

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68800; File No. SR-CBOE-2013-012)

February 1, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend CBSX Rule 52.4 relating to the Clearly Erroneous Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 29, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to CBOE Stock Exchange (“CBSX”) Rule 52.4, entitled “Clearly Erroneous Policy.” The Exchange also proposes to adopt new paragraph (i) to CBSX Rule 52.4 in connection with the upcoming operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Securities and Exchange Act of 1934 (the “Limit Up-Limit Down Plan” or “Plan”).<sup>3</sup>

(additions are underlined; deletions are [bracketed])

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

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Chicago Board Options Exchange, Incorporated  
Rules

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Rule 52.4 Clearly Erroneous Policy

The provisions of paragraphs (c), (e)(2), (f), and (g) of this Rule, as amended on September 10, 2010, and the provisions of paragraph (i), shall be in effect during a pilot period set to end on [February 4]September 30, 2013. If the pilot is not either extended, replaced or approved permanent by September 30, 2013, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraph (i) shall be null and void.

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(i) Securities Subject to Limit Up-Limit Down Plan. For purposes of this paragraph, the phrase “Limit Up-Limit Down Plan” or “Plan” shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (h) above shall govern all CBSX transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (i). If as a result of CBSX technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, an Official or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Official or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of

the Official or other senior level employee designee must be taken by no later than the start of CBSX Regular Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each CBSX Trader involved in the transaction shall be notified as soon as practicable by CBSX, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, CBSX will make the determination of whether to nullify transactions based on paragraphs (a) through (h) above.

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The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of CBSX's current rule "Clearly Erroneous Policy" and to adopt new paragraph (i) to CBSX Rule 52.4 in connection with upcoming operation of the Limit Up-Limit Down Plan.

#### Proposal to Extend Pilot

Portions of Rule 52.4, explained in further detail below, are currently operating as a pilot program set to expire on February 4, 2013.<sup>4</sup> The Exchange proposes to extend the pilot program to September 30, 2013.

On September 10, 2010, the Commission approved, on a pilot basis, changes to CBSX Rule 52.4 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on CBSX.<sup>5</sup> The Exchange also adopted additional changes to CBSX Rule 52.4 that reduced the ability of CBSX to deviate from the objective standards set forth in Rule 52.4.<sup>6</sup> The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis through September 30, 2013, which is the date that the Exchange anticipates that the phased implementation of the Limit Up-Limit Down Plan will be complete. As explained in further detail below, although the Limit Up-Limit Down Plan is intended to prevent executions that would

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<sup>4</sup> Securities Exchange Act Release No. 67575 (August 2, 2012), 77 FR 47478 (August 8, 2012) (SR-CBOE-2012-070).

<sup>5</sup> Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR-CBOE-2010-056).

<sup>6</sup> Id.

need to be nullified as clearly erroneous, the Exchange believes that certain protections should be maintained while the industry gains initial experience operating with the Limit Up-Limit Down Plan, including the provisions of Rule 52.4 that currently operate as a pilot.

#### Proposed Limit Up-Limit Down Provision to Rule 52.4

The Exchange proposes to adopt new paragraph (i) to Rule 52.4, to provide that the existing provisions of CBSX Rule 52.4 will continue to apply to all CBSX transactions, including transactions in securities subject to the Plan, other than as set forth in proposed paragraph (i). Accordingly, other than as proposed below, the Exchange proposes to maintain and continue to apply the Clearly Erroneous Policy standards in the same way that it does today. Notably, this means that CBSX might nullify transactions that occur within the price bands disseminated pursuant to the Limit Up-Limit Down Plan to the extent such transactions qualify as clearly erroneous under existing criteria. As an example, assume that a Tier 1 security pursuant to the Plan has a reference price pursuant to both the Plan and Rule 52.4 of \$100.00. The lower pricing band under the Plan would be \$95.00 and the upper pricing band under the Plan would be \$105.00. An execution could occur on CBSX in this security at \$96.00, as this is within the Plan's pricing bands. However, if subjected to review as potentially clearly erroneous, CBSX would nullify an execution at \$96.00 as clearly erroneous because it exceeds the 3% threshold that is in place pursuant to Rule 52.4(c)(1) for securities priced above \$50.00 (i.e., with a reference price of \$100.00, any transactions at or below \$97.00 or above \$103.00 could be nullified as clearly erroneous). Accordingly, this proposal maintains the status quo with respect to reviews of clearly erroneous executions and the application of objective numerical

guidelines by CBSX. The proposal does not increase the discretion afforded to CBSX in connection with reviews of clearly erroneous executions.

The Limit Up-Limit Down Plan is designed to prevent executions from occurring outside of dynamic price bands disseminated to the public by the single plan processor as defined in the Limit Up-Limit Down Plan.<sup>7</sup> The possibility remains that CBSX could experience a technology or systems problem with respect to the implementation of the price bands disseminated pursuant to the Plan. To address such possibilities, CBSX proposes to adopt language to make clear that if a CBSX technology or systems issue results in any transaction occurring outside of the price bands disseminated pursuant to the Plan, an Official or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Official or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Official or other senior level employee designee must be taken by no later than the start of CBSX Regular Trading Hours<sup>8</sup> on the trading day following the date on which the execution(s) under review occurred. Although CBSX will act as promptly as possible and the proposed objective standard (i.e., whether an execution occurred outside the band) should make it feasible to quickly make a determination, there may be circumstances in which additional time may be needed for verification of facts or coordination with outside parties, including the single plan processor responsible for

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<sup>7</sup> See Limit Up-Limit Down Release, supra note 3.

<sup>8</sup> Regular Trading Hours commence at 9:30 a.m. Eastern Time. See CBSX Rule 51.2(a).

disseminating the price bands and other market centers. Accordingly, CBSX believes it necessary to maintain some flexibility to make a determination outside of the thirty (30) minute guideline. In addition, CBSX proposes that a transaction that is nullified pursuant to new paragraph (i) would be appealable in accordance with the provisions of Rule 52.4(e)(2). In addition, CBSX proposes to make clear that in the event that a single plan processor experiences a technology or systems problem that prevents the dissemination of price bands, CBSX would make the determination of whether to nullify transactions based on Rule 52.4(a)-(h).

The Exchange believes that cancelling trades that occur outside of the price bands disseminated pursuant to the Plan is consistent with the purpose and intent of the Plan, as such transactions are not intended to occur in the first place. If transactions do occur outside of the price bands and no exception applies -- which necessarily would be caused by a technology or systems issue -- then the Exchange believes the appropriate result is to nullify such transactions.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Although the Limit Up-Limit Down Plan will be operational during the same time period as the proposed extended pilot, the Exchange believes that maintaining the pilot for at least through the phased implementation of the Plan is operational will help to protect against unanticipated consequences. To that end, the extension will allow the Exchange to determine whether Rule 52.4 is necessary once the Plan is operational and, if so, whether improvements can be made. Further, the Exchange believes it consistent with the protection of investors and the public interest to adopt objective criteria to nullify transactions that occur outside of the Plan's price bands when such transactions should not have been executed but were due to a systems or technology issue.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the Financial Industry Regulatory Authority ("FINRA") and other national securities exchanges are also filing similar proposals, and thus, that the proposal will help to ensure consistent rules across market centers.



C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>15</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-012 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

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<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CBOE-2013-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-CBOE-2013-012 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).