

the proposed changes to fees are equitably allocated among Exchange constituents as the methodology for calculating ADV and TCV will apply equally to all Members. While, although unlikely, certain Members may have a higher ADV as a percentage of average daily TCV with their activity included from days where the Exchange has an Exchange Outage, the proposal will make all Members' cost of trading on the Exchange more predictable, regardless of how the proposal affects their ADV as a percentage of average daily TCV.

Volume-based tiers such as the liquidity removing and adding tiers maintained by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide higher rebates or lower fees that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality. Further, the Exchange believes that a tiered pricing model not significantly altered by a day of atypical trading behavior which allows Members to predictably calculate what their costs associated with trading activity on the Exchange will be is reasonable, fair and equitable and not unreasonably discriminatory as it is uniform in application amongst Members and should enable such participants to operate their business without concern of unpredictable and potentially significant changes in expenses.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will benefit intermarket competition in that they will help the Exchange to continue to incentivize higher levels of liquidity at a tighter spread while providing more stable and predictable costs to its Members. Further, the proposed changes will help to promote intramarket competition by avoiding a penalty to Members for days when trading on the Exchange is unavailable for a significant portion of the day. As stated above, the Exchange notes that it operates in a highly competitive market

in which market participants can readily direct order flow to competing venues if the deemed fee structures to be unreasonable or excessive.

#### *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.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>12</sup> 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.

#### **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-BYX-2013-034 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-BYX-2013-034. 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-BYX-2013-034 and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-70692; File No. SR-CBOE-2013-098]**

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Continuing Education**

October 16, 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 October 4, 2013, the 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which

<sup>13</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> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

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

renders the proposal effective upon filing with the Commission. 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 correct an administrative error in Rule 9.3A(c)(1) and add a reference to CBOE Rule 9.3A to the CBOE Stock Exchange, LLC ("CBSX") Appendix A. 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 proposes to make an administrative change to correct an inadvertent error in Exchange Rule 9.3A(c)(1). The Exchange proposes to make the proposed change so the text properly reflects the intention and practice of Rule 9.3A(c)(1). The Exchange also proposes to add a reference to CBOE Rule 9.3A to CBSX Appendix A. The Exchange believes that adding the reference to CBOE Rule 9.3A to CBSX Appendix A will more clearly put CBSX Trading Permit Holders ("TPHs") on notice of their continuing education requirements.

In 2003, the Exchange filed a rule change, SR-CBOE-2003-01 to, among other things, amend CBOE's continuing education rule.<sup>5</sup> As part of that filing, a

new paragraph (b) was added to Exchange Rule 9.3A, and the then current paragraph (b) was renumbered to paragraph (c).<sup>6</sup> In doing so, an inadvertent error was made in a reference to paragraph (b) in the new Rule 9.3A(c)(1). The error can be found in the first sentence of current CBOE Rule 9.3A(c)(1). A reference is made to "paragraph (b)"; however, the intended reference is to "paragraph (c)."

The intention of CBOE Rule 9.3A is to discuss the register [sic] persons subject to the Firm Element of the continuing education program. This intention is spelled out in the title of the paragraph which is, "Persons Subject to the Firm Element." This intention is more explicitly spelled out in SR-CBOE-2003-01. More specifically, the filing states that the Firm Element requires, "member and member organizations to provide to their registered employees having direct contact with customers ongoing training that is specifically tailored to their business."<sup>7</sup> The Firm Element is described in paragraph (c) of current CBOE Rule 9.3A and not paragraph (b). Thus, the Exchange is now proposing to amend this error to more accurately describe the intention and practice of the rule.

Finally, the Exchange is proposing to add a reference to Rule 9.3A to CBSX Appendix A. CBSX Appendix A to Chapters 50 through 54 lists the rules in Chapters 1 through 29 that are applicable to trading on CBSX.<sup>8</sup> CBOE Rule 9.3A is applicable to CBSX members as well as outlined in current CBOE Rule 6.3A [sic] as incorporated into Appendix A. As such, CBOE Rule 3.6A.04 states that each individual registered under CBOE Rule 3.6A "is required to satisfy the continuing education requirements set forth in Rule 9.3A and any other applicable continuing education requirements as prescribed by the Exchange."<sup>9</sup> Thus, CBSX members are already on notice of their continuing education requirements under CBOE Rule 9.3A. To make these requirements more explicit, however, the Exchange is proposing to add a reference to CBOE Rule 9.3A in CBSX Appendix A. The Exchange believes this change will more clearly spell out continuing education requirements for CBSX registered persons.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the

Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed rule change is consistent with these provisions as it will more accurately describe the practice of the Exchange in the Exchange Rulebook. The same registered persons will be subject to the Firm Element of the continuing education requirements, and, thus, the current practices of the Exchange will remain the same. The Exchange believes the proposed rule change is necessary to accurately describe the continuing education requirements for Exchange Trading Permit Holders. In addition, the Exchange believes that adding a reference to Rule 9.3A to CBSX Appendix A will more sufficiently put participants on CBSX of their continuing education requirements.

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

CBOE 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 the proposed rule change imposes any burden on intramarket competition because it applies to all Trading Permit Holders. Additionally, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it merely attempting to correct a typographical error and add an additional cross reference. There will be

<sup>5</sup> See Securities Exchange Act Release No. 47188 (January 17, 2003), 68 FR 3071 (January 22, 2003) (notice of [sic] immediate effectiveness of SR-CBOE-2003-01 which permitted the in-house delivery of the Regulatory Element of Continuing Education by member organizations).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See Introduction to CBSX Rules, Chapters 50 through 54.

<sup>9</sup> See CBOE Rule 3.6A.04.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> *Id.*

no substantive changes to the Exchange's operations nor its rules.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the rule change raises no novel issues. It corrects an inaccurate cross reference in Rule 9.3A and would more clearly set forth the continuing education requirements for associated persons of CBSX Trading Permit Holders. Waiver of the operative delay would be beneficial to associated persons of member firms by making the existing requirements clearer. Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of this 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 will 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-098 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-CBOE-2013-098. 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, 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 CBOE. 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-CBOE-2013-098 and should be submitted on or before November 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-70598; File No. SR-NYSEARCA-2013-96]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 2.23 to Specify Applicable Continuing Education Requirements, Amending the NYSE Arca Options Fee Schedule to Specify Corresponding CE Fees and to Specify Fees for the Series 56 Examination**

October 2, 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 September 19, 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 and II below, which Items have been prepared by the self-regulatory organization. NYSE ARCA has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii)<sup>4</sup> of the Act and Rule 19b-4(f)(6)<sup>5</sup> thereunder, which renders the filing effective upon filing with the Commission. 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 Rule 2.23 to specify applicable continuing education ("CE") requirements, (ii) [sic] amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to specify corresponding CE fees, and (iii) amend the Fee Schedule to specify fees for the Series 56 examination. 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.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 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).

<sup>15</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.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).