

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70540; File No. SR-CBOE-2013-089)

September 27, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend CBSX Rule 53.22 Related to CBSX Remote Market-Maker Appointments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 17, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) a 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Stock Exchange, LLC (“CBSX”) Rule 53.22 related to CBSX Remote Market-Maker (“RMM”) appointments. The text of the proposed rule change is provided below.

(additions are underlined; deletions are [bracketed])

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**Chicago Board Options Exchange, Incorporated**

**Rules**

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

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

## **Rule 53.22 Appointment of CBSX Remote Market-Makers**

(a) [On a form or forms]In a manner prescribed by CBSX, a registered CBSX Remote Market-Maker (other than CBSX DPMs and CBSX LMMs) may [apply for]select an Appointment (having the obligations of Rule 53.23) in one or more non-option securities traded on CBSX. CBSX may also appoint a registered CBSX Remote Market-Maker in one or more non-option securities traded on CBSX. In making such Appointments, CBSX shall give attention to (1) the preference of registrants; (2) the maintenance and enhancement of competition among CBSX Remote Market-Makers in each security; and (3) assuring that financial resources available to a CBSX Remote Market-Maker enable it to satisfy the obligations set forth in Rule 53.23 with respect to each security for which it is appointed. CBSX may arrange two or more securities into groupings and make Appointments to those groupings rather than to individual securities. CBSX may suspend or terminate any Appointment of a CBSX Remote Market-Maker under this Rule and may make additional Appointments whenever the interests of a fair and orderly market are best served by such action.

(b) – (c) No changes.

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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'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 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 Exchange proposes to amend CBSX Rule 53.22 related to RMM appointments. A “CBSX Remote Market-Maker” or “RMM” is a CBSX Trading Permit Holder that has agreed to fulfill certain market-making obligations thus qualifying for defined benefits as set forth in the CBSX Rules.<sup>3</sup> An RMM is an individual (either a Trading Permit Holder or nominee of a Trading Permit Holder organization) who is registered with CBSX for the purpose of making transactions as a dealer-specialist in the CBSX electronic trading system in accordance with the CBSX Rules. Registered RMMs are designated as specialists on CBSX for all purposes under the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder. RMMs may only operate in a remote capacity.<sup>4</sup>

CBSX Rule 53.22 currently provides, among other things, that RMMs may apply for an appointment (having the obligations of CBSX Rule 53.23)<sup>5</sup> in one or more non-option securities

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<sup>3</sup> See CBSX Rule 50.3(2).

<sup>4</sup> See CBSX Rule 53.20.

<sup>5</sup> Under CBSX Rule 53.23, RMMs must, among other things:

- enter into transactions that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market;
- not enter into transactions or make bids or offers that are inconsistent with such a course of dealings;
- with respect to each security for which it holds an appointment, continuously engage in, to a reasonable degree under the existing circumstances, in dealings for its own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, or a temporary disparity between the supply of and demand for a particular security;

traded on CBSX on a form or forms prescribed by CBSX. It further provides that in making such appointments, CBSX must give attention to (1) the preference of registrants; (2) the maintenance and enhancement of competition among RMMs in each security; and (3) whether the financial resources available to an RMM enable it to satisfy the obligations set forth in Rule 53.23 with respect to each security in which it holds an appointment.

The proposed rule change amends Rule 53.22 to allow RMMs to select appointments rather than apply for them and to allow CBSX to appoint RMMs in one or more securities (considering the same factors listed above). The proposed rule change will enable RMMs to manage their appointments with more flexibility and in a timelier manner. The Exchange believes this will provide RMMs with more efficient access to the securities in which they want to make markets and disseminate competitive quotations, which will provide additional liquidity and enhance competition in those securities. CBSX will retain the ability to appoint RMMs in

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- compete with other CBSX Market-Makers to improve markets;
  - make markets which, absent changed market conditions, will be honored for the number of shares entered into the CBSX electronic trading system;
  - engage in trading activity of which at least 75% of its total dollar amount traded on CBSX is in securities to which it has an appointment;
  - with respect to securities in which an RMM does not hold an appointment, not engage in transactions for an account in which it has an interest that are disproportionate in relation to, or in derogation of, the performance of its obligations with respect to those securities in which it does hold an appointment;
  - satisfy RMM obligations in a security in which it does not hold an appointment whenever an RMM submits a two-sided quote in that security; and
  - comply with two-sided and minimum size obligations and pricing obligations for bids and offers.

order to maintain a fair and orderly market.<sup>6</sup> RMMs will continue to be subject to the obligations set forth in Rule 53.23 with respect to their appointments.

The proposed rule change is substantially similar in all material respects to the rules of other self-regulatory organizations.<sup>7</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</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 facilitating 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 is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to a free and open market, because it will enable RMMs to manage their appointments with more flexibility and in a

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<sup>6</sup> CBSX also retains the authority under Rule 53.22(a) to suspend or terminate any RMM appointment if in the interest of a fair and orderly market.

<sup>7</sup> See, e.g. CBOE Rule 8.3(a)(i) and C2 Options Exchange, Incorporated Rule 8.2(b).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

timelier manner. The Exchange believes this will provide RMMs with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which will provide additional liquidity and enhance competition in those securities. CBSX will still have authority to suspend or terminate any RMM appointment in the interest of a fair and orderly market, including if necessary to prevent fraudulent and manipulative acts and practices and protect investors or if an RMM does not satisfy its obligations with respect to an appointment.

The proposed rule change does not result in unfair discrimination, as it applies to all RMMs. The proposed rule change reduces the burden on RMMs to manage their appointments and thus provide liquidity to CBSX; however, RMMs must still comply with the obligations set forth in CBSX Rule 53.23, which will ensure continuous, two-sided quotations in its appointed securities. CBSX believes it is appropriate to provide RMMs with the ability to select appointments but not Designated Primary Market-Makers (“DPMs”) or Lead Market-Makers (“LMMs”). Because DPMs and LMMs are subject to more stringent obligations, for which they receive additional benefits, with respect to their appointments than RMMs, the Exchange believes it is appropriate to continue to approve DPMs and LMMs after a thorough application process to ensure that they have sufficient resources and capabilities to satisfy those obligations.

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 because it provides the same relief to a group of similarly situated market participants – RMMs. The proposed rule change reduces the burden on RMMs to manage their appointments and thus provide liquidity to CBSX; however, RMMs must still comply with the obligations set forth in

CBSX Rule 53.23, which will ensure continuous, two-sided quotations in its appointed securities. CBSX believes it is appropriate to provide RMMs with the ability to select appointments but not Designated Primary Market-Makers (“DPMs”) or Lead Market-Makers (“LMMs”). Because DPMs and LMMs are subject to more stringent obligations, for which they receive additional benefits, with respect to their appointments than RMMs, the Exchange believes it is appropriate to continue to approve DPMs and LMMs after a thorough application process to ensure that they have sufficient resources and capabilities to satisfy those obligations.

The proposed rule change is substantially similar in all material respects to rules of other self-regulatory organizations. The Exchange does not believe the proposed rule change will help RMMs to the detriment of market participants on other exchanges. RMMs are still subject to the same obligations with respect to its appointments; the proposed rule change is making the appointment process more efficient for RMMs.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition, as it will enable RMMs to manage their appointments with more flexibility and in a timelier manner. The Exchange believes this will provide RMMs with more efficient access to the securities in which they want to make markets and thus more quickly begin disseminating competitive quotations in those securities, which will provide additional liquidity and enhance competition in those securities.

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>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder. 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 after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>13</sup> normally does not become operative prior to 30 days after the date of the 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 requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is appropriate because the proposed rule change does not present any new, unique or substantive issues, but rather only changes the manner by which RMMs may obtain appointments. The Exchange also states that RMMs will continue to be subject to the same obligations with respect to their appointments. According to the Exchange, waiver of the operative delay will provide RMMs with more efficient access to the securities in which they want to make markets so that RMMs may more quickly begin disseminating competitive quotations in those securities, which will provide additional liquidity and enhance competition in those securities. The Commission believes that

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> Id.

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

waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as doing so will allow RMMs to manage their appointments in a more flexible and timely manner. 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 Number SR-CBOE-2013-089 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 operative delay for this proposal, the Commission has 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-2013-089. 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 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 Number SR-CBOE-2013-089, 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).