

• Fourth, the Exchange has in place NASDAQ Rule 2160(c), which requires The NASDAQ OMX Group, Inc., as the holding company owning both the Exchange and NES, to establish and maintain procedures and internal controls reasonably designed to ensure that NES does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange has met all the above-listed conditions. By meeting the above conditions, the Exchange has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as demonstrate that NES cannot use any information advantage it may have because of its affiliation with the Exchange. Because the Exchange has met all the above-listed conditions, it now seeks permanent approval of this inbound routing relationship. The Exchange will continue to comply with the conditions 1–4 stated above.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>12</sup> in general, and with Sections 6(b)(5) of the Act,<sup>13</sup> in particular, in that the proposal is 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, because the proposed rule change will allow the Exchange to continue to receive inbound orders from NES, acting in its capacity as a facility of BX and PHLX, in a manner consistent with prior approvals and established protections. The Exchange believes that these conditions establish mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NES, as well as ensure that NES cannot use any information it

may have because of its affiliation with the Exchange to its advantage.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Permanent approval of the current pilot program does not raise any issues of intramarket competition because it involves inbound routing from an affiliated exchange. Nor does it result in a burden on competition among exchanges, because there are many competing exchanges that provide routing services, including through an affiliate.

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

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be 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–NASDAQ–2013–028 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–NASDAQ–2013–028. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE., Washington, DC 20549–1090. Copies of the filing will also 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–NASDAQ–2013–028 and should be submitted on or before March 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

[FR Doc. 2013–03411 Filed 2–13–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68873; File No. SR–CBOE–2013–016]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change To Permit the Minimum Price Variation for Mini-Options To Be the Same as Permitted for Standard Options on the Same Security

February 8, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

<sup>14</sup> 17 CFR 200.30–3(a)(12).

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

(“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 31, 2013, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 change from interested persons.

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

CBOE proposes to permit the minimum price variation for mini-option contracts that deliver 10 shares to be the same as permitted for standard options that deliver 100 shares on the same security. 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 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

CBOE recently amended its rules to allow for the listing of mini-options that deliver 10 physical shares on SPDR S&P 500 (“SPY”), Apple, Inc. (“AAPL”), SPDR Gold Trust (“GLD”), Google Inc. (“GOOG”) and Amazon.com Inc. (“AMZN”).<sup>3</sup> Mini-options trading is expected to commence in March 2013. Prior to the commencement of trading

mini-options, the Exchange proposes to establish and permit the minimum price variation for mini-option contracts to be the same as permitted for standard options on the same security. In addition to giving market participants clarity as to the minimum pricing increments for mini-options, the filing would harmonize penny pricing between mini-options and standard options on the same security.

Of the five securities on which mini-options are permitted, four of them (SPY, AAPL, GLD and AMZN) participate in the Penny Pilot Program. Under the Penny Pilot Program:

- The minimum price variation for AAPL, GLD and AMZN options is \$0.01 for all quotations in series that are quoted at less than \$3 per contract and \$0.05 for all quotations in series that are quoted at \$3 per contract or greater;<sup>4</sup> and
- The minimum price variation for SPY options is \$0.01 for all quotations in all series.<sup>5</sup>

In the lead up to the launch of mini-options trading, the Exchange has polled firms with customer bases of potential product users and they have indicated a preference that premium pricing for mini-options match what is currently permitted for standard options that deliver 100 physical shares on the same securities. Specifically, firms’ systems are configured using the “root symbol” of an underlying security and cannot differentiate, for purposes of minimum variation pricing, between contracts on the same security. Mini-options will be loaded into firms’ systems using the same “root symbol” that is used for standard options on the same security. As a result, it is believed that existing systems will not be able to assign different minimum pricing variations to different contracts on the same security. As a result, firms have indicated their preference that there be matched pricing between mini-options and standard options on the same security because their systems, which are programmed using “root symbols,” would not be able to assign different minimum pricing variations to mini-options and standard options on the same security.

Because mini-options are a separate class from standard options on the same security, mini-options would have to qualify separately for entry into the Penny Pilot Program. This, however, is

not possible by product launch (or possibly ever) for a number of reasons. First, there is a six calendar month trading volume criteria for entry into the Penny Pilot Program, which mini-options cannot satisfy prior to launch. Second, even if mini-options met the trading volume criteria, replacement classes are only added to the Penny Pilot Program on the second trading day following January 1 and July 1 in a given year. Finally, there is a price test for entry into the Penny Pilot Program which excludes “high premium” classes, which are defined as classes priced at \$200 per share or higher at the time of selection. As of the date of this filing, three of the five securities (AAPL, AMZN and GOOG) eligible for mini-options would be excluded as “high premium” classes, even though two of those securities (AAPL and AMZN) are in the Penny Pilot Program for standard options. The Exchange notes that GOOG is not in the Penny Pilot Program.<sup>6</sup>

The Exchange, therefore, is proposing to establish a pricing regime for mini-options separate from the Penny Pilot Program that permits the minimum price variation for mini-option contracts to be the same as permitted for standard options on the same security, which would encompass penny pricing for mini-option contracts on securities that participate in the Penny Pilot Program.<sup>7</sup>

As to the Penny Pilot Program, the Exchange believes that there are several good reasons to allow penny pricing for mini-options on securities that currently participate in the Penny Pilot Program, without requiring mini-options to separately qualify for the Penny Pilot Program. First, the Penny Pilot Program applies to the most actively-traded, multiply-listed option classes. Likewise, the five securities which may underlie mini-options were chosen because of the significant liquidity in standard options on the same security. The Exchange also believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. Second, one of the primary goals of the Penny Pilot Program is to

<sup>6</sup> The minimum price variation for standard options on GOOG is \$0.05 for all quotations in series that are quoted at less than \$3 per contract and \$0.10 for all quotations in series that are quoted at \$3 per contract or greater. See CBOE Rule 6.42(1) and (2).

<sup>7</sup> As noted in the Exchange’s original mini-option filing, mini-options are limited to five securities and any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission. The current proposal is limited to the five securities originally approved to underlie mini-options. The Exchange anticipates that a similar minimum pricing variation regime would be included in any rule change to expand the mini-option program.

<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. 68656 (January 15, 2013), 78 FR 4526 (January 22, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to List and Trade Option Contracts Overlying 10 Shares of Certain Securities) (SR–CBOE–2013–001).

<sup>4</sup> See CBOE Rule 6.42(3).

<sup>5</sup> See CBOE Rule 6.42(3) and Securities Exchange Act Release No. 61478 (February 3, 2010), 75 FR 6762 (February 10, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to [sic] Relating to the Penny Pilot Program) (SR–CBOE–2010–09).

narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. This same goal can similarly be accomplished by permitting penny pricing for mini-option contracts on securities that already participate in the Penny Pilot Program. Finally, the Exchange believes that penny pricing for mini-options is desirable for a product that is geared toward retail investors. Mini-options are on high priced securities and are meant to be an investment tool with more affordable and realistic prices for the retail average investor. Penny pricing for mini-options on securities that are currently in the Penny Pilot Program would benefit the anticipated users of mini-options by providing more price points. The Exchange notes that it is not requesting penny pricing for all of the five securities eligible for mini-options trading; but rather is seeking to permit matched penny pricing for mini-options on those securities for which standard options already trade in pennies.

In addition to an expressed market preference for matched minimum increment pricing (including penny pricing) between mini-options and standard options on the same securities, the Exchange believes that its rules establish precedent for the current proposal. Specifically, CBOE Rule 6.42.03 provides, among other things, that matched penny pricing between SPY and Mini-S&P 500 Index ("XSP") options is permitted. As to SPY and XSP options, the rationale for matched pricing was that the underlying SPY ETF is designed to track the performance of the S&P 500 Index and XSP options are options based on the S&P 500 Index.<sup>8</sup> In support of this earlier filing, the Exchange believed that having the same minimum price variation for SPY and XSP options was necessary for consistency and for competitive reasons.

To effect the current proposed rule changes, CBOE proposes to amend CBOE Rules 6.42 and 5.5. As to CBOE Rule 6.42 (Minimum Increments for Bids and Offers), CBOE proposes adding new Interpretation and Policy .04 that would be an internal cross reference to new proposed Interpretation and Policy .22(d) to CBOE Rule 5.5 as the provision that sets forth the minimum price variation for bids and offers for mini-options. Proposed Interpretation and Policy .22(d) to CBOE Rule 5.5 would provide as follows:

The minimum price variation for bids and offers for mini-options shall be the same as permitted for standard options on the same security. For example, if a security participates in the Penny Pilot Program, mini-options on the same underlying security may be quoted in the same minimum increments, e.g., \$0.01 for all quotations in series that are quoted at less than \$3 per contract and \$0.05 for all quotations in series that are quoted at \$3 per contract or greater, \$0.01 for all SPY option series, and mini-options do not separately need to qualify for the Penny Pilot Program.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with this proposal. The Exchange does not believe that this increased traffic will become unmanageable since mini-options are limited to a fixed number of underlying securities.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.<sup>9</sup> In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

Specifically, the Exchange believes that investors and other market participants would benefit from the current rule proposal because it would clarify and establish the minimum price variation for mini-options prior to the commencement of trading. The Exchange believes that the marketplace and investors will be expecting the minimum price variation for contracts on the same security to be the same. As a result, the Exchange believes that this change would lessen investor and marketplace confusion because mini-options and standard options on the same security would have the same minimum price variation.

While price protection between mini-options and standard options on the same security is not required, the

Exchange believes that consistency between mini-options and standard options as to the minimum price variation is desirable and is designed to promote just and equitable principles of trade. Matching the minimum price variation between mini-options and standard options on the same security would help to eliminate any unnecessary arbitrage opportunities that could result from having contracts on the same underlying security traded in different minimum price increments. Similarly, matched minimum pricing would hopefully generate enhanced competition among liquidity providers. The Exchange believes that matched pricing for mini-options and standard options on the same security would attract additional liquidity providers who would make markets in mini-options and standard options on the same security. In addition to the possibility of more liquidity providers, the Exchange believes that the ability to quote mini-options and standard options on the same security in the same minimum increments would hopefully result in more efficient pricing via arbitrage and possible price improvement in both contracts on the same security. The Exchange also believes that allowing penny pricing for mini-options on securities that currently participate in the Penny Pilot Program (without mini-options having to qualify separately for entry into the Penny Pilot Program) will benefit the marketplace and investors because penny pricing in mini-options may also accomplish one of the primary goals of the Penny Pilot Program, which is to narrow the bid-ask spreads of exchange-traded options to reduce the cost of entering and exiting positions. Finally, the proposed rule would be beneficial from a logistical perspective since firms' existing systems are configured using the "root symbol" of an underlying security and would not be able to assign different minimum pricing variations to mini-options and standard options on the same security.

### *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 not necessary or appropriate in furtherance of the purposes of the Act. Specifically, since mini-options are permitted on multiply-listed classes, other exchanges that have received approval to trade mini-options will have the opportunity to similarly establish the minimum price variation for mini-options prior to the anticipated launch in March 2013. CBOE also believes that the proposed rule change will enhance competition by allowing

<sup>8</sup> See Securities Exchange Act Release No. 56565 (September 27, 2007), 72 FR 56403 (October 3, 2007) (Order Granting Approval to a Proposed Rule Change Regarding the Extension and Expansion of the Penny Pilot Program) (SR-CBOE-2007-98).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

products on the same security to be priced in the same minimum price increments.

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

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be 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-2013-016 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-2013-016. 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-CBOE-2013-016 and should be submitted on or before March 7, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-03386 Filed 2-13-13; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68890; File No. SR-BX-2013-013]

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Requesting Permanent Approval of a Pilot Program To Receive Inbound Equities Orders From PSX Through NES**

February 8, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 6, 2013, NASDAQ OMX BX, Inc. ("Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

The Exchange has filed a proposed rule change for the permanent approval of the Exchange's pilot program to permit the BX Equities Market ("System") to accept inbound orders routed by Nasdaq Execution Services LLC ("NES") from the NASDAQ OMX PSX facility of NASDAQ OMX PHLX LLC ("PHLX").

**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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

In conjunction with PHLX providing outbound routing services on PSX to all markets using its affiliated routing broker, NES,<sup>4</sup> BX proposed that NES be permitted to route orders from PHLX to the Exchange on a pilot basis, subject to certain limitations and conditions, as described below.<sup>5</sup> The current pilot program expires March 30, 2013.<sup>6</sup>

NES is a broker-dealer and member of NASDAQ, PHLX and BX. NES provides all routing functions for The NASDAQ Stock Market ("NASDAQ"), BX and PHLX. BX, NASDAQ, PHLX and NES are affiliates. Accordingly, the affiliate relationship between BX and NES, its member, raises the issue of an exchange's affiliation with a member of such exchange. Specifically, in connection with prior filings, the Commission has expressed concern that the affiliation of an exchange with one of its members raises the potential for unfair competitive advantage and

<sup>4</sup> See Securities Exchange Act Release No. 65469 (October 3, 2011), 76 FR 62486 (October 7, 2011) (SR-Phlx-2011-108).

<sup>5</sup> See Securities Exchange Act Release No. 65514 (October 7, 2011), 76 FR 63969 (October 14, 2011) (SR-BX-2011-066).

<sup>6</sup> See Securities Exchange Act Release No. 67995 (October 5, 2012), 77 FR 62292 (October 12, 2012) (SR-BX-2012-066).