

designated limit price. Initiating Trading Permit Holders will not be required to designate such a limit price, and may still instead enter the contra-side order with a specified single price or auto-match all Auction responses. The Exchange believes that this additional flexibility for Trading Permit Holders to obtain executions on behalf of their customers while continuing to provide meaningful, competitive Auctions will increase the number of Auctions, which will ultimately enhance competition in the Auctions and provide customers with additional opportunities for price improvement. The proposed rule change also provides the possibility that other TPHs may receive increased order allocations through AIM, which the Exchange believes could increase participation in Auctions and further enhance competition.

CBOE believes that the proposed rule change will in fact relieve any burden on, or otherwise promote, competition. The Exchange believes the proposed rule change is procompetitive because it would provide Initiating Trading Permit Holders with the same flexibility as the rules at other exchanges that also permit initiating participants to elect to auto-match up to a designated limit price in those exchanges' price improvement auctions.<sup>16</sup> The Exchange believes that AIM, and in turn the customers that benefit from AIM, would be disadvantaged if Trading Permit Holders are not provided with the option to auto-match up to a designated limit price because this lack of flexibility reduces the number of Auctions and, as a result, opportunities for price improvement. Because C2, BOX, and ISE currently allow initiating participants the option to auto-match up to the best-priced response received during an auction or up to a designated limit price, the Exchange believes it is important for competitive purposes that it be able to offer the same opportunities for price improvement on CBOE through AIM. The Exchange believes adding this same flexibility will promote trading activity on the Exchange to the benefit of the Exchange, its Trading Permit Holders, and market participants.

*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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder.

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-CBOE-2013-048 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-2013-048. 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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of the filing of the proposed rule, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 St. 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-CBOE-2013-048, and should be submitted on or before June 4, 2013.

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

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

[FR Doc. 2013-11359 Filed 5-13-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69534; File No. SR-OCC-2013-03]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Add Provisions to the By-Laws To Facilitate the Use of the Stock Loan/Hedge Program by Canadian Clearing Members

May 8, 2013.

#### I. Introduction

On March 8, 2013 The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2013-03 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> The proposed rule change was published for comment in the **Federal**

<sup>19</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>16</sup> See *supra* notes 9-11.

Register on March 26, 2013.<sup>3</sup> The Commission received no comment letters. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The purpose of the proposed rule change is to add provisions to the By-Laws governing the OCC's Stock Loan/Hedge Program to facilitate the use of the Stock Loan/Hedge Program by Canadian Clearing Members.

OCC's Stock Loan/Hedge Program is provided for in Article XXI of the By-Laws and Chapter XXII of the Rules, and provides a means for OCC clearing members to submit broker-to-broker stock loan transactions<sup>4</sup> to OCC for clearance.<sup>5</sup>

Currently, for OCC clearing members to participate in OCC's Stock Loan/Hedge Program, they must be members of the Depository Trust Company ("DTC") and maintain accounts to facilitate Delivery Orders ("DOs") to approved counterparties for stock loan transactions. Canadian Clearing Members (who are otherwise eligible to participate in the Stock Loan/Hedge Program) are not participants of DTC. For purposes of settling transactions in U.S. equity securities, Canadian Clearing Members ordinarily rely on the services of CDS Clearing and Depository Services Inc. ("CDS"),<sup>6</sup> which provides a cross-border service to clear and settle trades with U.S. counterparties.<sup>7</sup>

<sup>3</sup> Securities Exchange Act Release No. 34-69188 (March 20, 2013), 78 FR 18382 (March 26, 2013).

<sup>4</sup> Broker-to-broker transactions are independently-executed stock loan transactions that are negotiated directly between two OCC clearing members.

<sup>5</sup> Where a stock loan transaction is submitted to, and accepted by, OCC for clearance, OCC substitutes itself as the lender to the borrower and the borrower to the lender, thus serving a function for the stock loan market similar to the one it serves within the listed options market. OCC thereby guarantees the future daily mark-to-market payments between the lending clearing member and borrowing clearing member, which are effected through OCC's cash settlement system, and the return of the loaned stock to the lending clearing member and the collateral to the borrowing clearing member, upon close-out of the stock loan transaction. OCC leverages the infrastructure of the DTC to transfer loaned stock and collateral between OCC clearing members.

<sup>6</sup> CDS is Canada's national securities depository, processing over 413 million trades annually. One of CDS's services enables its Canadian participants to clear and settle trades (which would include stock loan and borrow transactions) with U.S. counterparties through affiliations with DTC and the National Securities Clearing Corporation ("NSCC"). Under current OCC Rules 901(a) and (g), Canadian Clearing Members are able to effect settlement of deliver/receive obligations arising from exercised or assigned stock options and matured stock futures by appointing CDS to act as their agent through the arrangements with DTC and NSCC.

<sup>7</sup> OCC is not a party to such cross-border service arrangements.

OCC is amending Interpretation .07 to Section 1 of Article V of the By-Laws to allow participation by Canadian Clearing Members in the Stock Loan/Hedge Program by permitting them to appoint CDS to act as their agent in effecting DOs for stock loan transactions through DTC under arrangements similar to those used for deliveries under options and futures.<sup>8</sup> Upon such an appointment, a sponsored sub-account will be established on behalf of the Canadian Clearing Member in a CDS participant account at DTC, through which the Canadian Clearing Member can obtain access to similar DTC services used by U.S. clearing members who maintain participant accounts at DTC in respect to stock loan transactions. Through their identified sub-accounts within a CDS participant account at DTC, Canadian Clearing Members will be able to effect DOs for stock loan transactions to other DTC participants in the same manner as U.S. clearing members. The cross-border service offered by DTC and CDS will enable Canadian Clearing Members to transfer securities between their accounts held at CDS and the identified sub-accounts carried on their behalf in CDS participant accounts held at DTC to effect DOs for stock loan transactions.

Under the amended Interpretation .07 to Section 1 of Article V of the By-Laws, a Canadian Clearing Member that appoints CDS to act for it in connection with the Stock Loan/Hedge Program will be required to agree with OCC that the clearing member remains responsible to OCC in respect of its stock loan and borrow positions regardless of any non-performance by CDS, that OCC may treat any failure of CDS to complete delivery or payment required to close an open stock loan or borrow position as a failure by such Canadian Clearing Member, thereby triggering OCC's buy-in and sell-out procedures and such other procedures and remedies as are provided under OCC's Rules, including recourse to the collateral deposited by the clearing member. Accordingly, OCC believes that it will have no credit exposure to CDS as the result of a failure by CDS to perform. OCC will seek acknowledgement of CDS and DTC with respect to these arrangements. If, for any reason, CDS ceases to act for one or more Canadian Clearing Members,<sup>9</sup> OCC

<sup>8</sup> Unlike settlement of deliver/receive obligations in respect of stock options and stock futures, stock loan and borrow transactions do not involve NSCC.

<sup>9</sup> A Canadian Clearing Member will be obligated, under amended Interpretation .07 to Section 1 of Article V of the By-Laws, to promptly notify OCC in writing if it knew or reasonably expected CDS to cease acting on its behalf, or if CDS had ceased

will have authority to require clearing members to close out open stock loan and borrow positions through buy-in and sell-out procedures, or any other procedures provided in the By-Laws or Rules, if necessary.

In order to accommodate the participation by Canadian Clearing Members in the Stock Loan/Hedge Program, OCC will make certain conforming changes to its Non-U.S. Clearing Member Agreement.<sup>10</sup> OCC also will make certain technical changes to its Non-U.S. Clearing Member Agreement for clarity and consistency with its U.S. Clearing Member Agreement.

Finally, for ease of reference throughout the proposed addition to Interpretation .07 to Section 1 of Article V of the By-Laws, OCC is amending Section 1 of Article I of the By-Laws to define a Canadian Clearing Member approved to participate in the Stock Loan/Hedge Program as a "Canadian Hedge Clearing Member."

## III. Discussion

Section 19(b)(2)(C) of the Act<sup>11</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act<sup>12</sup> requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

By facilitating the inclusion of Canadian Clearing Members in OCC's Stock Loan/Hedge Program, the rule change serves to broaden the scope of OCC clearing members that are able to participate in stock loan transactions and thereby further promotes the prompt and accurate clearance and settlement of stock loan transactions, and also fosters cooperation and coordination with persons engaged in the clearance and settlement of stock loan transactions. The rule change achieves these objectives while also

acting on its behalf, with respect to effecting DOs for stock loan and stock borrow transactions.

<sup>10</sup> As part of the application process to become a clearing member of OCC, any non-U.S. applicant must execute a copy of OCC's Non-U.S. Clearing Member Agreement. In the agreement, the applicant makes certain representations with respect to, among other things, the types of transactions it will engage in as a Non-U.S. Clearing Member.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

continuing to protect the clearing system against risk.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>13</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (File No. SR-OCC-2013-03) be and hereby is APPROVED.<sup>15</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-11366 Filed 5-13-13; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69539; File No. SR-EDGX-2013-16]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

May 8, 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 May 1, 2013, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("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.

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

The Exchange proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule

15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at [www.directedge.com](http://www.directedge.com), at the Exchange's principal office, and at the Public Reference Room of the Commission.

#### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Currently, Footnote 1 of the Exchange's fee schedule provides that Members may qualify for the Mega Tier rebate of \$0.0035 per share for all liquidity posted on EDGX where Members add or route at least 2 million shares of average daily volume ("ADV") prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6) and add a minimum of 35 million shares of ADV on EDGX in total, including during both market hours and pre- and post-trading hours (hereinafter referred to as the "\$0.0035 Mega Tier Rebate"). Members also may qualify for the Mega Tier but will earn a rebate of \$0.0032 per share for all liquidity posted on EDGX if they add or route at least 4 million shares of ADV prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6) and add a minimum of .20% of the Total Consolidated Volume ("TCV") on a daily basis measured monthly, including during both market hours and pre- and post-trading hours (hereinafter referred to as the "\$0.0032 Mega Tier Rebate"). Currently, for meeting the aforementioned criteria (the \$0.0035 Mega Tier Rebate or the \$0.0032 Mega Tier Rebate), Members will pay a reduced rate for removing liquidity of \$0.0029 per share for Flags N, W, 6, BB, PI, and ZR (hereinafter referred to as the \$0.0029 Reduced Rate). Where a Member does not meet the criteria for either the \$0.0035 Mega Tier Rebate or \$0.0032 Mega Tier Rebate, then a

removal rate of \$0.0030 per share applies.

The Exchange proposes to amend Footnote 1 of its fee schedule to provide that if Members qualify for the \$0.0035 Mega Tier Rebate, they can also qualify for a separate reduced rate for removing and/or routing liquidity of \$0.0020 per share for Flags N, W, 6, 7, BB, PI, RT, and ZR (hereinafter referred to as the \$0.0020 Reduced Rate). The Exchange proposes to append Footnote 1 to Flags 7 and RT (the routing flags) to signify a rate change from the routing rates of \$0.0030 per share if the criteria of Footnote 1 is met. Footnote 1 is already appended to the other above-mentioned flags.

The Exchange notes that Members that qualify for the \$0.0035 Mega Tier Rebate would no longer qualify for the \$0.0029 Reduced Rate and may only qualify for the \$0.0020 Reduced Rate. The Exchange also proposes to add the following language to the end of the paragraph regarding the \$0.0035 Mega Tier Rebate: Where a Member does not meet the aforementioned criteria, then a rate of \$0.0030 per share applies.

In addition, the Exchange proposes to separate out the criteria for the \$0.0035 Mega Tier Rebate and the \$0.0032 Mega Tier Rebate by separating out the tiers and accompanying reduced rates into their own paragraphs. Lastly, the Exchange proposes to add "per share" following the amount of the reduced rate in the paragraph regarding the \$0.0032 Mega Tier Rebate, as well as to use the term "aforementioned" instead of "for the Mega Tier." Therefore, the final two sentences in the paragraph will now read as follows: "In addition, for meeting the aforementioned criteria, Members will pay a reduced rate for removing liquidity of \$0.0029 per share for Flags N, W, 6, BB, PI, and ZR. Where a Member does not meet the aforementioned criteria, then a removal rate of \$0.0030 per share applies."

The Exchange proposes to implement this amendment to its fee schedule on May 1, 2013.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>5</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to provide that if Members

<sup>13</sup> 15 U.S.C. 78q-1.

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

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

<sup>16</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> As defined in Exchange Rule 1.5(n).

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78f(b)(4).