

Section 15A(b)(9) of the Act provides that “[t]he rules of the association do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.”⁵¹ NSX argues that FINRA fails to adequately address whether the Proposal imposes a burden on competition for other self-regulatory organization (“SRO”)s such as NSX.⁵² According to NSX, the Proposal is an unfair subsidy of FINRA’s trading facility and that by charging “below cost or subsidized rates to ADF Market Participants, FINRA would have an unfair advantage against other exchanges that are offering competitive alternatives.”⁵³ NSX argues that ADF users should be required to self-fund the ADF platform.⁵⁴ In addition, NSX claims that the ADF Deposit Amount and the requirement to send at least 75% of quotes and trades to FINRA amount to an unprecedented burden on competition because the ADF Quoting Requirement would make it economically unfeasible for any other SRO that provides order delivery functionality to compete with FINRA.⁵⁵

FINRA responds that NSX’s assertion that FINRA is either subsidizing the operation of the ADF or operating at a loss and that this results in an unfair competitive advantage against exchanges attempting to offer order delivery alternatives to the ADF is misleading.⁵⁶ FINRA states that the ADF Deposit Amount is not an unfair subsidy; rather it is designed to recoup expenses it incurs in connection with the addition of new ADF Market Participants and the ADF Migration.⁵⁷ FINRA notes that the Proposal is “intended to avoid the need for FINRA to subsidize all of the costs associated with” the ADF.⁵⁸ Moreover, FINRA notes that the ADF Quoting Requirement is not an unnecessary or appropriate burden on competition because it is not a requirement to use the ADF, and is only a means to earn back the ADF Deposit Amount.⁵⁹ According to FINRA, therefore, meeting the ADF Quoting Requirement is voluntary and at the discretion of an ADF Market Participant.⁶⁰

The Commission does not believe that the Proposal constitutes an unnecessary

or inappropriate burden on competition. In addition, the Commission does not agree with NSX’s argument that the Quoting Requirement would make it economically unfeasible for any other SRO that provides order delivery functionality to compete. To the extent that ECNs choose to use the ADF Platform because the ADF offers better facilities and a more favorable price structure, such a result is not an unnecessary or inappropriate burden on competition.

In its comment letter, NYSE suggests that the combination of FINRA’s existing ADF fee schedule contained in Rule 7510—in which the Quotation Update Charge to be paid by an ADF Market Participant varies commensurate with the number of trades reported through the ADF by that ADF Market Participant—and the fees contained in the Proposal is inconsistent with Section 15A(b)(9) because they make it economically prohibitive for an ADF Participant to quote on the ADF but trade report elsewhere.⁶¹

FINRA responds by reiterating that the proposed ADF Deposit Amount is designed to reasonably and equitably allow FINRA to recoup costs related to the ADF migration and the addition of a new ADF Market Participant that the provision by which an ADF Market Participant may earn back some or all of its ADF Deposit Amount is designed to provide an incentive for an ADF Market Participant to remain active on the ADF and to utilize the ADF capacity that FINRA has incurred costs to provide.⁶² FINRA states that this, in turn, will reduce the likelihood that FINRA will incur unnecessary expenditures in connection with the ADF migration, and will increase the probability of FINRA recouping a reasonable amount of the costs involved with launching a new ADF Market Participant from that ADF Market Participant rather than recover those costs from fees paid by all FINRA members.⁶³ FINRA believes the only new issue raised by NYSE relates to FINRA’s existing quotation fee structure in Rule 7510(b) rather than the Proposal itself.⁶⁴ As an initial matter, FINRA believes that such comments are not appropriately directed to this filing, as Rule 7510 has been previously filed and made effective under the Act.⁶⁵ FINRA further argues that both the proposed and existing fee structure fairly impose costs on those members whose quotation and trading activity creates

system capacity demands, as well as provide incentives to quote and trade report to the ADF, which also generates revenue for FINRA to support the costs of operating the ADF.⁶⁶ FINRA believes that an ADF Market Participant currently would consider both its quoting and trading activity when determining its desired level of activity on the ADF, and the Proposal, pursuant to which an ADF Market Participant would ascertain its ability to earn back some or all of its ADF Deposit Amount, is consistent with this analysis.⁶⁷ The Commission believes that FINRA has satisfied its burden to demonstrate that the Proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁶⁸ that the proposed rule change (SR-FINRA-2013-031), is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁹

Kevin M. O’Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71404; File No. SR-CHX-2014-01]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Order Cancellation Fee

January 27, 2014.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (“Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that on January 15, 2014, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) 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 solicit comments on the proposed rule change from interested persons.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ 15 U.S.C. 78s(b)(2).

⁶⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁵¹ 15 U.S.C. 78o-3(b)(9).

⁵² NSX Letter at 5.

⁵³ NSX Letter II at 3.

⁵⁴ *Id.* at 3-4.

⁵⁵ *Id.* at 4.

⁵⁶ FINRA Response II at 2-3.

⁵⁷ See FINRA Response at 6 and FINRA Response II at 3.

⁵⁸ FINRA Response II at 3.

⁵⁹ FINRA Response at 6.

⁶⁰ *Id.* at 6-7 and FINRA Response II at 3.

⁶¹ NYSE Letter at 1-2.

⁶² FINRA Response III at 3.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

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

CHX proposes to amend Section E.8 of its Schedule of Fees and Assessments (the "Fee Schedule") to amend the Order Cancellation Fee. The text of this proposed rule change is available on the Exchange's Web site at http://www.chx.com/rules/proposed_rules.htm, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section E.8 of the Fee Schedule to amend the Order Cancellation Fee. Specifically, the Exchange proposes to adopt proposed Section E.8(c) to provide an exemption from Order Cancellation Fees for a given month if an Account Symbol⁴ meets an Average Daily Volume ("ADV") requirement for that month. The Exchange does not propose to substantively amend the Order Cancellation Fee in any other way.

Current Order Cancellation Fee

Under SR-CHX-2012-15,⁵ the Exchange adopted the current formula-based Order Cancellation Fee detailed under Section E.8 of the Fee Schedule, amended under SR-CHX-2013-11⁶ and

SR-CHX-2013-12,⁷ which assesses a daily cancellation fee per Account Symbol and security, if the order cancellation ratio exceeds a designated threshold. In sum, the formula subtracts from the total daily number of "Wide" or "W" orders⁸ in a given security the product of "Near" or "N" orders⁹ in the same security submitted by the Participant in the Regular Trading Session in a given day and its corresponding "N" order multiplier or "Nmult."¹⁰ The difference is then divided by "E," which is defined as the greater of the number one (1) or the sum of all Wide and Near orders in a given security that are submitted and executed (in whole or in part) in the Regular Trading Session (excluding cross transactions) on a given day.

If the resulting value is equal to or greater than the corresponding "Cancellation Ratio" for that security, found under paragraph (b), a corresponding Order Cancellation Fee would apply to the Participant for that day's activity in that security. If, however, the value is less than the corresponding Cancellation Ratio, the Participant would not be assessed a fee.

⁷ See Securities Exchange Act Release No. 69903 (July 1, 2013), 78 FR 40788 (July 8, 2013) (SR-CHX-2013-12) ("Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Single-Sided Order Fees and Credits and the Order Cancellation Fee").

⁸ Section E.8(a) of the Fee Schedule provides that "'W' equals the number of Wide orders in a security priced at \$1.00/share or more, that is submitted during the Regular Trading Session, through an Account Symbol, on a given day. An order shall be considered Wide if any one of the following conditions are met:

The order price of the security is inferior to the National Best Bid ("NBB") for a buy order or National Best Offer ("NBO") for a sell order at the time the order is received by the Matching System and the difference between the order price and the NBB or NBO is equal to or greater than the corresponding Threshold Away Amount of the particular security; or

The order is voluntarily cancelled by the order sender prior to the expiration of its corresponding Minimum Duration (expressed in milliseconds) after acceptance by the Matching System, without any executions; or

An order marked "Do Not Display," pursuant to Article 1, Rule 2(c)(2)."

⁹ Section E.8(a) of the Fee Schedule provides that "'N' equals the number of Near orders (which must be display eligible) in a security priced at \$1.00/share or more submitted in the Regular Trading Session, through an Account Symbol, on a given day. A Near order is:

An order where the difference between the order price and the NBB or NBO is less than the corresponding Threshold Away Amount of the particular security; and

Where the order is not voluntarily cancelled by the order sender prior to either (1) the expiration of the Minimum Duration of the particular security or (2) a partial execution of the order, whichever is earlier."

¹⁰ Section E.8(a) of the Fee Schedule provides that "'Nmult' is the corresponding multiplier value to be applied against 'N'."

Currently, the Cancellation Ratio and other values listed under paragraph (b) are consistent for Tape A, B, and C securities. Although the fee is assessed daily, Account Symbols are only billed after the end of the month.

The purpose of the Order Cancellation Fee is to recoup some of the costs associated with administering and processing large numbers of cancelled orders and to incent Participants to post marketable orders and, thereby, promote liquidity and single-sided order executions on the Exchange.¹¹

Proposed ADV Exemption

Since the Order Cancellation Fee became operative on November 1, 2012, the Exchange has observed that some Account Symbols have been billed Order Cancellation Fees notwithstanding exceptionally high ADV in securities subject to the Order Cancellation Fee. That is, despite consistent order sending and cancellation activity throughout the course of the month, some high ADV Trading Accounts exhibited unusually low ADV on one or two trading days and were consequently billed Order Cancellation Fees for the month because the Order Cancellation Fee is assessed daily. The Exchange submits that the need for an Order Cancellation Fee for a Trading Account is obviated if it provides valuable single-sided order executions and revenue to the Exchange. This is because such exceptionally high ADV Trading Accounts support the purpose of the Order Cancellation Fee (e.g., to promote single-sided order executions), regardless of order cancellation activity.

The current Order Cancellation Fee does not permit Trading Accounts to leverage exceptionally high ADV attained over the course of a month to eliminate the Order Cancellation Fee assessed due to unusually weak trading days. Thus, in order to more equitably apply the current Order Cancellation Fee, the Exchange now proposes to adopt proposed Section E.8(c), which provides that all Order Cancellation Fees assessed to an Account Symbol in a given month shall be waived if the ADV attributable to the Account Symbol for the month is equal to or greater than 100,000 shares from single-sided orders executed at or greater than \$1.00/share.¹² Trades resulting from cross orders and single-sided orders executed below \$1.00/share shall not be included in the ADV calculation because such

¹¹ See *supra* note 5.

¹² The 100,000 shares value was determined based on historical trading activity on the Exchange and shall only be modified by a proposed rule filing pursuant to Rule 19b-4 under the Act.

⁴ An "Account Symbol" identifies a specific "Trading Account," as defined under CHX Article 1, Rule 1(II). The terms are used interchangeably throughout this filing.

⁵ See Securities Exchange Act Release No. 68219 (November 13, 2012), 77 FR 69673 (November 20, 2012) (SR-CHX-2012-15) ("Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Order Cancellation Fee").

⁶ See Securities Exchange Act Release No. 69701 (June 5, 2013), 78 FR 35082 (June 11, 2013) (SR-CHX-2013-11) ("Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Order Cancellation Fee").

orders are not subject to the Order Cancellation Fee.¹³ Moreover, the proposed exemption will be applied at the Account Symbol level and not at a security-specific level. That is, if a Trading Account meets the 100,000 shares ADV requirement for a given month, all Order Cancellation Fees assessed under the Account Symbol for the month will be waived. Correspondingly, the Exchange proposes to amend the first paragraph of current Section E.8(a) to provide that the Order Cancellation Fee is subject to the proposed exemption as stated under proposed paragraph (c). The following example illustrates this exemption.

Example. Assume that a Participant Trading Permit¹⁴ holder has two Trading Accounts with Account Symbols "A" and "B." For the month of December 2013, the Participant was billed \$3,000 in Order Cancellation Fees. Specifically, Account Symbol A was assessed \$1,000 in Order Cancellation Fees for activity in five different securities and had an ADV of 90,000 shares from qualified orders, whereas Account Symbol B was assessed \$2,000 in Order Cancellation Fees for activity in three different securities and had an ADV of 110,000 shares from qualified orders.

Given that Account Symbol B had an ADV of 110,000 shares from qualified orders in December 2013, the entire \$2,000 in Order Cancellation Fees assessed to Account Symbol B would be waived pursuant to proposed Section E.8(c). However, given that Account Symbol A had an ADV of 90,000 shares from qualified orders, the Trading Account would not qualify for the proposed exemption and would be billed \$1,000 in Order Cancellation Fees. For the purposes of the proposed ADV exemption, the Order Cancellation Fee assessed to specific securities and ADV in specific securities is irrelevant.

The Exchange proposes to make these amendments to Section E.8 operative February 3, 2014. The Order Cancellation Fee shall continue to be calculated daily and billed after the end of the month. If an Account Symbol meets the requirements of proposed paragraph (c), the Account Symbol will not be billed an Order Cancellation Fee for that month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁶ in particular, in that it

provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange believes that the proposed ADV exemption from the Order Cancellation Fee described herein promotes the equitable allocation of the Order Cancellation Fee as it will more fairly allocate costs among Participants according to their respective trading activity. A Participant with a Trading Account that has exceptionally high ADV provides additional revenue to the Exchange (e.g., Liquidity Removing Fee under Section E.1 of the Fee Schedule and market data revenue), which may be used to recoup some of the costs of administering and processing cancelled orders. Thus, Participants with Trading Accounts that meet the proposed ADV threshold for a given month should not be billed Order Cancellation Fees assessed to such Trading Accounts for that month.

In addition, these changes to the Fee Schedule would equitably allocate reasonable fees among Participants in a non-discriminatory manner by assessing cancellation fees on all Trading Accounts that exceed a fixed Cancellation Ratio and by waiving cancellation fees on all Trading Accounts that satisfy the requirements of the proposed ADV exemption. Since all Participants are subject to the Order Cancellation Fee and given that the proposed ADV exemption is available to all Participants, the Exchange submits that the amended Order Cancellation Fee is non-discriminatory.

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 does not believe that the proposed ADV exemption to the Order Cancellation Fee burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of, and draw additional volume to, the Exchange. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels set by the Exchange to be excessive. The proposed ADV exemption provides relief from the Order Cancellation Fee to Participants that execute a requisite number of certain single-sided orders submitted to the Exchange, which is intended to increase revenue derived from trades and to draw additional liquidity to the Exchange. Thus, the proposed rule

change is a competitive proposal that is intended to add additional liquidity and order executions to the Exchange, which will, in turn, benefit the Exchange and all Participants.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder¹⁸ because it establishes or changes a due, fee or other charge imposed by the Exchange.

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 email to rule-comments@sec.gov. Please include File Number SR-CHX-2014-01 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-CHX-2014-01. This file number should be included on the

¹³ Section E.8(a) provides, in pertinent part, that "a cancellation fee shall apply for all cancellation messages relating to orders in each security priced at \$1.00/share or more."

¹⁴ See Article 1, Rule 1(aa).

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

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 such filing also will be available for inspection and copying at the principal offices 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-CHX-2014-01, and should be submitted on or before February 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71402; File No. SR-CBOE-2014-006]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Bylaws of its Parent Company

January 27, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 17, 2014, 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 the bylaws of its parent company, CBOE Holdings, Inc. ("CBOE Holdings"). The text of the proposed rule change is available on the Exchange's Web site (<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 is proposing to make certain amendments to the Bylaws (the "Bylaws") of its parent company, CBOE Holdings, Inc. ("CBOE Holdings") to make improvements in its governance. Currently, CBOE Holdings' Bylaws provide that "when a quorum is present at any meeting, a plurality of the votes properly cast for the election of directors shall be sufficient to elect directors." This applies to both contested and uncontested elections. The Exchange proposes to change the manner in which uncontested elections occur. Specifically, the Exchange is proposing to move from a plurality voting standard to a majority voting standard for uncontested elections where "each nominee for director shall be elected to the Board of Directors if a majority of the votes properly cast are in favor of such nominee's election (i.e., if the number of votes properly cast "for"

a nominee's election exceeds the number of votes properly cast "against" that nominee's election); *provided, however*, that, if, as of the last date by which stockholders of the Corporation may submit notice to nominate a person for election as a director pursuant to *Section 2.11* of these Bylaws or pursuant to any rule or regulation of the Securities and Exchange Commission, the number of nominees for director exceeds the number of directors to be elected at any such meeting (a "Contested Election"), a plurality of the votes properly cast for the election of directors shall be sufficient to elect directors." As such, there will be no change to the voting process for contested elections.

Under the majority voting standard that will apply to uncontested elections, a nominee who fails to receive the requisite vote would not be duly elected to the Board; however, because a director holds office until his or her successor is duly elected and qualified, any incumbent director-nominee who fails to receive the requisite vote does not automatically cease to be a director. Instead, such director continues as a "holdover director" until such director's death, resignation or removal, or until his or her successor is duly elected and qualified. For this reason, the majority voting standard under consideration requires that any incumbent nominee, as a condition to his or her nomination for election, must submit in writing an irrevocable resignation, the effectiveness of which is conditioned upon the director's failure to receive a majority of the votes properly cast in favor of such nominee's election and the Board's acceptance of the resignation.³ The Exchange is proposing to amend the language in *Section 3.4* of the Bylaws to delete the statement that a resignation, unless specifically contingent upon its acceptance, will be effective as of its date or of the date specified therein, and replace that language with the statement that a resignation "will be effective when delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events." This would allow Directors to submit resignations that are contingent upon both the Director not receiving majority vote in an uncontested election and the Board accepting such resignation (or some other event that could lead to the Director no longer intending to act as a Director at some point in the future due

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Pursuant to the "Board Election Process" section of CBOE Holdings' Corporate Governance Guidelines (available at <http://ir.cboe.com/documentdisplay.cfm?DocumentID=7090>).