

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69575; File Nos. SR-NYSE-2012-57; SR-NYSEMKT-2012-58]

### Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Changes Deleting NYSE Rules 95(c) and (d) and NYSE MKT Rules 95(c) and (d)—Equities and Related Supplementary Material

May 14, 2013.

On October 26, 2012, the New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC (“NYSE MKT”) (collectively, the “Exchanges”) each 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> proposed rule changes (“Proposals”) to delete NYSE Rules 95(c) and (d) and related Supplementary Material and NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material, respectively. The Proposals were published for comment in the **Federal Register** on November 15, 2012.<sup>3</sup> The Commission received no comment letters on the Proposals.

On December 21, 2012, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to February 13, 2013.<sup>4</sup> On February 13, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the Proposals.<sup>5</sup>

Section 19(b)(2) of the Act<sup>6</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the Proposals not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the Proposals, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Proposals were published for notice and comment in the **Federal Register** on November 15, 2012. May 14, 2013 is 180 days from that date, and July 13, 2013 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposals so that it has sufficient time to consider the Proposals. Specifically, as the Commission noted in the Order Instituting Proceedings, the Proposals raise the issue that elimination of the Rule 95(c) restriction on Floor brokers in connection with intra-day trading, as contemplated by the Proposals, may not be consistent with the Act in light of other benefits currently conferred by the Exchanges upon Floor brokers. For example, under the Exchanges’ rules, a Floor broker is entitled to a potentially preferential “parity” allocation of shares of an Exchange execution, as compared with off-Floor market participants that place orders on the Exchanges’ respective books.<sup>7</sup> Accordingly, a customer of a Floor broker engaged in intra-day trading, through an algorithmic proprietary trading strategy or otherwise, may have an advantage over market participants pursuing similar strategies directly on the Exchanges’ respective books, by virtue of the Floor broker’s parity status. The restrictions contained in Rules 95(c) and (d) today may serve to help counterbalance those advantages.<sup>8</sup>

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> designates July 12, 2013, as the date by

which the Commission shall either approve or disapprove the Proposals.<sup>10</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69569; File No. SR-CBOE-2013-049]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

May 14, 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, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. 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

<sup>10</sup> The Commission notes that July 13, 2013 is a Saturday and is, therefore, designating July 12, 2013 as the date by which the Commission shall either approve or disapprove the Proposals.

<sup>11</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>1</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. 68185 (November 8, 2012), 77 FR 68188 (SR-NYSE-2012-57) (“NYSE Notice”); Release No. 68186 (November 8, 2012), 77 FR 68191 (SR-NYSEMKT-2012-58) (“NYSE MKT Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 68522, 77 FR 77160 (December 31, 2012) (SR-NYSE-2012-57); Release No. 68521, 77 FR 77152 (SR-NYSEMKT-2012-58) (December 31, 2012).

<sup>5</sup> See Securities Exchange Act Release No. 68923 (February 13, 2013), 78 FR 11928 (February 20, 2013) (“Order Instituting Proceedings”).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See NYSE Rule 72(c)(ii) (“For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to herein as “Book Participant”) shall constitute individual participants. The orders represented in the Book Participant in aggregate shall constitute a single participant and will be allocated shares among such orders by means of time priority with respect to entry.”); see also NYSE MKT Rule 72(c)(ii) (same).

<sup>8</sup> See Order Instituting Proceedings, *supra* note 5 at 11929, 11930.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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 amend its Fees Schedule with regards to the fees assessed for Floor Broker Trading Permits. Specifically, the Exchange proposes to add to Footnote 25 the statement that any Floor Broker Trading Permit Holder that executes an average of 15,000 customer open-outcry contracts per day ("CPD") over the course of a calendar month in multiply-listed options classes will receive a rebate of \$7,500 on that Floor Broker Trading Permit Holder's Floor Broker Trading Permit fees. The purpose of the proposed change is to encourage Floor Brokers to execute open-outcry customer trades in multiply-listed options, and the Exchange believes that giving Floor Brokers a break in their Floor Broker Trading Permit fees will provide such an incentive. The Exchange recognizes the competitive nature of maintaining a Floor Broker operation at CBOE and wants to provide a credit to Floor Brokers that engage in a significant amount of Floor Broker open outcry trading at CBOE.

The Exchange also proposes to make a technical, non-substantive change to the "Stock Portion of Stock-Option Strategy Orders" table in its Fees Schedule. The "Notes" section of that table includes the statement "The per share fee assessed to customers for the stock portion of stock-option strategy orders will be waived through August 31, 2012." As August 31, 2012 is now in the past, the Exchange proposes to delete that statement.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>4</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit

Holder and other persons using its facilities. Providing Floor Broker Trading Permit Holders who execute an average of 15,000 customer open-outcry contracts per day in multiply-listed options classes with a rebate of \$7,500 on that Floor Broker Trading Permit Holder's Floor Broker Trading Permit fees is reasonable because it allows the qualifying Floor Brokers to pay lower Floor Broker Trading Permit fees than they otherwise would have. The Exchange believes that it is equitable and not unfairly discriminatory to offer such a rebate to Floor Brokers only, and only those who execute 15,000 contracts per day (of customer, open-outcry trading in multiply-listed options classes) because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support. Further, the proposed change is designed to encourage the execution of orders via open outcry, which should increase volume, which would benefit all market participants (including Floor Brokers who do not hit the 15,000 contracts-per-day threshold) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the 15,000 contracts-per-day threshold). Also, only Floor Brokers are assessed Floor Broker Trading Permit fees.

The Exchange proposes limiting the rebate qualification to open outcry trading because Floor Brokers only engage in open outcry trading (at least in their capacities as Floor Brokers), and because, as previously stated, the Exchange wishes to support and encourage open-outcry trading, which allows for price improvement and has a number of positive impacts on the market system. The Exchange proposes limiting the rebate qualification to customer orders because market participants generally prefer to trade against customer trades, and encouraging customer trading in this manner should provide such market participants with more customer orders with which to trade. Further, the options industry has a long history of promoting customer orders through rebates and other preferential fee structures. The Exchange proposes limiting the rebate qualification to multiply-listed options classes because the Exchange expended considerable resources developing its proprietary, singly-listed products and therefore does not desire to offer this rebate associated with such products.

The Exchange believes the proposed rule change to delete the outdated

statement in the "Notes" section of the "Stock Portion of Stock-Option Strategy Orders" table is consistent with the Section 6(b)(5)<sup>5</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 facilitation [sic] 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. The proposed deletion would prevent potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*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 or inappropriate burden on intramarket competition because, while it is limited to Floor Brokers (and only those who hit the 15,000-contract-per-day threshold), Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support. Further, the proposed change is designed to encourage the execution of orders via open outcry, which should increase volume, which would benefit all market participants (including Floor Brokers who do not hit the 15,000 contracts-per-day threshold) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the 15,000 contracts-per-day threshold). Also, only Floor Brokers are assessed Floor Broker Trading Permit fees. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intermarket competition because it only applies to CBOE Floor Brokers. To the extent that this rebate proves attractive to Floor Brokers on other options exchanges, or its results prove attractive to market participants on other exchanges, such Floor Brokers

<sup>3</sup> 15 U.S.C. 78ff(b).

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

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

or market participants may elect to become Floor Brokers or market participants at CBOE.

*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>6</sup> and paragraph (f) of Rule 19b-4<sup>7</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-2013-049 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-2013-049. 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](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 20549-1090, 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-CBOE-2013-049, and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-69571; File No. SR-NSCC-2013-05]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Require that All Locked-in Trade Data Submitted to It for Trade Recording be Submitted in Real-Time**

May 14, 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 30, 2013, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. On May 14, 2013,

<sup>8</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.

NSCC filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified, from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

NSCC is proposing to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time, as defined below, and to prohibit pre-netting and other practices that prevent real-time trade submission.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

*(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 for NSCC to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time,<sup>5</sup> and to prohibit pre-netting and other practices that prevent real-time trade submission.

According to NSCC, the majority of all transactions processed at NSCC are submitted on a locked-in basis by self-regulatory organizations ("SROs") (including national and regional exchanges and marketplaces) and Qualified Special Representatives ("QSRs").<sup>6</sup> Currently, NSCC data reveals

<sup>3</sup> In Amendment No. 1, NSCC modified Exhibit 5 to the original proposed rule change filing to correct a typographical error in the text of its Rules & Procedures ("Rules") related to the proposed rule change.

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>5</sup> The term "real-time," when used with respect to trade submission, will be defined in Procedure XIII (Definitions) of NSCC's Rules as the submission of such data on a trade-by-trade basis promptly after trade execution, in any format and by any communication method acceptable to NSCC.

<sup>6</sup> QSRs are NSCC Members that either (i) operate an automated execution system where they are always the contra side of every trade, (ii) are the parent or affiliate of an entity operating such an automated system, where they are the contra side of every trade, or (iii) clear for a broker-dealer that

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).