

affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

6. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to permit the Feeder Fund to impose asset-based service and/or distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3 and 22d-1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

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

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69560; File No. SR-CBOE-2013-050]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Complex Order Router Subsidy Program

May 10, 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 8, 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, II, and III 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 Substance of the Proposed Rule Change

The Exchange proposes to adopt an additional qualification requirement to participate in CBOE's Complex Order Router Subsidy Program. 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.

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

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

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On March 8, 2013, CBOE established the Complex Order Router Subsidy Program (the "CORS Program" or "Program") which allows CBOE to enter into subsidy arrangements with any CBOE Trading Permit Holder ("TPH") (each, a "Participating TPH") or Non-CBOE TPH broker-dealer (each a "Participating Non-CBOE TPH") that provide certain order routing functionalities to other CBOE TPHs, Non-CBOE TPHs and/or use such functionalities themselves.<sup>3</sup> (The term "Participant" as used in this filing refers to either a Participating TPH or a Participating Non-CBOE TPH). Specifically, CBOE TPHs and non-CBOE TPHs that participate in the CORS Program receive a payment from CBOE for every executed contract for complex orders routed to CBOE through their system. The purpose of this proposed change is to add an additional feature that a Participant's order routing functionality must have to qualify for the Program.

SR-CBOE-2013-032 includes a description of the features that an order routing functionality of a Participant must have, and the performance requirements that the order routing functionality must satisfy, in order to qualify for the program.<sup>4</sup> Any CBOE TPH or broker-dealer that is not a CBOE TPH is permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features required in SR-CBOE-2013-032. In addition to the features described in SR-CBOE-2013-032, the Exchange is proposing to require a Participant's order routing functionality to provide current consolidated market data for complex orders from the U.S. options exchanges that offer complex order execution systems in order for the Participant to qualify to participate in the Program. A Participant shall have forty-five (45) days from the date that an exchange launches trading of complex orders to provide that exchange's market data for complex orders as part of its

<sup>3</sup> See Securities Exchange Act Release No. 69203 (March 21, 2013), 78 FR 18655 (March 27, 2013) (SR-CBOE-2013-032).

<sup>4</sup> SR-CBOE-2013-032, pp. 5-7. The primary functional requirements under the CORS Program are that an order routing functionality has to: (i) be capable of interfacing with CBOE's API to access current CBOE trade engine functionality and (ii) cause CBOE to be the default destination exchange for complex orders, but allow any user to manually override CBOE as the default destination on an order-by-order basis.

order routing functionality for any exchange that does not yet exist or that does not offer complex order execution systems as of May 6, 2013.

Nothing in the proposed subsidy arrangement relieves any CBOE TPH or non-CBOE TPH broker-dealer that is using an order routing functionality whose provider is participating in the CORS Program ("Users") from complying with its best execution obligations. Just as with any customer order and any other routing functionality, both a CBOE TPH and a non-CBOE TPH broker-dealer have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. The Exchange recognizes that, unlike simple, non-complex orders, there is no NBBO for complex orders and an exception from the prohibition on trade-throughs is provided for any transaction that is effected as a portion of a complex order.<sup>5</sup> The Exchange believes that the proposed additional requirement to provide consolidated market data for complex orders provides an additional tool for Users to assess the availability of price improvement at other markets and therefore facilitates compliance with their best execution obligations. Finally, any User, whether or not a CBOE TPH, needs to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"), in general. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market

system, and, in general, to protect investors and the public interest.

In particular, the proposed rule change ensures that CBOE TPHs and non-CBOE TPH broker-dealers that use a Participant's order router functionality are provided current consolidated market data for complex orders, which lets them assess the availability of price improvement at other markets. This information facilitates a User's compliance with its best execution obligations, thereby enhancing investor protection and promoting just and equitable principles of trade.

In addition, the Exchange believes that this proposed change is not unfairly discriminatory because the proposed additional requirement is applicable to every Participating CBOE TPH and Participating Non-CBOE TPH. Additionally, every user of a Participant's order routing functionality would be receiving the consolidated market data for complex orders. Finally, any CBOE TPH or broker-dealer that is not a CBOE TPH may participate in the CORS Program, provided that its complex order routing functionality incorporates the requirements set forth in SR-CBOE-2013-032 and above.

## 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 that the proposed change will impose an unnecessary burden on intramarket competition because it will apply equally to all participating parties. Additionally, the Exchange believes the proposed rule change will reduce the burdens on investors who use a Participant's order routing functionality that result from having to comply with best execution obligations, as they will not themselves individually receive market data for complex orders from each exchange that offers complex order execution systems. Further, the Exchange does not believe that such change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that, should the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges can always elect to provide order routing functionality to CBOE for complex orders or use order routing functionalities that are a part of the CORS Program for complex orders.

## 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</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. 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-2013-050 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-2013-050. 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

<sup>5</sup> See CBOE Rule 6.81(b)(7).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

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 the 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-CBOE-2013-050, and should be submitted on or before June 6, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69555; File No. SR-Phlx-2013-45]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Pricing for Mini Options**

May 10, 2013.

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 April 29, 2013, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III, 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 Substance of the Proposed Rule Change**

The Exchange proposes to amend Section A of the Exchange's Pricing Schedule entitled "Mini Options Fees". While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that they become operative on May 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at <http://nasdaqomxphlx.com>.

[cchwallstreet.com](http://cchwallstreet.com), at the principal office of the Exchange, 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 purpose of the proposed rule change is to amend Section A of the Pricing Schedule by updating various existing transaction fees for Non-Customers for both adding and removing liquidity. Additionally, the proposed rule change will also establish fees and rebates applicable for order executions that are part of PIXL.<sup>3</sup>

Specifically, the Exchange is proposing to assess market participants on a per trade basis the following fees and rebates on Mini Options:

	Customer	Professional	Specialist and market maker	Broker-dealer	Firm
Mini Options Transaction Fee—Electronic Adding Liquidity	\$0.00	\$0.03	\$0.02	\$0.03	\$0.03
Mini Options Transaction Fee—Electronic Removing Liquidity	0.00	0.09	0.04	0.09	0.09
Mini Options Transaction Fee—Floor and QCC	0.00	0.09	0.09	0.09	0.09

Additionally, for executions that occur as part of PIXL, the following fees and rebates will apply: (i) Initiating Order: \$0.015 per contract; (ii) PIXL Order (contra-party to the Initiating Order): Customer is \$0.00 and all others will be assessed will be assessed a transaction fee of \$0.03 per contract; and (iii) PIXL Order (contra-party to other than the Initiating Order): Customer will be assessed a transaction fee of \$0.00 and all others will be assessed a transaction fee of \$0.03 per contract (the contra-party will be

assessed a transaction fee of \$0.03 per contract).

PFOF fees will be as follows: (i) Penny Pilot Options: \$0.02; and (ii) all Other Options: \$0.06. Also, Routing Fees set forth in Section V will now apply to Mini Options. Other options transaction fee caps, discounts or rebates, in addition to the Monthly Market Maker Cap and the Monthly Firm Fee Cap set forth in Section II that already do not apply to transactions in Mini Options, also now will not apply to transactions in Mini Options. Finally, Mini Options volume will now be

included in the calculations for the Customer Rebate Program eligibility, but will not be eligible to receive the rebates associated with the Customer Rebate Program.

**Transaction Fees.** Section A provides for a "Mini Options Transaction Fee—Electronic" and for a "Mini-Options Transaction Fee—Floor and QCC", both of which apply in the Customer, Professional, Specialist and Market Maker, Broker-Dealer and Firm fee categories. As noted in a previous filing, "the Exchange is currently setting these fees at \$0.00 but may in the future file

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or

(PIXL<sup>SM</sup>). See Rule 1080(n) and Section IV of the Pricing Schedule.