

the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**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)(ii) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>16</sup> because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such 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 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-ISE-2013-65 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-ISE-2013-65. 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 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-ISE-2013-65 and should be submitted on or before January 10, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-71083; File No. SR-OCC-2013-807]**

**Self-Regulatory Organizations; The Options Clearing Corporation; Advance Notice Concerning the Governance Committee Charter**

December 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4(n)(1)(i),<sup>2</sup> notice is hereby given that on September 14, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the advance notice described in Items I and

II below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice**

This advance notice concerns the charter of the Governance Committee ("GC Charter") of OCC's Board of Directors ("Board").

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice*

This advance notice concerns the GC Charter. The Board authorized formation of the Governance Committee ("GC") at its May 21, 2013, meeting and approved the GC Charter at its September 24, 2013, meeting. As set forth in the GC Charter, the purpose of the GC is to review the overall corporate governance of OCC and recommend improvements to OCC's Board. The GC Charter describes the role the GC plays in assisting the Board in fulfilling its responsibilities, as described in OCC's By-Laws and Rules, as well as specifying the policies and procedures governing the membership and organization, scope of authority, and specific functions and responsibilities of the GC. In addition, the guidelines for the composition of the GC as well as the policies regarding its meeting schedule, quorum rules, minute-keeping and reporting requirements are set forth in the GC Charter and conform to applicable requirements specified in OCC's By-Laws and Rules.

The GC is composed of not fewer than five Directors with at least one Public Director, one Exchange Director and one Member Director. Management Directors will not be members of the GC. The Board will designate a GC Chair and if the Chair is not present at a meeting, the members who are present will designate a member to serve as the Acting Chair. The GC will meet at least four times a year and a majority of the GC members

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</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(n)(1)(i).

constitutes a quorum. The GC is permitted to call executive sessions from which guests of the GC may be excluded, and GC members are permitted to participate in all meetings by conference telephone call or other means of communication that permit all meeting participants to hear each other. The GC Chair, or the Chair's designee, will report regularly to the Board on the GC's activities.

The GC Charter sets forth certain functions and responsibilities for the GC including, but not limited to, the following: Review the composition of the Board as a whole, including the Board's balance of participant and non-participant directors, business specialization, technical skills, diversity and other desired qualifications; review the Board's Charter for consistency with regulatory requirements, transparency of the governance process and other sound governance practice and recommend changes to the Board, where appropriate; review the committee structure of the Board, including the GC, and recommend changes to the Board, where appropriate; review OCC's policies and procedures for identifying and reviewing Board nominee candidates, including the criteria for Board nominees; develop and recommend to the Board a periodic process of self-evaluation of the role and performance of the Board, its committees and management in the governance of OCC; review OCC's policies on conflicts of interest of directors, including the OCC Directors Code of Conduct and recommend changes, where appropriate; and, review OCC's new director orientation program as well as OCC's training and education programs for Board members and recommend changes, where appropriate. In addition to the foregoing, the GC may undertake other and different activities, as appropriate, or as may be delegated to it by the Board. In discharging its role, the GC shall confer with management and other employees of OCC to the extent the GC deems it necessary to so to fulfill its duties.<sup>3</sup>

This advance notice is consistent with Section 806(e)(1)(A)<sup>4</sup> of the Clearing Supervision Act because the proposed change could be deemed to materially affect the nature or level of risks presented by OCC. The implementation of the GC may result in changes that will improve OCC's overall risk

<sup>3</sup> The GC, subject to the approval of the Board, is permitted to hire specialists or rely on outside advisors or specialists to assist it in carrying out the GC's activities. The GC has the authority to approve the fees and retention terms of such advisors and specialists.

<sup>4</sup> 12 U.S.C. 5465(e)(1)(A).

management process. In addition, the adoption of the GC Charter will reduce the amount of systemic risk OCC presents to the financial system because it will enhance the transparency of OCC's governance arrangements. The advance notice is not inconsistent with any existing OCC By-Laws or Rules.

*(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others*

Written comments on the advance notice were not and are not intended to be solicited with respect to the advance notice and none have been received.

**III. Date of Effectiveness of the Advance Notice and Timing for Commission Action**

The proposed changes contained in the advance notice may be implemented pursuant to Section 806(e)(1)(G) of Clearing Supervision Act<sup>5</sup> if the Commission does not object to the proposed changes within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed changes contained in the advance notice if the Commission objects to the proposed changes.

The Commission may extend the period for review by an additional 60 days if the proposed changes raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. Proposed changes may be implemented in fewer than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed changes and authorizes the clearing agency to implement the proposed changes on an earlier date, subject to any conditions imposed by the Commission.

OCC has also filed the advance notice as a proposed rule change pursuant to Section 19(b)(1) of the Act<sup>6</sup> and Rule 19b-4 thereunder.<sup>7</sup> Pursuant to those provisions, within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

<sup>5</sup> 12 U.S.C. 5465(e)(1)(G).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

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

the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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-OCC-2013-807 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-OCC-2013-807. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at <http://www.theocc.com/about/publications/bylaws.jsp>.

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–OCC–2013–807 and should be submitted on or before January 10, 2014.

By the Commission.

**Kevin O’Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71085; File No. SR–NYSEMKT–2013–99]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rules 104—Equities and 123C—Equities To Specify That Closings May Be Effectuated Manually or Electronically

December 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 December 3, 2013, NYSE MKT LLC (“NYSE MKT” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 Rules 104—Equities and 123C—Equities to specify that closings may be effectuated manually or electronically. 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.

#### 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 those 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 parts 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 amend Rules 104—Equities (“Rule 104”) and 123C—Equities (“Rule 123C”) to specify that closings may be effectuated manually or electronically.<sup>3</sup> Rule 104(a)(3) currently provides that designated market makers (“DMM”) have the responsibility, among other things, to facilitate the close of trading for each of the securities in which the DMM is registered as required by Exchange rules (including Rule 123C), which may include supplying liquidity as needed. Rule 104(b) further provides that DMM units shall have the ability to employ algorithms for quoting and trading consistent with Exchange and SEC regulations. As such, DMM units at the Exchange all use algorithms to engage in quoting and trading activity at the Exchange.

Rule 123D(1)—Equities specifies that openings may be effectuated manually or electronically. Accordingly, the Exchange currently provides DMM units with functionality to open a security, either on a trade or on a quote, algorithmically. The Exchange is in the process of making a technological change to enable DMM units to use algorithms to close a security as well, i.e., to effectuate a close electronically. The Exchange believes that such functionality would be consistent with current Rule 104(b) because the rule already permits algorithms to engage in quoting or trading activity. However, for the avoidance of doubt, the Exchange proposes to amend Rule 123C to add supplementary material that parallels the current Rule 123D(1)—Equities rule provision governing the manner by which openings are effectuated to similarly provide that closings may be effectuated manually or electronically.

To assure that certain non-displayed interest that is eligible to participate in manual transactions is included in the opening transaction, Rule 104(a)(2) currently provides that the DMM and DMM unit algorithms will have access to aggregate order information in order to comply with their requirement to

facilitate the opening.<sup>4</sup> Because such non-displayed interest is also eligible to participate in the closing transaction, the Exchange would similarly provide aggregate order information to the DMM and DMM unit algorithm in order for the DMM algorithm to close the security electronically. Accordingly, the Exchange proposes to amend Rule 104(a)(3) to add that DMM and DMM unit algorithms will have access to aggregate order information in order to comply with their requirement to facilitate the close of trading as required by Exchange rules. The proposed additional rule text mirrors the current rule text in Rule 104(a)(2).

Rule 104(b)(iii) provides that the DMM unit’s system employing algorithms will have access only to publicly-available information. However, as noted above, certain non-displayed interest must be included in the opening or closing transaction. Currently, in order to both include such interest in an opening that is effectuated electronically and meet the Rule 104(b)(iii) requirements, the Exchange delivers aggregate order information that includes such non-displayed interest to DMM unit algorithms in a format that is accessible only for the purpose of the opening transaction. Stated otherwise, such information is not made available to the DMM algorithms that engage in intraday quoting and trading activity. The Exchange proposes to use similar mechanisms to deliver aggregate order information necessary for DMM units to effectuate a closing transaction electronically so that it is similarly restricted in its use and availability. In order to provide additional transparency in Exchange rules, the Exchange proposes to amend Rule 104(b)(iii) to add a qualifying statement that except as provided for in Rule 104(a)(2) and proposed Rule 104(a)(3), which as described above are of limited purpose, the DMM unit’s system employing algorithms will not have access to order

<sup>4</sup> Minimum Display Reserve interest, which includes Minimum Display Reserve Orders pursuant to Rule 13—Equities and Floor broker interest designated as reserve interest pursuant to Rule 70—Equities, is eligible to participate in manual executions, which include the open and close. Exchange systems include all interest eligible to participate in the opening transaction in the aggregate order information available for execution at a price point when the DMM facilitates a manual transaction. See Securities Exchange Act Release No. 34–58184 (July 17, 2008), 73 FR 42853 at 42868 (July 23, 2008) (SR–NYSE–2008–45) (The Exchange’s equity trading rules are based on the rules of the New York Stock Exchange LLC). See also Rule 115—Equities (providing that the aggregated interest of Minimum Display Reserve Orders may be included in the information a DMM may provide to an inquiry from a Floor broker conducting a market probe in the normal course of business).

<sup>3</sup> Rule 104 is operating on a pilot basis as part of the Exchange’s New Market Model pilot and is in effect until January 31, 2014. See Securities Exchange Act Release No. 69812 (June 20, 2013), 78 FR 38766 (June 27, 2013) (SR–NYSEMKT–2013–51).

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

<sup>2</sup> 17 CFR 240.19b–4.