

2013, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to April 25, 2013.<sup>5</sup> On April 18, 2013, FINRA withdrew the proposed rule change (SR-FINRA-2013-002).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69443; File No. SR-NYSEArca-2013-39]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Add a Moving Average Check for Incoming Market Orders and Marketable Limit Orders

Dated: April 24, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 11, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

Eichhorn, Supervising Attorney, and Julianne S. Bisceglia, Legal Intern, University of Miami School of Law, Investor Rights Clinic, dated Feb. 15, 2013; Letter from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated Feb. 15, 2013; Letter from Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network, dated Feb. 15, 2013; Letter from James Cooper, Chief Operating Officer, Zions Direct, dated Feb. 15, 2013; Letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated Feb. 15, 2013; Letter from James Smith, Chief Compliance Officer, BlackRock Investments, LLC, Ned Montenecourt, Chief Compliance Officer, BlackRock Capital Markets, LLC, BlackRock Execution Services, and Joanne Medero, Managing Director, BlackRock, Inc., dated Feb. 15, 2013; Letter from Clifford E. Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated Feb. 15, 2013; Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated Feb. 16, 2013; and Letter from Lisa Catalano, Esq., dated Feb. 18, 2013.

<sup>5</sup> See Securities Exchange Act Release No. 69063, 78 FR 15994 (Mar. 13, 2013).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 NYSE Arca Equities Rule 7.31 to add a Moving Average Check for incoming Market Orders and marketable limit orders. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts 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 proposes to amend NYSE Arca Equities Rule 7.31(a) to add a Moving Average Check that would prevent incoming Market Orders and marketable Limit Orders, as defined in NYSE Arca Equities Rule 7.31(b), from trading if the order size exceeded certain thresholds. The Exchange believes that the proposed Moving Average Check would serve as an additional safeguard that could help limit potential harm from extreme price volatility by preventing executions of potentially erroneously sized orders.

Specifically, the proposed Moving Average Check would reduce the potential for a single order to disrupt trading in that security by comparing the size of the incoming order to a measure of historical trading activity in that security. The Exchange believes that if an incoming order represents a significant volume as compared to the historical trading activity in that security, that order is likely to be erroneous and should be rejected before it has an opportunity to impact the market. As proposed, the Exchange would perform the following Moving

Average Check for all incoming Market Orders and marketable Limit Orders:

- If the size of an incoming Market Order or marketable Limit Order is less than or equal to 50% of the projected 30-day moving average volume for that security, the order would be processed normally.
- If the size of an incoming Market Order or marketable Limit Order is greater than 50% but less than or equal to 75% of the projected 30-day moving average volume for the security, the Exchange would process the order normally and also notify the ETP Holder that the order size was greater than 50% of the projected 30-day moving average volume for the security.
- If the size of an incoming Market Order or marketable limit order is greater than 75% of the projected 30-day moving average volume for the security, the Exchange would reject the order and notify ETP Holder of the reason why the order was rejected.

As proposed, the projected 30-day moving average volume for each security would be calculated by: (i) Taking the prior day's 30-day moving average volume and multiplying that number by 29; (ii) adding to that number the total consolidated last sale volume in that security for the prior trading day; and (iii) dividing the combined number by 30.<sup>4</sup> If a security does not yet have a projected 30-day moving average volume, the default projected 30-day moving average volume shall be 10,000 shares. For example:

##### • Day 0

1. Seed the projected 30-day moving average volume for Day 0 with the default projected 30-day moving average volume (10,000 shares).

2. Total consolidated last sales volume in XYZ on Day 0 of 20,000 shares.

##### • Day 1

1. Projected 30-day moving average volume for Day 1 Moving Average Check =  $10,333 \text{ shares } ((10,000 \times 29) + 20,000)/30$ .

2. Total consolidated last sales volume for XYZ on Day 1 of 10,000 shares.

##### • Day 2

1. Projected 30-day moving average volume for Day 2 Moving Average Check =  $10,322 \text{ shares } ((10,333 \times 29) + 10,000)/30$ .

<sup>4</sup> The Exchange notes that the projected 30-day moving average volume is not the same as the 30-day average daily volume for the security.

2. Total consolidated last sales volume for XYZ on Day 2 of 20,000 shares.

• Day 3

1. Projected 30-day moving average volume for Day 3 Moving Average Check = 10,645 [sic] shares  $((10,332 \times 29) + 20,000)/30$ .

As proposed, the Moving Average Check would not apply to orders designated for Auctions pursuant to NYSE Arca Equities Rule 7.35<sup>5</sup> and orders that were not marketable upon entry into the Exchange.<sup>6</sup> When determining the size of marketable Reserve Orders, the Exchange proposes to include the full volume of the order, including the reserve size.

The Exchange believes that the proposed Moving Average Check would provide appropriate thresholds for determining whether an incoming Market Order or marketable Limit Order should either be accepted by the Exchange and processed normally or be rejected. Specifically, the Exchange believes that if the size of the incoming Market Orders or marketable limit orders is greater than 75% of the projected moving average volume for that security, it is likely erroneous and should be rejected. The Exchange proposes to include a notification to the ETP Holder of the reason for the rejection so that the ETP Holder is on notice of why the order was rejected. While the Exchange will permit incoming orders that are greater than 50% but less than or equal to 75% of the projected moving average volume, the Exchange believes that a notification should be provided to the ETP Holder warning that the order is approaching a threshold size for rejection, thereby putting the ETP Holder on notice of the potential impact of that order on the market for that security. Such a notification would also put an ETP Holder on notice of whether an order of such size was intended to be entered or should be modified.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers

<sup>5</sup> The Exchange notes that one of the purposes of an auction is to maximize liquidity for efficient price discovery for a single-priced transaction and that the auction may not function effectively if order size were limited.

<sup>6</sup> The Exchange notes that a large-sized limit order could be unmarketable at the time of entry, but that after the price of that security moves, the order could become marketable. The Exchange believes that if such a large-sized order were displayed, the market would respond with adequate liquidity to dampen the potential market impact of such large-sized order before it becomes marketable.

<sup>7</sup> 15 U.S.C. 78f(b).

the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, 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. Specifically, the Exchange believes that the proposed Moving Average Check will remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by ensuring that exceedingly large-sized Market Orders and marketable limit orders cannot be entered into the Exchange and potentially cause significant price dislocation for the security. The Exchange believes that the percentage thresholds for the Moving Average Check provide appropriate parameters for determining whether an incoming Market Order or marketable limit order should either trade normally, receive a warning notification, or be rejected by the Exchange, thereby facilitating transactions on the Exchange in a just and equitable manner while protecting investors from exceedingly large or potentially erroneously sized orders that may dislocate pricing and liquidity in the market and result in extreme price volatility.

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

The Exchange 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 Exchange believes that the proposal will serve as an additional safeguard to help limit potential harm from extreme price volatility by preventing executions from exceedingly large or potentially erroneously sized orders in a manner that promotes a fair and orderly market while protecting investors on the Exchange. In addition, the proposal should act to promote competition amongst market participants on the Exchange by facilitating transactions on the Exchange in a just and equitable fashion while protecting investors.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order, approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2013-39 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 Number SR-NYSEArca-2013-39. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-NYSEArca-2013-39 and should be submitted on or before May 21, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69438; File No. SR-CBOE-2013-037]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees for the BBO Data Feed for CBOE Listed Options

April 23, 2013.

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 April 16, 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, II, and III 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

Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") proposes to amend the fee schedule of Market Data Express, LLC ("MDX"), an affiliate of CBOE, for the BBO Data Feed for CBOE listed options ("BBO Data Feed" or "Data"). The text of the proposed rule change is available on the Exchange's Web site ([http://](http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx)

[www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx](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 purpose of the proposed rule change is to amend the fees charged by MDX for the BBO Data Feed and to make several clarifying changes to the MDX fee schedule.<sup>3</sup> The BBO Data Feed is a real-time, low latency data feed that includes CBOE "BBO data" and last sale data.<sup>4</sup> The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to the Options Price Reporting Authority ("OPRA") for redistribution to the public.<sup>5</sup>

The BBO Data Feed also includes certain data that is not included in the data sent to OPRA, namely, (i) totals of customer versus non-customer contracts at the BBO, (ii) All-or-None contingency orders priced better than or equal to the BBO, (iii) BBO data and last sale data for complex strategies (e.g., spreads,

straddles, buy-writes, etc.) ("Spread Data"), (iv) BBO data and last sale data for Flexible Exchange ("FLEX") options traded on the CBOE FLEX Hybrid Trading System, including BBO data and last sale data for FLEX complex strategies (collectively, "FLEX BBO data"), and (v) expected opening price ("EOP") and expected opening size ("EOS") information that is disseminated prior to the opening of the market and during trading rotations (collectively, "EOP/EOS data").<sup>6</sup>

MDX currently charges Customers a "direct connect fee" of \$3,500 per connection per month and a "per user fee" of \$25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers.<sup>7</sup> Either a CBOE Trading Permit Holder or a non-CBOE Trading Permit Holder may be a Customer. All Customers are assessed the same fees.

The Exchange proposes to eliminate both the direct connect fee and the per user fee and replace them with a "data fee", payable by a Customer, of \$5,000 per month for internal use and external redistribution of the BBO Data Feed. A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system or through a connection to MDX provided by an approved redistributor (i.e., a market data vendor or an extranet service provider) and then distributes it internally and/or externally. The data fee would entitle a Customer to provide the BBO Data Feed to an unlimited number of internal users and Devices within the Customer. The data fee would also entitle a Customer to distribute externally the BBO Data Feed to other Customers. A Customer receiving the BBO Data Feed from another Customer would be assessed the data fee by MDX and would be entitled to distribute the Data internally and/or externally.<sup>8</sup> All Customers would have

<sup>6</sup> The Exchange identified the inclusion of FLEX BBO data and EOP/EOS data in the BBO Data Feed in a proposed rule change filed in January 2013. See Securities Exchange Act Release No. 68696 (January 18, 2013), 78 FR 5527 (January 25, 2013). MDX also makes the FLEX BBO data available as a separate data feed at no charge to any Customer that wishes to subscribe to only that data. EOP/EOS data is not offered separate from the BBO Data Feed.

<sup>7</sup> An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

<sup>8</sup> A Customer may choose to receive the Data from another Customer rather than directly from MDX's system because it does not want to or is not equipped to manage the technology necessary to establish a direct connection to MDX. In addition,

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The BBO Data Feed and the fees charged by MDX for the BBO Data Feed were established in March 2011. See Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011).

<sup>4</sup> The BBO Data Feed includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top-of-book data"). Data with respect to executed trades is referred to as "last sale" data.

<sup>5</sup> The Exchange notes that MDX makes available to Customers the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.