

DMM is assigned based on October 2013 data.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The billing method described herein is based on objective standards that are applicable to all members and member organizations and reflects the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

*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)<sup>11</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>13</sup> of the Act 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2013-78 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-NYSE-2013-78. 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 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-NYSE-2013-78 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70995; File No. SR-NYSEArca-2013-92]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in Order To Comprehensively Update Rules Related to the Exchange's Order Types and Modifiers**

December 5, 2013.

On September 30, 2013, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend NYSE Arca Equities Rules 7.31, 7.32, 7.37, and 7.38 in order to comprehensively update rules related to the Exchange's order types and modifiers. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.<sup>3</sup> The Commission received no comments on the proposal.

Section 19(b)(2) of the Act<sup>4</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is December 6, 2013. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposal. The proposal would comprehensively update the Exchange's order type and modifier rules in order to provide additional specificity and transparency regarding the operation of many of the Exchange's order types and modifiers, better align the Exchange's rules with currently available functionality, and organize and define the Exchange's

<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. 70637 (October 9, 2013), 78 FR 62745 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

order types and modifiers in a more intuitive manner.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> designates January 20, 2014, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70996; File No. SR-CBOE-2013-114]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 18.2 (Procedures in Trading Permit Holder Controversies)

December 5, 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 November 22, 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend CBOE Rule 18.2 to provide that arbitrators in controversies between parties who are Trading Permit Holders ("TPHs") or associated persons of TPHs (such controversies herein referred to as "TPH controversies") may be selected from CBOE's Arbitration Committee ("Committee") or, if necessary, from rosters provided by the Financial Industry Regulatory Authority Inc.

("FINRA") of qualified non-public arbitrators and non-public chairperson-qualified arbitrators, as defined by FINRA.

The text of the proposed rule change is available on the Exchange's Web site at <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 V 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 seeks to amend Rule 18.2 (Procedures in Trading Permit Holder Controversies) to provide more flexibility with regards to the selection of the arbitration panel for TPH controversies. By way of background, the Exchange offers an arbitration facility for TPHs and associated persons of TPHs to arbitrate disputes, claims or controversies arising out of Exchange business.<sup>3</sup>

Under Exchange rules, any arbitration between parties who are TPHs or persons associated with a TPH shall be resolved by an arbitration panel that consists of three members of the Committee, which is maintained primarily as a means for managing a pool of qualified industry arbitrators that generally is composed of a cross-section of Exchange TPHs and/or former TPHs or associated persons of TPHs or other individuals who are knowledgeable about the securities industry.

<sup>3</sup> For the purposes of CBOE's arbitration rules, the term "Exchange business" does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment. The Exchange may, however, make its arbitration facilities available for the resolution of employment discrimination claims if the parties mutually agree to arbitrate the claim after it has arisen. See CBOE Rule 18.1 Interpretation and Policy .03.

For TPH controversies, CBOE Rule 18.2(a) currently provides that the arbitration panel appointed to hear such controversies be comprised of no fewer than three arbitrators from the Committee.<sup>4</sup> In this proposal, the Exchange seeks to amend Rule 18.2 to provide greater flexibility with regard to the selection of the arbitration panel for TPH controversies. Specifically, CBOE proposes to amend the rule to provide that arbitrators may be selected from the Committee or, if necessary, from rosters provided by FINRA of qualified non-public arbitrators and non-public chairperson-qualified arbitrators (as defined by FINRA's rules governing arbitration of industry disputes) that have indicated that they would be willing to serve as an arbitrator for another self-regulatory organization.<sup>5</sup>

Over the years, fewer TPHs have made themselves available to serve on the Committee. Consequently, it has become increasingly burdensome for the Exchange to select a sufficient number of arbitrators solely from the Committee to sit on any given arbitration panel. In addition, it has become increasingly difficult not only to find three arbitrators to sit on an arbitration panel, but also to ensure that at least one of the arbitrators is qualified to serve as a chairperson on the panel. Moreover, there are instances in which many Committee members have interests, relationships, or circumstances that might preclude them from being able to

<sup>4</sup> In practice, however, arbitration panels for TPH controversies typically consist of three Committee members.

<sup>5</sup> FINRA Rule 13100(p) defines the term "non-public arbitrator" as a person who is otherwise qualified to serve as an arbitrator and: (1) Is or, within the past five years, was: (A) Associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (B) registered under the Commodity Exchange Act; (C) a member of a commodities exchange or a registered futures association; or (D) associated with a person or firm registered under the Commodity Exchange Act; (2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1); (3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or (4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. For purposes of FINRA Rule 13100(p), the term "professional work" does not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation. The Exchange's guidelines classifying whether an arbitrator is deemed to be from the securities industry is substantially similar to FINRA's definition of "non-public arbitrator." See CBOE Rule 18.10.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> 17 CFR 200.30-3(a)(31).

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

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