

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>154</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-9854; 34-75303; File No. 265-27]

### Advisory Committee on Small and Emerging Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold an open, public telephone meeting on Wednesday, July 15, 2015, beginning at 1:00 p.m. EDT. Members of the public may attend the meeting by listening to the webcast accessible on the Commission's Web site at [www.sec.gov](http://www.sec.gov). Persons needing special accommodations to access the meeting because of a disability should notify the contact person listed below. The agenda for the meeting includes a continuation of discussions started at the Committee's meeting on June 3, 2015, including regarding public company disclosure effectiveness and the treatment of "finders." The public is invited to submit written statements to the Committee.

**DATES:** The public meeting will be held on Wednesday, July 15, 2015. Written statements should be received on or before Monday, July 13, 2015.

**ADDRESSES:** Written statements may be submitted by any of the following methods:

#### *Electronic Statements*

- Use the Commission's Internet submission form (<http://www.sec.gov/info/smallbus/acsec.shtml>); or
- Send an email message to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 265-27 on the subject line; or

#### *Paper Statements*

- Send paper statements to Brent J. Fields, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File No. 265-27. This file number should be

included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site at <http://www.sec.gov/info/smallbus/acsec.shtml>.

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Julie Z. Davis, Senior Special Counsel, at (202) 551-3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-3628.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Keith F. Higgins, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: June 25, 2015.

**Brent J. Fields,**  
*Committee Management Officer.*

[FR Doc. 2015-16108 Filed 6-30-15; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75302; File No. SR-CBOE-2015-062]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Front-End Order Entry and Management Tools in Connection With Purchase of Livevol Assets

June 25, 2015.

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 June 23, 2015, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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> 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 purpose of this filing is to describe the functionality and adopt fees for the use of two new front-end order entry and management applications. 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.

#### 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 this filing is to describe the functionality and adopt fees for the use of two new front-end order entry and management applications. On June 1, 2015, CBOE IV, LLC ("Newco") (a wholly owned subsidiary of CBOE's parent company, CBOE Holdings, Inc.) entered into a definitive asset purchase agreement with Livevol<sup>5</sup> pursuant to which Newco agreed to purchase certain software and technology, including Livevol X ("LVX") and Livevol Core X ("LVCX")

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

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

<sup>5</sup> Livevol, Inc. has an additional subsidiary, Livevol Securities, Inc. ("LVS"), which is a registered U.S. broker-dealer (but not a Trading Permit Holder of the Exchange). CBOE will not acquire any assets related to this broker-dealer business.

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

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

<sup>154</sup> 17 CFR 200.30-3(a)(12).

and, together with LVX, the “applications”).<sup>6</sup>

The applications are front-end order entry and management tools for listed stocks and options that support both simple and complex orders.<sup>7</sup> LVX is a software application that is installed locally on a user’s desktop terminal, and LVCX is a web-based application integrated into the application programming interface of the user’s proprietary system. The applications provide users with the capability to send option orders to U.S. options exchanges and stock orders to U.S. stock exchanges (and other trading centers<sup>8</sup>). Additionally, the applications allow users to input parameters to control the size, timing and other variables of their trades.<sup>9</sup> Both applications include access to real-time options and stock market data; LVX also includes access to historical data. The applications provide their users with the ability to maintain an electronic audit trail and provide

<sup>6</sup>Pursuant to the asset purchase agreement, Newco will also purchase from Livevol market data analytical products. See *infra* note 10.

<sup>7</sup>Newco may add functionality to permit users to submit orders for commodity futures, commodity options and other non-security products to be sent to designated contract markets, futures commission merchants, introducing brokers or other applicable destinations of the users’ choice.

<sup>8</sup>A “trading center,” as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates a self-regulatory organization trading facility, an alternative trading system, an exchange market-maker, an over-the-counter market-maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

<sup>9</sup>LVX also provides position and risk management capabilities. The LVX risk management functionality allows users to, among other things, set pre-trade customizable risk controls. Users of these risk controls set the parameters for the controls (to the extent a firm sublicenses LVX applications to its customers (see below), the firm will set risk controls on behalf of its customers). Users have the option to instead use other third-party risk control software, including risk control software or technology (LVCX users are responsible for obtaining their own risk control software or technology). The Exchange notes that entering broker-dealers (including Trading Permit Holders) must ensure that any orders that come from the applications to their systems will be subject to all applicable pre-trade risk control requirements in accordance with Rule 15c3-5 of the Securities Exchange Act of 1934 (the “Act”). See 17 CFR 240.15c3-5. Please note that, in the adopting release for Rule 15c3-5 under the Act, the Securities and Exchange Commission (the “Commission”) indicated that a broker-dealer relying on risk management technology developed by third parties should perform appropriate due diligence to help assure the controls are reasonably designed, effective, and otherwise consistent with Rule 15c3-5. Mere reliance on representations of the third-party technology developer, even if an exchange or other regulated entity, is insufficient to meet this due diligence standard.

detailed trade reporting.<sup>10</sup> Use of the applications is completely optional.

The applications are designed so that orders entered into an application may be sent to CBOE or other U.S. exchanges (and trading centers) through an “LV Routing Intermediary.” An “LV Routing Intermediary” is a CBOE Trading Permit Holder that has connectivity to, and is a member of, other options and/or stock exchanges (or trading centers). If a user sends an order through an application to an LV Routing Intermediary, the LV Routing Intermediary will route that order to a market for execution on behalf of the entering user.<sup>11</sup> Users cannot directly route orders through the applications to an exchange or trading center. For users’ convenience, CBOE will make available upon request a list of LV Routing Intermediaries that provide third-party routing services for orders entered through LVX or LVCX. The Exchange notes that a firm’s decision to function as an LV Routing Intermediary is within that firm’s sole discretion.<sup>12</sup>

Certain LV Routing Intermediaries may permit application users to designate a market to which an LV Routing Intermediary is to route an order received from an application. Other LV Routing Intermediaries may employ “smart router” functionality, which, generally, determines where to route an order based on pre-set algorithmic logic. LV Routing Intermediaries may also provide users with the ability to either designate a destination market (an order-by-order basis or by default) or use the smart router functionality. Which LV Routing Intermediary a user chooses to use (and

<sup>10</sup>The functionality of the applications that formats users’ stock and option orders entered into those applications for broker-dealers, which then submit those orders to exchanges for execution, is the basis for this rule filing. The applications include other functionality. LVCX provides users with certain basic data analysis tools for real-time data, including market scanners, watchlists and alerts. LVX provides users with these tools for both real-time and historical data as well as other advanced analytical tools, including time and sales analytics, charting capabilities, live and historical skews, volatility comparisons, data queries and filtering, and “Greek” calculations. The Exchange notes that Newco will also acquire technology products separate from the applications that offer these and other market data and analytical tools to customers, as well as an add-on tool that extracts data from the data analysis products (including the applications) and enters it into a Microsoft Excel spreadsheet. These data analysis tools are not subject to a rule filing requirement.

<sup>11</sup>A user may also be an LV Routing Intermediary if the user is CBOE Trading Permit Holder that has connectivity to, and is a member of, other options and/or stock exchanges (or trading centers).

<sup>12</sup>To the extent a firm sublicenses LVX applications to its customers (see below), the firm will determine which LV Routing Intermediary to use for applications used by the firm and its customers.

thus which type of routing permissions are available to a user) is entirely within a user’s discretion.<sup>13</sup>

The Exchange represents that the applications are merely new front-end order entry and management systems that interface to the systems of LV Routing Intermediaries. The applications are not integrated into and have no connectivity to CBOE’s trading system (or the trading systems of any other U.S. exchange or trading center). Thus, orders submitted through the applications will ultimately come to CBOE or other exchanges for execution through third-party routing technology. There will be no change to, or impact on, the Exchange’s market structure as a result of offering the applications. As a result, the Exchange represents that the applications do not require any changes to the Exchange’s surveillance or communications rules.

Use of the applications is completely voluntary. CBOE will make the applications available to users (and in certain cases, their customers, as further described below) as a convenience for entering and managing orders, but neither application is an exclusive means for any user to send orders to CBOE or intermarket. Orders entered into the applications that are ultimately routed to CBOE for execution will receive no preferential treatment as compared to orders electronically sent to CBOE in any other manner. Orders entered into an application that get routed to CBOE will be subject to current trading rules in the same manner as all other orders sent to the Exchange, which is the same as orders that are sent through an application to the Exchange today.

CBOE will begin making the applications available to users following the closing of the acquisition of the applications and other technology products from Livevol.<sup>14</sup> Newco will grant users licenses to use LVX and LVCX. The Exchange notes that a firm or individual does not need to be a Trading Permit Holder to license LVX or LVCX, because, as discussed above, neither application is directly connected to CBOE (or any other U.S. exchange), and orders submitted into either

<sup>13</sup>Currently, there are seven broker-dealers that are expected to function as LV Routing Intermediaries as of the closing date of the acquisition (LVX will not be one of the LV Routing Intermediaries).

<sup>14</sup>CBOE expects the closing date to be July 31, 2015 and will announce the closing date via press release or its Web site (including via circular). The proposed rule change will be operative on the later of August 1, 2015 (assuming a July 31, 2015 closing date) or the first business day immediately following the closing date (if the closing date occurs later than July 31, 2015).

application for execution must be routed through the connectivity of an LV Routing Intermediary.<sup>15</sup> Newco will also provide technical support, maintenance and user training for the applications. LVX users that pay the standard monthly fee per log-in ID set forth in the standard pricing table below may not sublicense to [sic] LVX to their customers ("LVX Standard Users"). LVX users that pay the monthly enterprise fee set forth in the enterprise pricing table below and commit to licensing LVX for a period of two years (which period will begin on the date on which the user enters into an agreement for an applicable enterprise tier with Newco that permits sublicensing) may sublicense LVX to their customers ("LVX Enterprise Users").<sup>16</sup>

LVX Standard User Pricing Table

Number of Log-In IDs	Monthly Fee/ Log-In ID
1–15 .....	\$500
16 + .....	\$400

LVX Enterprise User Pricing Table

Number of Log-Ins IDs	Monthly Enterprise Fee
1–499 .....	\$50,000
500 + .....	\$80,000

- *LVX Standard User Pricing*

*Example:* If a customer wants to license 20 log-ins, it would pay  $500 \times 15 + 400 \times 5$ , or \$9,500 per month for those log-ins. That monthly fee would increase or decrease for each additional or cancelled, respectively, log-in ID by the applicable amount set forth in the above table.

- *LVX Enterprise User Pricing*

*Example:* A firm enters into an

<sup>15</sup> Rule 6.23A provides that only Trading Permit Holders and associated persons with authorized access may directly enter orders into CBOE's trading system.

<sup>16</sup> The Exchange notes that it expects Newco to assume agreements between Livevol and their current LVX and LVCX customers at the closing of the acquisition, provided that the fees those customers pay under those agreements as of the closing date are consistent with the fees for LVX set forth in this rule filing. Additionally, Newco intends to prepare a form license agreement for each application and, no later than three months following the closing of the acquisition, ensure each customer has executed such agreement so that all LVX customers and LVCX customers use the product pursuant to the same terms and conditions. CBOE expects LVS will enter into a license agreement with Newco at the closing of the acquisition and be an LVX Enterprise User. LVS would be responsible for entering into any user agreements with any new customers to whom it sublicenses LVX after the closing in accordance with the terms and conditions in its license agreement, as would be required with respect to any customer that is permitted to sublicense LVX.

agreement with Newco on August 1, 2015, pursuant to which the firm can sublicense these log-ins to its customers. The firm must pay \$50,000 each month through July 31, 2017 as long as it has no more than 499 log-in IDs. However, suppose, as of January 1, 2016, the firm wants to increase its log-in ID total to 500. At that time, because the firm would be entering into the next tier, the firm would need to enter into a new two-year commitment (through December 31, 2018) and begin paying \$80,000/month. If the firm needed fewer than 500 log-ins during that two-year period, it would continue to pay \$80,000 each month for that two-year period. At the end of the two-year commitment, if an LVX Enterprise User wants to continue to license LVX, the firm could either enter into a new two-year commitment to remain an LVX Enterprise User (with the monthly fee to be based on how many log-ins the firm has at that time) or instead go to standard log-in ID pricing without sublicensing rights for its outstanding log-ins.

For LVCX, the Exchange proposes a monthly fee of \$100 per log-in ID. CBOE will pass through to the LVCX user its actual costs of any LVCX installation fees, which costs will be determined on a time and materials (per hour) basis. LVCX users may sublicense LVCX to their customers.

Additionally, the Exchange proposes an LV Routing Intermediary fee of \$0.02 per executed contract or share equivalent for the first million contracts or share equivalent executed in a month and \$0.03 per executed contract or share equivalent for each additional contract or share equivalent executed in the same month. This fee is based on the aggregate number of executions on all markets (including CBOE) from all LVX Standard Users for which an LV Routing Intermediary serves in that capacity. The Exchange notes that this fee will be charged to an LV Routing Intermediary whether it is routing application orders on behalf of itself or on behalf of another application user.<sup>17</sup> There will be no LV Routing Intermediary fee charged for executions from LVX applications of LVX Enterprise Users or from LVCX applications.

The monthly log-in ID fees for standard LVX tier log-in IDs and for LVCX log-in IDs, as well as LV Routing Intermediary fees, will allow for Newco's recoupment of the costs of

developing, maintaining, supporting and enhancing the applications and the related Routing Intermediary functionality as well as for income from the value-added services being provided through use of the applications. The Exchange believes the fee structure represents an equitable allocation of reasonable fees because the same monthly log-in ID fees apply to all LVX Standard Users and all LVCX users, and the same LV Routing Intermediary fee applies the same to all broker-dealers that elect to become LV Routing Intermediaries for LVX Standard Users. The Exchange believes these fees are reasonable and appropriate as they are competitive with similar applications available throughout the market and are based on Livevol's costs and fee structure currently in place for the applications. The Exchange believes the LV Routing Intermediary fee is also reasonable in light of the fact that it is small in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the applications, and the decision to function as an LV Routing Intermediary, are discretionary and not compulsory. Users can choose to route orders without the use of either of the applications. The Exchange is offering the applications as a convenience; they are not an exclusive means available to send orders to CBOE or intermarket.

The Exchange believes the requirement to enter into a two-year commitment to become an LVX Enterprise User (and thus to be able to sublicense LVX to customers) is appropriate, because providing ongoing support for a firm's customer base (which may be large) would likely require the Exchange to expend significant additional resources, including potentially adding personnel to provide training and support for these customers as well as increasing equipment and infrastructure commitments. Without the two-year commitment, Newco would be at significant risk of making these expenditures, only to have the firm no longer need them and not have the opportunity to recoup the costs related to those resources. While the initial cost to add a log-in ID for a customer is smaller as the number of log-ins licensed by a single firm increases due to the scalability of costs, sublicensing to a larger number of customers will generally require Newco to bear these longer-term costs. The Exchange believes other providers in the industry offer certain rights in exchange for longer term commitments for similar

<sup>17</sup> The Exchange notes the LV Routing Intermediary fee is the same amount as the routing intermediary fee for PULSe; however, the LV Routing Intermediary fee applies to routing to any market, including CBOE, while the PULSe fee applies to away-market routing only.

sublicensing rights. Additionally, given the high monthly cost and long-term commitment to become an LVX Enterprise User and given that the Exchange charges integration [sic] costs to LVCX users but not LVX Standard Users, because the Exchange understands that LV Routing Intermediaries will generally pass-through the LV Routing Intermediary fee to their customers, the Exchange believes it is reasonable and appropriate to not apply the LV Routing Intermediary fee to orders that come through an LVX Enterprise User's applications or LVCX applications. It is also reasonable for the Exchange to protect its intellectual property related to LVX by requiring payment for the right to sublicense, which could create additional risk as Newco will not control to which users a firm may sublicense LVX. The Exchange believes this commitment requirement represents an equitable allocation of reasonable fees because any user that wants sublicensing rights is subject to the same fees and time commitment.

The Exchange believes the installation fee for LVCX is reasonable because the Exchange believes the related installation work will vary per customer due to the necessity of integration of the software into a customer's own system. The Exchange believes this fee to be equitable because it directly passes through those costs to the user based on a time and materials basis that will apply to all users in the same manner.

The Exchange notes that Newco will provide additional technology products and services and may in the future engage in other business activities, which may include the provision of other technology products and services to broker-dealers and non-broker-dealers in addition to the applications.<sup>18</sup> In this regard:

<sup>18</sup> See supra note 10. Newco is not and, at least initially, will not be registered as a broker-dealer under Section 15(a) of the Act. In this regard, the Exchange notes the following: (a) CBOE and Newco will be responsible for the marketing of the applications. Newco will be the party to any agreements with customers for these products. (b) CBOE and Newco will be responsible for providing, supporting and maintaining the technology for the applications. CBOE will be responsible for ensuring that Newco's provision of the applications, to the extent they are deemed facilities of CBOE, meets CBOE's self-regulatory organization obligations. (c) Unless it registers as a broker-dealer under Section 15(a) of the Act, Newco will not hold itself out as a broker-dealer, provide advice related to securities transactions, match orders, make decisions about routing orders, facilitate the clearance and settlement of executed trades, prepare or send transaction confirmations, screen counterparties for creditworthiness, hold funds or securities, open, maintain, administer or close brokerage accounts, or provide assistance in resolving problems, discrepancies or disputes related to brokerage

- There will be procedures and internal controls in place that are reasonably designed so that Newco will not unfairly take advantage of confidential information it receives as a result of its relationship with CBOE in connection with the applications or any other business activities.

- The books, records, premises, officers, directors, agents and employees of Newco, with respect to the products that may be deemed facilities of CBOE, will be deemed to be those of CBOE for purposes of and subject to oversight pursuant to the Act.

## 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>19</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>20</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>21</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>22</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.

In particular, the Exchange believes that offering the applications to market participants protects investors and is in the public interest, because it will allow the Exchange to directly offer users

accounts. Should Newco seek to register as a broker-dealer in the future, the Exchange represents that the broker-dealer would not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act.

<sup>19</sup> 15 U.S.C. 78f(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> *Id.*

<sup>22</sup> 15 U.S.C. 78f(b)(4).

order entry and management applications in addition to the technology products it currently offers (such as the PULSe workstation), which applications include access to data as well as analytical tools. LVX and LVCX are currently offered and used in the marketplace and compete with similar products offered by other technology providers as well as other exchanges.<sup>23</sup> Additionally, firms can create their own proprietary front-end order entry software and routing technology.

The Exchange believes the proposed rule change does not discriminate among market participants because use of the applications, as well as being an LV Routing Intermediary, is completely voluntary. The Exchange is making the applications available as a convenience to market participants, who will continue to have the option to use any order entry and management system available in the marketplace to send orders to the Exchange and other exchanges; the applications are merely alternatives that will be offered by the Exchange rather than its current owner. Neither application is an exclusive means available to market participants to send orders to CBOE or other markets. Any orders sent through an application to CBOE for execution will receive no preferential treatment. Additionally, the applications will be available to all market participants, and the Exchange expects to license the applications to market participants pursuant to the same terms and conditions.

The Exchange believes the applications remove impediments to and perfect the mechanism of a free and open market and a national market system because users have discretion to determine which LV Routing Intermediary they will use, and thus what type of routing parameters will be available to them (whether it is the ability to designate a destination market or use smart router functionality). Each user must enter into an agreement with an LV Routing Intermediary, which can provide for routing to U.S. options and stock exchanges (and trading centers). Only Trading Permit Holders will continue to be permitted to directly route orders received from an application to CBOE, and only members of other U.S. exchanges will be able to enter orders for execution at those exchanges that they receive from an application. The Exchange also notes that broker-dealers must continue to

<sup>23</sup> For example, International Securities Exchange, LLC ("ISE") offers a front-end order entry workstation called PRECISE to its customers, which the Exchange believes has similar functionality as the applications.

ensure that orders they receive from applications will be subject to applicable pre-trade risk control requirements of the broker-dealer that directly submits the orders to an exchange in accordance with Rule 15c3-5 under the Act.<sup>24</sup>

The standard monthly log-in ID fees for LVX log-in ID and monthly fees for LVCX log-in IDs, as well as LV Routing Intermediary fees, will allow for Newco's recoupment of the costs of developing, maintaining, supporting and enhancing the applications and the related Routing Intermediary functionality as well as for income from the value-added services being provided through use of the applications. The Exchange believes the fee structure represents an equitable allocation of reasonable fees because the same monthly log-in ID fees apply to all LVX Standard Users and all LVCX users, and the same LV Routing Intermediary fee applies the same to all broker-dealers that elect to become LV Routing Intermediaries for LVX Standard Users. The Exchange believes these fees are reasonable and appropriate as they are competitive with similar applications available throughout the market and are based on Livevol's costs and fee structure currently in place for the applications. The Exchange believes the LV Routing Intermediary fee is also reasonable in light of the fact that it is small in relation to the total costs typically incurred in routing and executing orders. The Exchange also notes that use of the applications, and the decision to function as an LV Routing Intermediary, are discretionary and not compulsory. Users can choose to route orders without the use of either of the applications. The Exchange is offering the applications as a convenience; they are not an exclusive means available to send orders to CBOE or intermarket. Additionally, given the high monthly cost and long-term commitment to become an LVX Enterprise User and given that the Exchange charges integration [sic] costs to LVCX users but not LVX Standard Users, because the Exchange understands that LV Routing Intermediaries will generally pass-through the LV Routing Intermediary fee to their customers, the Exchange believes it is reasonable and appropriate to not apply the LV Routing Intermediary fee to orders that come through an LVX Enterprise User's applications or LVCX applications.

The Exchange believes the requirement to enter into a two-year commitment to become an LVX

Enterprise User (and thus to be able to sublicense LVX to customers) is appropriate, because providing ongoing support for a firm's customer base (which may be large) would likely require the Exchange to expend significant additional resources, including potentially adding personnel to provide training and support for these customers as well as increasing equipment and infrastructure commitments. Without the two-year commitment, Newco would be at significant risk of making these expenditures, only to have the firm no longer need them and not have the opportunity to recoup the costs related to those resources. While the initial cost to add a log-in ID for a customer is smaller as the number of log-ins licensed by a single firm increases due to the scalability of costs, sublicensing to a larger number of customers will generally require Newco to bear these longer-term costs. The Exchange believes other providers in the industry offer certain rights in exchange for longer term commitments for similar sublicensing rights. It is also reasonable for the Exchange to protect its intellectual property related to LVX by requiring payment for the right to sublicense, which could create additional risk as Newco will not control to which users a firm may sublicense LVX. The Exchange believes this commitment requirement represents an equitable allocation of reasonable fees because any user that wants sublicensing rights is subject to the same fees and time commitment.

The Exchange believes the installation fee for LVCX is reasonable because the Exchange believes the related installation work will vary per customer due to the necessity of integration of the software into a customer's own system. The Exchange believes this fee to be equitable because it directly passes through those costs to the user based on a time and materials basis that will apply to all users in the same manner.

#### *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 will make the applications available to market participants on the same terms and conditions, and use of either application will be completely voluntary. Additionally, the decision to act as an LV Routing Intermediary is completely voluntary, and users have discretion to determine which LV Routing Intermediary to use. Market

participants will continue to have the flexibility to use any order entry and management technology they choose. The Exchange will merely be directly offering the applications as alternatives to a product that the Exchange currently makes available in the market (PULSe). If market participants believe that other products available in the marketplace are more beneficial than either application, they will simply use those products instead. Orders sent to the Exchange through an application for execution will receive no preferential treatment. The Exchange notes that the applications are already available and used in the marketplace today. This acquisition merely changes the party that will own and license to users the applications going forward.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition. CBOE will be offering a type of product that is widely available throughout the industry, including from some exchanges. Market participants can also develop their own proprietary products with the same functionality. ISE currently offers a similar front-end order entry application. CBOE believes that the applications will be additions to its current suite of technology products it offers to market participants to enter and manage orders for routing to U.S. exchanges. Any market participant will be able to use the applications.

The Exchange notes that when Congress charged the Commission with supervising the development of a "national market system" for securities, a premise of its action was that prices, products and services ordinarily would be determined by market forces.<sup>25</sup> Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention, to determine prices, products and services in the securities markets.<sup>26</sup> Many

<sup>25</sup> See, e.g., H.R. Rep. No. 94-229, at 92 (1975) (Conf. Rep.) (stating Congress's intent that the "national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed").

<sup>26</sup> See S. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975) ("The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services."); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (Dec. 9, 2008) at 74781 ("The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system. Indeed, competition among multiple markets and market participants trading the same

Continued

<sup>24</sup> See 17 CFR 240.15c3-5.

exchanges and other market participants make technology products, including products similar to the applications, available to the industry. Other market participants that offer these products can adjust pricing or add functionality to attract users to their products to compete with the Exchange-offered products based on all competitive forces in the marketplace, as the Exchange expects these other market participants currently do. The Exchange believes that other market participants that offer these products will continue to remain competitive in the market for order-entry, management and routing products, as they currently are in this market in which at least two exchanges (including CBOE) offer similar technology products. For example, CBOE currently offers PULSe, and ISE currently offers PreCISE. The Exchange believes that many investors will continue to elect to use competing products available from non-exchange technology providers.

*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>27</sup> and Rule 19b-4(f)(6)<sup>28</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 shall institute proceedings

products is the hallmark of the national market system.”) (SR-NYSEArca-2006-21); Regulation NMS, 70 FR at 37499 (observing that NMS regulation “has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies”).

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f)(6).

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-2015-062 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-062. 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-CBOE-2015-062, and should be submitted on or before July 22, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-75295; File No. SR-BOX-2015-23]

**Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7260 To Extend, Through June 30, 2016, the Pilot Program That Permits Certain Classes To Be Quoted in Penny Increments**

June 25, 2015.

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 June 17, 2015, BOX Options Exchange LLC (the “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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 7260 to extend, through June 30, 2016, the pilot program that permits certain classes to be quoted in penny increments (“Penny Pilot Program”). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at <http://boxexchange.com>.

**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

<sup>29</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.