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

Written comments were neither solicited nor received.

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) of the Act [11] and Rule 19b–4(f)(6) [12] thereunder. Because the foregoing 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 from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange notes that such waiver will allow the Exchange to immediately add language to its rule text that was incorrectly omitted from a previous rule change, thereby clarifying its rules and avoiding potential market participant confusion.[17] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the proposal is designed to avoid potential investor confusion regarding the Exchange's rules and provide clarification to the public. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

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 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.* Please include File Number SR–NASDAQ–2013–164 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–NASDAQ–2013–164. 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 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–NASDAQ–2013–164, and should be submitted on or before January 29, 2014.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–00070 Filed 1–7–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *Id.*

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See* SR–NASDAQ–2013–164, Item 7.

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71223; File No. SR–CBOE–2013–109]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Market-Maker Appointment Cost Rebalances

January 2, 2014.

I. Introduction

On November 1, 2013, Chicago Board Options Exchange, Incorporated (''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'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules regarding Market-Maker appointment cost rebalances. The proposed rule change was published for comment in the **Federal Register** on November 19, 2013.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange is proposing to amend its rules regarding Market-Maker appointment cost rebalances. According to the Exchange, appointments to act as a Market-Maker ''cost'' different

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70856 (November 13, 2013), 78 FR 69491 (''Notice'').

amounts for different classes (with no classes costing more than 1.0).[4] The Exchange places options classes into different tiers, with all the classes in a certain tier costing the same amount per appointment.[5] Each Trading Permit held by a Market-Maker has an appointment credit of 1.0. For each Trading Permit the Market-Maker holds, the Market Maker may select any combination of Hybrid classes and Hybrid 3.0 classes, whose aggregate appointment cost does not exceed 1.0.[6]

Currently, on a quarterly basis, the Exchange may rebalance the tiers into which different classes fall, meaning that the Exchange can elect to move a class from one tier to another (with that class' corresponding appointment cost changing). The Exchange proposes to memorialize in proposed CBOE Rule 8.3(c)(iv) that the Exchange will announce any rebalances at least ten business days before the rebalance takes effect.[7] Under the proposal, such rebalances will be announced to Trading Permit Holders (''TPHs'') via Regulatory Circular.

When the Exchange effects a rebalancing (*i.e.,* changes the appointment cost tier for a certain class of options), the class is assigned the appointment cost of that new tier. Upon such rebalancing, each Market-Maker with a Virtual Trading Crowd (''VTC'') appointment [8] will be required to hold the appropriate number of Trading Permits reflecting the revised appointment costs of the Hybrid classes constituting the Market-Maker's appointment. Accordingly, when classes are rebalanced, the sum of a Market-Maker's appointment costs cannot exceed the number of Trading Permits that a Market-Maker holds. Market-Makers manage their own appointments through an online appointment system. The system displays the relevant appointment costs for each class, thereby facilitating the ability of a Market-Maker to manage its committed and available appointment credits.

The Exchange proposes to add language to CBOE Rule 8.3(c)(iv) to address situations in which a Market-Maker fails to adjust his or her appointments and, as a result, the sum of the Market-Maker's appointment costs otherwise would exceed the available appointment credits based on the number of Trading Permits the Market-Maker holds. The proposed new language states: ''[i]f a Market-Maker with a VTC appointment holds a combination of appointments whose aggregate revised appointment cost is greater than the number of Trading Permits that Market-Maker holds, the Market-Maker will be assigned as many Trading Permits as necessary to ensure that the Market-Maker no longer holds a combination of appointments whose aggregate revised appointment cost is greater than the number of Trading Permits that Market-Maker holds.'' In the event that a Market-Maker's appointment costs exceed his or her available assignment credits as the result of a reassignment of appointment costs by the Exchange, and the Exchange needs to allocate another trading permit or permits to the Market-Maker, then the Exchange also will assess the Market-Maker the corresponding Trading Permit fees for the additional Trading Permit(s).[9]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[12] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The proposed rule change is designed to allow the Exchange to avoid a situation where a Market-Maker has an aggregate appointment cost that exceeds the available appointment credits that the Market-Maker holds based on the trading permits that he or she possesses. The Exchange argues that such a situation would constitute an unfair advantage in favor of that Market-Maker.[13] The Exchange argues that, by preventing such situations, the proposed rule change may remove impediments to and perfect the mechanism of a free and open market system. In its filing, the Exchange noted that it does not have the ability to adjust the VTC appointments of a Market-Maker whose aggregate appointment costs exceeds his or her available appointment credits. Even if it did have such ability, rectifying an appointment cost deficit by removing one or more of a Market-Maker's appointments would remove a source of liquidity and thus have the potential to negatively affect market quality in a particular class on CBOE. Further, allowing a Market-Maker to exceed his or her appointment costs would amount to unfair discrimination and provide a competitive advantage over other Market-Makers who stayed within their available appointment credits. As an alternative to incurring the expense of an additional trading permit, a Market-Maker could, in response to an increase in tier appointment costs by CBOE, adjust its appointments on its own initiative.

In addition, the revised rule would codify the Exchange's current practice of notifying TPHs at least ten business days before effecting Market-Maker class tier rebalances, which could potentially affect their fees if they are required to purchase additional trading permits. It also would enable the Exchange to adjust the VTC appointments of a Market-Maker whose aggregate appointment cost exceeds the number of trading permits that the Market-Maker holds and charge the Market-Maker for

[4] *See id.* at 69491.

[5] For example, all the classes in tier B cost 0.05 per class appointment, all the classes in tier E cost .01 per class appointment. *See id.*

[6] *See* CBOE Rule 8.3(c)(iv).

[7] It is the Exchange's current practice to announce such rebalances more than ten business days prior to taking effect, but this practice is not codified in CBOE's rules. *See* Notice, *supra* note 3, at 69491.

[8] A VTC appointment allows a Market-Maker to quote electronically in a class.

[9] For example, the Exchange described a situation in which a Market-Maker's aggregate appointment cost for the classes for which it holds Market-Maker appointments prior to a rebalancing is 4.90 and the Market-Maker holds five Trading Permits (*i.e.,* a total of 5.0 credits). The Exchange then rebalances the appointment costs of classes and announces such rebalancing at least ten days prior to the rebalancing takes effect. Upon this rebalancing taking effect, the Market-Maker's appointment cost will now be 5.40. If the Market-Maker does not adjust its appointments prior to such rebalancing taking effect, then the Exchange will simply assign that Market-Maker a sixth Market-Maker Trading Permit (for a total of 6.0 credits) to cover the Market-Maker's aggregate appointment costs . The Exchange also will begin to bill the Market-Maker for the cost of the additional sixth permit. *See id.*

[10] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(1).

[13] *See* Notice, *supra* note 3, at 69492.

the additional permit(s). The Exchange states that this proposal would allow the Exchange to avoid the resource-intensive process of instituting regulatory proceedings against these Market-Makers who fall out of compliance with the Exchange's rule.[14] The Commission believes that CBOE's proposal is consistent with CBOE's responsibility to be organized and have the capacity to be able to enforce compliance by the Exchange's members with its rules, and is designed to allow CBOE to expeditiously and efficiently maintain a level playing field among its Market-Makers with respect to appointment costs following a rebalancing of such costs by the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2013–109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–00067 Filed 1–7–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71224; File No. SR–FINRA–2013–054]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to a Capacity Management Plan

January 2, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 24, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to adopt a new FINRA Capacity Management Plan (''Plan'') for the Alternative Display Facility (''ADF'') and amend the ADF Trading Center Certification Record (''Certification'') to, among other things, require ADF Trading Centers to comply with the Plan.

A copy of the Plan was filed as Exhibit 3a. A copy of the revised Certification was filed as Exhibit 3b. The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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 ADF is a quotation collection and trade reporting facility that provides ADF Market Participants (i.e., ADF-registered market makers or electronic communications networks (''ECNs'')) [3] the ability to post quotations, display orders and report transactions in NMS stocks [4] for submission to the Securities Information Processors (''SIPs'') for consolidation and dissemination to vendors and other market participants. In addition, the ADF delivers real-time data to FINRA for regulatory purposes, including enforcement of requirements imposed by Regulation NMS.[5]

To become an ADF Market Participant, a member must apply to FINRA, which includes certifying the member's good standing with FINRA and demonstrating compliance with the net capital and other financial responsibility provisions of the Act.[6] Before displaying quotations or orders on the ADF, an ADF Market Participant that is an ''ADF Trading Center'' [7] must also execute and comply with a Certification Record to certify the ADF Trading Center's compliance efforts with its obligations under Regulation NMS.[8]

Regulatory developments, such as the SEC's adoption of Regulation NMS in 2005, have resulted in a dramatic increase in quote and trade volume in the National Market System. The securities markets have experienced significant changes, evolving to a larger number and variety of trading centers that are almost completely automated, with sophisticated, rapid and interconnected systems. As a result of this increase in volume, self-regulatory organizations (''SROs'') and trading centers generally have sought to adopt increasingly robust capacity management plans to ensure that they are capable of processing quote and trade data during volume peaks.

In addition, SROs have found it necessary to develop capacity management plans to mitigate the potential of being penalized for overrunning their volume projections submitted to the consolidated data plans. For example, the Consolidated Tape Association Plan (''CTA Plan'') and the Consolidated Quotation Plan (''CQ Plan''; together, ''CTA/CQ Plans''), which serve as the consolidated data plans for securities listed on the New York Stock Exchange, BATS, NYSE Arca, NYSE MKT and other regional exchange-listed securities,[9] currently enforce a strict ''pay-for-capacity'' methodology that includes monetary penalties for capacity overruns.[10] Under this approach, SROs submit volume

[14] *See* Notice, *supra* note 3, at 69491.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 6220(a)(3).

[4] *See* 17 CFR 242.600.

[5] *See* 17 CFR 242.600.

[6] *See* Rule 6271(b). FINRA has submitted a proposed rule change to amend the ADF rules to, among other things, assess an ADF Deposit Amount on ADF Market Participants. *See* Securities Exchange Act Release No. 70048 (July 26, 2013), 78 FR 46652 (August 1, 2013) (SR–FINRA–2013–031).

[7] An ''ADF Trading Center'' is a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN that is a ''Trading Center,'' as defined in Rule 600(b)(78) of SEC Regulation NMS, and that is certified to display its quotations or orders through the ADF. *See* Rule 6220(a)(4); *see also* 17 CFR 242.600(b)(78).

[8] *See* Rules 6220(a)(5), 6250(a)(7); NASD Notice to Members 06–67 (November 2006); *see also* SR–NASD–2006–091, Amendment No. 3, Exhibit 3.

[9] The CTA Plan governs the collection and dissemination of last sale price information for non-NASDAQ listed securities, while the CQ Plan governs the collection and dissemination of bid/ask quotation information for listed securities.

[10] *See* Exhibit A to the CTA Plan (October 1, 2013 composite), available at *https://cta.nyxdata.com/CTA* (Capacity Planning Process for The Consolidated Tape System); *see also* Exhibit A to the CQ Plan (October 1, 2013 composite), available at *https://cta.nyxdata.com/CTA*.