

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69147; File No. SR-CBOE-2013-029)

March 15, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Comply with the Requirements of the National Market System Plan to Address Extraordinary Market Volatility

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 March 4, 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 amend CBOE Stock Exchange, Inc. (“CBSX”) rules to comply with the National Market System Plan to Address Extraordinary Market Volatility (as amended, the “Plan”). The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, on the Commission’s website (<http://www.sec.gov>), and at the Commission’s Public Reference Room.

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

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

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

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend CBSX rules to conform with the Plan. Specifically, the Exchange is proposing to add CBSX Rule 52.15, "Special Conditions due to Extraordinary Market Volatility" and make other administrative changes. CBSX believes these amendments will allow CBSX to appropriately conform to the market-wide requirements under the Plan. CBSX believes similar rule changes will be adopted by other markets in the national market system in a coordinated manner.

In an attempt to address extraordinary market volatility in NMS Stock, and, in particular, events like the severe volatility on May 6, 2010, the Exchange, in conjunction with the other national securities exchanges and the Financial Industry Regulatory Authority, Inc. (collectively, "Participants") drafted the Plan pursuant to Rule 608 of Regulation NMS and under the Securities Exchange Act of 1934 (the "Act").<sup>3</sup> The Plan is primarily designed to, among other things, address extraordinary market volatility in NMS stocks, protect investors, and promote fair and orderly markets. The Plan provides for market-wide limit up-limit down requirements that prevent trades in individual NMS Stocks from occurring outside of specified price bands, as defined in Section I(N) of the Plan. These requirements would be coupled with trading pauses,

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<sup>3</sup> See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4-631).

as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or monetary gaps of liquidity).

The Plan was filed on April 5, 2011 by the Participants for publication and comment.<sup>4</sup> The Participants requested the Commission approve the Plan as a one-year pilot. On May 24, 2012, the Participants filed an amendment to the Plan which clarified, among other things, the calculation of the reference price, as defined in Section I(T) of the Plan, potential for order type exemption, and the creation of an Advisory Committee.<sup>5</sup> On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.<sup>6</sup>

Under the Plan, Participants are required to adopt certain rules in order to comply. Specifically, Section II(B) requires each Participant to adopt a rule requiring compliance by its members with the provision of the Plan. In addition, Section VI of the Plan sets forth the limit up-limit down requirements of the Plan, and in particular, that all trading centers in NMS Stocks, including both those operated by the Participants and those operated by member of Participants, shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trades at prices that are below the lower price band or above the upper price band for an NMS Stock, consistent with the Plan. Price bands would be calculated by Securities Information Processors (“SIPs”) responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act. As proposed, and approved, the Plan would be implemented, as a one year pilot program, in two phases.<sup>7</sup> Phase I would become

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<sup>4</sup> Id.

<sup>5</sup> See Securities and Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4-631).

<sup>6</sup> See Securities and Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

<sup>7</sup> Id.

effective immediately and apply to Tier I NMS Stock per Appendix A of the Plan, and Phase II would become effective six months later, or earlier if announced by the SIPs 30 days prior, and would apply to all NMS Stocks.

To comply with the above stated provisions of the Plan, the Exchange is proposing to add CBSX Rule 52.15, “Special Conditions due to Extraordinary Market Volatility” and make other administrative conforming changes. As stated above, CBSX believes similar rule changes will be adopted by other markets in the national market system in a coordinated manner.

First, the Exchange is proposing to add CBSX Rule 52.15, “Special Conditions due to Extraordinary Market Volatility.” Under the Plan, Section II(B) requires each Participant to adopt a rule requiring compliance by its members with the provision of the Plan. Thus, the Exchange is proposing to add a new CBSX Rule 52.15(c)(1) to add such language. In addition, the proposed rule change would add CBSX Rule 52.15(a) to refer Trading Permit Holders (“TPHs”) to Exchange rules addressing “Market-wide Trading Halts Due to Extraordinary Market Volatility”<sup>8</sup> as these trading halts will also occur at the same time as the Plan to accommodate more fundamental price moves. The Exchange is also proposing to add CBSX Rule 52.15(b) which references Exchange Rule 6.3C, “Individual Stock Trading Pause Due to Extraordinary Market Volatility,” which is the current individual stock trading halts currently in effect. The Plan seeks to replace these halts, but by including reference to the current halts in the proposed Rule, TPHs will more fully understand which rules are applicable. For more clarity, the Exchange is proposing to add language to newly proposed Rule 52.15(c) to alert TPHs to the gradual phasing of the Plan as it coincides with the Trading Pauses referenced in Rule 52.15. Next, the Exchange is proposing to add language regarding Clearly Erroneous Executions. A

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<sup>8</sup> See Rule 6.3B.

new paragraph (i) has been added to CBSX Rule 52.4 to address the Plan.<sup>9</sup> In implementing one rule to alert TPHs to the Plan, the Exchange is proposing to create a roadmap of rules related to the Plan to make it explicit and easy to use how the Plan will be incorporated into the CBSX Rules. By adding the proposed language to CBSX Rule 52.15, CBSX is attempting to eliminate confusion for TPHs.

The Plan also requires policies and procedures including, but are not limited to, specific order handling rules addressing exchange-specific order types to be put in place by each exchange in order to comply. CBSX is proposing to add Rule 52.15(c)(3) to fulfill these requirements. The proposed rule change will address how certain orders will function on CBSX in compliance with the Plan.

CBSX believes the proposed rule change allows CBSX to comply with the Plan because it prevents trades from occurring outside of the price bands as the Plan specifically requires. Specifically, CBSX is proposing to add language to clarify that market orders<sup>10</sup> will execute at prices “at, or better than, the opposite side of the Price Band.” If the order, or any portion of that order, would result in an execution outside of the Price Band, then the order will be cancelled. The Exchange believes the proposed changes will comply with the Plan, as required, as it will ensure market orders are not executed at a price that is outside of the applicable Price Band.

CBSX is also adding language to address orders that may be explicitly priced outside the Price Bands.<sup>11</sup> Because the specified price on these orders might also be outside the price bands,

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<sup>9</sup> See Securities Exchange Act Release No. 34-68800 (February 7, 2013), 78 FR 9076 (February 21, 2013) (SR-CBOE-2013-012).

<sup>10</sup> See Rule 51.8(a) which defines a market order as “an order to buy or sell a stated number of shares at the best price available on the CBSX system.”

<sup>11</sup> CBSX currently supports various order types that, by their nature, require a specified price (e.g. Limit Orders) or an optional contingency price (e.g. Silent Orders). See, e.g., CBSX Rule 51.8(b) and (10).

CBSX will re-price these orders to be within the price bands. More specifically, an order that is explicitly priced outside of the Price band, will be re-priced by the CBSX System to the corresponding Price Band. To remain consistent, if a Price Band moves and an order resting in the CBSX Book is priced outside of the Price Band, the resting order will also be re-priced to the corresponding Price Band. Language is also being proposed to clarify that re-priced orders will retain the original time price priority. The Exchange believes this proposed change will also prevent orders from executing outside of the Price Bands.

Next, CBSX is adding language to address Immediate-or-Cancel orders. Any Immediate-or-Cancel order will be accepted by the CBSX System, however, such orders may only execute at or within the bands. Consistent with Immediate-or-Cancel orders generally, any unexecuted portion will be cancelled. With the proposed changes, CBSX will be in compliance with the Plan by preventing trades from occurring outside the price bands during a limit state. The Exchange is also proposing to add language to state that any CBSX order priced passively outside of the Price Bands will be accepted by the CBSX System and put in the CBSX book. Such orders will not be executed until the Price Band moves and the order is now at or within the Price Band.

The Exchange is also proposing to add language to describe how the Exchange will route orders. More specifically, the Exchange is proposing to add 52.15(c)(3)(E) to explicitly say that the Exchange shall not route to an away market displaying a quote that is outside of the applicable Price band. The Exchange believes this change will ensure the Exchange will not execute any orders outside of the Price Bands and required by the Plan.

Next, the Exchange is proposing to add language regarding special handling of quotes after the Plan becomes operative. The Exchange is proposing to add language specifically

addressing new bids and offers will be cancelled for those quotations are outside of the applicable Price Bands. In addition, any resting quotation in the CBSX book that becomes outside of the Price Bands due to a change in the market will be re-priced to the corresponding Price Band as appropriate. The Exchange believes that this proposed change will further ensure that orders will not be executed outside of the Price Bands as required by the Plan.

Finally, as an administrative change, the Exchange is proposing to add reference to Rule 6.3C, “Individual Stock Trading Pause Due to Extraordinary Market Volatility” in CBSX Appendix A to make clear Rule 6.3C applies to CBSX members as well. The Exchange believes this change creates more clarity to TPHs which rules are applicable to them.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)<sup>14</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will comply with the Plan which is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks, thereby protecting investors and promoting a fair and orderly market. In addition, similar rule changes will be adopted by other markets in the national market system in a coordinated manner promoting the public interest. Creating a more orderly market will promote just and equitable principles of trade by allowing investors to feel more secure in their participation in the national market system. The proposed rule change also incorporates a market-wide plan, which has been approved by the Commission under the Act.<sup>15</sup> Incorporation of such Plan into the CBSX rules allows for explicit compliance under the Act.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act<sup>16</sup>, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. The Plan was filed under the Act, and the proposed rule changes merely allow CBSX to comply with the Plan. Therefore, the proposed rule change is allowing the Exchange to have the capacity to carry out the purposes of the Act. In addition, it is requiring CBSX TPHs to comply with the Plan and, thus, the Act.

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<sup>14</sup> Id.

<sup>15</sup> See supra note 6.

<sup>16</sup> 15 U.S.C. 78f(b)(1).

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. The proposed changes are based on a market-wide plan, and, as such, the Exchange understands other competing exchanges plan to make similar changes. In addition, the proposed changes are being made to establish, maintain, and enforce written policies and procedures that are reasonably specified in the Plan. As such, the proposed changes merely provide protection to investors during periods of extraordinary market volatility.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>19</sup> to determine whether the proposed rule change should be approved or disapproved.

#### 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 No. SR-CBOE-2013-029 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.

All submissions should refer to File No. SR-CBOE-2013-029. 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

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<sup>19</sup> 15 U.S.C. 78s(b)(2)(B).

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 such 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 No. SR-CBOE-2013-029 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>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).