

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 publicly available. All submissions should refer to File Number SR-NYSEMKT-2013-86 and should be submitted on or before January 29, 2014.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

As proposed, the proposed rule change provided that, unless determined otherwise by the Exchange and announced to ATP Holders via Trader Update, the specified percentage (*i.e.*, “n%”) will be no less than 60%, and “n%-x” will be no less than 40%. Amendment No. 2 amended the proposed rule change by removing the language in the proposal that gives the Exchange discretion to adjust the specified percentage (*i.e.*, “n%”) to an amount less than 60% and “n%-x” to an amount less than 40%. By removing this discretion, Amendment No. 2 reduces potential uncertainty about the application of the proposed rule change. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of notice in the *Federal Register*.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>15</sup> that the proposed rule change (SR-NYSEMKT-2013-86), as modified by Amendment

Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

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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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71227; File No. SR-CBOE-2013-110]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Eliminate the e-DPM Program January 2, 2014.

##### I. Introduction

On November 1, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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 eliminate the Electronic DPM (“e-DPM”) Program (the “e-DPM Program” or “Program”). The proposed rule change was published for comment in the *Federal Register* on November 20, 2013.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

##### II. Description of the Proposal

The Exchange proposes to eliminate the e-DPM Program by deleting Exchange rules that exclusively govern the Program and by removing all references to either the Program or e-DPMs throughout the remainder of its rulebook. Originally adopted in 2004, the e-DPM Program allows Trading Permit Holders (“TPHs”) to remotely function as a Designated Primary Market-Maker (“DPM”).<sup>4</sup> An e-DPM acts as a specialist on CBOE by entering bids and offers electronically from locations other than the floor-based trading

crowds where applicable option classes are traded, and are not required to have traders physically present in the trading crowd.<sup>5</sup>

The Exchange proposes to eliminate the Program because it believes the Program is no longer competitively necessary given the growing prevalence of Preferred Market-Maker<sup>6</sup> (“PMM”) routing, which the Exchange believes has rendered the initially unique tenets of the Program less relevant and attractive to broker-dealers that might otherwise consider becoming or remaining an e-DPM.<sup>7</sup> In particular, the Exchange noted in its filing that while e-DPMs have similar or greater quoting obligations than PMMs, CBOE's rules provide a smaller participation entitlement to e-DPMs as compared to the participation entitlement that CBOE provides to PMMs.<sup>8</sup> The Exchange further represented that all e-DPMs that receive preferred orders on CBOE are also registered as PMMs.<sup>9</sup> The Exchange explained that the only circumstance in which it is a benefit to act as an e-DPM from the perspective of increasing a TPH's participation entitlement is where an order is not preferred to any party or the recipient of the preferred order is not at the NBBO when the order is received.<sup>10</sup> To place this attribute in context, the Exchange noted that 85% of orders that come into the Exchange are preferred orders.<sup>11</sup>

The Exchange stated that it does not believe that the elimination of the e-DPM Program will affect CBOE's market quality because the Exchange does not expect any Market-Makers to cease doing business on the Exchange due to

<sup>5</sup> CBOE Rule 8.92, which the Exchange proposes to delete, defined an e-DPM as “a TPH organization that is approved by the Exchange to remotely function in allocated option classes as a DPM and to fulfill certain obligations required of DPMs except for Floor Broker and Order Book Official obligations.”

<sup>6</sup> Pursuant to CBOE Rule 8.13, the PMM program permits the Exchange to “allow on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the Trading Permit Holder transmitting the order that specifies a Market-Maker in that class as the ‘Preferred Market-Maker’ for that order. A qualifying recipient of a Preferred Market-Maker order shall be afforded a participation entitlement” as set forth in CBOE Rule 8.13.

<sup>7</sup> See Notice, *supra* note 3, at 69723.

<sup>8</sup> See *id.* The Exchange stated that on most transactions to which the e-DPM entitlement applies, if no party is labeled “preferred” for that order, or the party labeled “preferred” is not at the NBBO, e-DPMs are only guaranteed a maximum of 15% participation entitlement per order, whereas PMMs have a maximum 40% participation entitlement on orders that are preferred to them. See Notice, *supra* note 3, at 69723–69724.

<sup>9</sup> See *id.* at 69723.

<sup>10</sup> See *id.* at 69724.

<sup>11</sup> See *id.*

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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. 70875 (November 14, 2013), 78 FR 69723 (“Notice”).

<sup>4</sup> See *id.* at 69723. CBOE Rule 8.80(a) defines as a DPM as a “TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker” and is subject to certain obligations as provided in CBOE's rules. A DPM generally will operate on CBOE's trading floor, but can function remotely away from CBOE's trading floor in certain classes, subject to approval by the Exchange. See CBOE Rule 8.80(a).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

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

the elimination of the Program; instead, the Exchange anticipates that all e-DPMs will stay on as Market-Makers and, on an order-by-order basis, as PMMs.<sup>12</sup> The Exchange believes that the greater participation entitlement under the PMM program when an order is preferred provides a stronger incentive for TPHs to quote at the NBBO than the lower participation entitlement for e-DPMs, which, according to the Exchange, helps to encourage narrower spreads.<sup>13</sup>

In support of its proposal to discontinue the e-DPM program, the Exchange further represented that it believes that the Program adds an unnecessary layer of complexity to CBOE rules, system processes, matching algorithms, and trading procedures.<sup>14</sup> The Exchange does not believe that the e-DPM Program provides CBOE with any competitive advantage, and believes that the elimination of the Program will provide the Exchange with more flexibility to consider other methods of encouraging DPM performance.<sup>15</sup>

In its filing, the Exchange represented that, if its proposal is approved by the Commission, CBOE would announce the elimination of the Program via a Regulatory Circular, which will include an end date for the Program that will be at least two weeks in advance in order for current e-DPMs to determine their course of action following elimination of the Program.<sup>16</sup>

### III. Discussion and Commission Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>18</sup> which requires, among other things, that the Exchange be so organized and have the capacity to carry out the purposes of the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>19</sup> which requires, among other things, that the rules of a national securities exchange

be designed to prevent fraudulent and manipulative acts and practices, 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.

As noted above, CBOE represents that all e-DPMs are also registered as PMMs. Accordingly, CBOE does not believe that elimination of the Program will harm CBOE's market quality as it anticipates current e-DPMs will continue to serve as market-makers on the Exchange and as PMMs on orders that are preferred to them.

Further, because such a high percentage of CBOE's order-flow is preferred (85% as indicated by CBOE), and because PMM status provides a comparably larger entitlement for preferred orders compared to e-DPM status, CBOE believes that the e-DPM program does not provide an incentive great enough to warrant the complexity the e-DPM program brings to the Exchange's rules, systems, and processes. CBOE also noted that other options exchanges do not have programs similar to the e-DPM program.<sup>20</sup>

Based on CBOE's representations, discussed above, the Commission believes that elimination of the e-DPM Program should not hinder the Exchange's capacity to carry out the purposes of the Act nor should it impede CBOE's ability to remove impediments to and perfect the mechanism of a free and open market and a national market system.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (SR-CBOE-2013-110) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71228; File No. SR-Phlx-2013-128]

#### Self-Regulatory Organizations; The NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Further Describe the Application of Fees Assessed for Connectivity to the Carteret Test Environment under Chapter VIII of the Exchange's Pricing Schedule

January 2, 2014.

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 December 23, 2013, NASDAQ OMX PHLX LLC ("Phlx" or the "Exchange") 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 a rule change to further describe the application of fees assessed pursuant to subparagraph (d) of "Testing Facilities" under Chapter VIII of the Exchange's Pricing Schedule. The Exchange is also eliminating outdated text relating to the applicability of the fees assessed for use and connectivity to the Testing Facilities.

The text of the proposed rule change is below. Proposed new language is italicized. Proposed deletions are in brackets.

\* \* \* \* \*

#### NASDAQ OMX PHLX LLC<sup>1</sup> PRICING SCHEDULE

ALL BILLING DISPUTES MUST BE SUBMITTED TO THE EXCHANGE IN WRITING AND MUST BE ACCOMPANIED BY SUPPORTING DOCUMENTATION. ALL DISPUTES MUST BE SUBMITTED NO LATER THAN SIXTY (60) DAYS AFTER RECEIPT OF A BILLING INVOICE, EXCEPT FOR DISPUTES CONCERNING NASDAQ OMX PSX FEES, PROPRIETARY DATA FEED FEES AND CO-LOCATION SERVICES FEES. AS OF JANUARY 3, 2011, THE EXCHANGE

<sup>12</sup> See *id.*

<sup>13</sup> See *id.*

<sup>14</sup> See *id.*

<sup>15</sup> See *id.*

<sup>16</sup> See *id.*

<sup>17</sup> In approving the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(1).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> See Notice, *supra* note 3, at 69724.

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</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.