

to an away market. The Exchange is passing along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM and is providing those savings to all market participants. Finally, PHLX XL routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) ("NBBO") price and based on price first.<sup>18</sup>

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

No written comments were either solicited or received.

**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>19</sup> 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 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

<sup>18</sup> See Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order ("ISO") to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2013-04 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-Phlx-2013-04. 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-Phlx-2013-04 and should be submitted on or before February 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

<sup>20</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68701; File No. SR-FINRA-2013-006]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FINRA Rule 4530 (Reporting Requirements)**

January 18, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 14, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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**

FINRA is proposing to amend FINRA Rule 4530 (Reporting Requirements) to: (1) Provide an exception from the rule for information disclosed on the Form U4 (Uniform Application for Securities Industry Registration or Transfer); (2) enable members to file required documents with FINRA online; and (3) provide an exception from the rule for findings and actions by FINRA.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA has prepared

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

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

FINRA Rule 4530, which became effective on July 1, 2011,<sup>4</sup> requires members to report to FINRA specified events (e.g., findings by a regulatory body) and quarterly statistical and summary information regarding written customer complaints.<sup>5</sup>

Exception for Information Disclosed on the Form U4

FINRA Rule 4530(e) currently provides that a firm is not required to report a specified event under the rule if it reports that event on the Form U5 (Uniform Termination Notice for Securities Industry Registration), consistent with the requirements of that form.<sup>6</sup> This provision is intended to eliminate duplicative reporting of information disclosed on the Form U5. FINRA proposes to provide a similar exception for certain specified events reported on the Form U4. The process applicable under the proposed Form U4 exception will, however, be slightly different, in part because of differences in the reporting criteria between Form U4 and FINRA Rule 4530 events.<sup>7</sup>

Under the Form U4 exception process, a member will be required to affirmatively request through functionality on the Central Registration Depository (CRD® system) that the data reported on a Form U4 Disclosure Reporting Page (DRP) also be applied to satisfy its corresponding FINRA Rule

4530 reporting obligation. Specifically, FINRA proposes to enable filers to designate through the use of checkboxes in the CRD system that the data reported on certain Form U4 DRPs also be applied to satisfy the corresponding requirement under FINRA Rule 4530(a)(1).<sup>8</sup> FINRA expects that this affirmative designation by the member will facilitate the staff's review process by allowing the staff to continue to identify, categorize and review Rule FINRA 4530 reportable events in a timely fashion and reduce the number of staff inquiries to the member to confirm or clarify the firm's intention. FINRA proposes to enable firms to designate that data on the following Form U4 DRPs be applied to satisfy the applicable FINRA Rule 4530(a)(1) events: (1) Criminal; (2) Regulatory Action; (3) Civil Judicial; and (4) Customer Complaint/Arbitration/Civil Litigation.

The proposed rule change will be effected through functionality in the CRD system; FINRA is not proposing changes to the Form U4. Moreover, firms can continue to report an event via the FINRA Rule 4530 application on the Firm Gateway. Finally, similar to the Form U5 exception, the proposed Form U4 exception will not extend to the reporting of quarterly statistical and summary customer complaint information pursuant to FINRA Rule 4530(d).

Availability of Online Filings

FINRA Rule 4530(f) requires firms to promptly file with FINRA copies of certain criminal actions, civil complaints and arbitration claims.<sup>9</sup> Firms have the option of filing the required documents either electronically (as a scanned email attachment or scanned and saved on a disk) or in paper form. Currently, firms do not have the option of filing these documents with FINRA online. FINRA proposes to amend FINRA Rule 4530 to give members the option of filing the required documents online via FINRA's

Firm Gateway.<sup>10</sup> This will provide firms an online platform to satisfy both their reporting and filing obligations under FINRA Rule 4530. The documents will be automatically uploaded in an existing centralized FINRA database. This change has the potential to reduce the burden on those firms that prefer to file documents electronically while also providing firms and FINRA with a more efficient audit trail and saving FINRA staff time currently spent uploading documents to the centralized database.

However, firms that choose to file their documents electronically using the Firm Gateway will be required to provide limited summary information regarding the documents,<sup>11</sup> such as the name and telephone number of the contact person and the name of the complainant or plaintiff. The required summary information will also automatically populate the centralized database. This will allow FINRA staff to retrieve and analyze information contained in these submissions from a consolidated source. Further, because the summary information will automatically populate the centralized database, FINRA staff will not have to separately enter such information into the database, which will improve the efficiency of the review process.

In conjunction with the proposed rule change, FINRA proposes to create a new form, which will be available through the Firm Gateway.<sup>12</sup> Members that choose to file their documents online will be required to complete the mandatory fields on the new online form and attach to the form a scanned copy of the required documents, in a format such as Adobe PDF.

Firms will continue to have the option of filing the documents required under FINRA Rule 4530(f) via mail or email. In addition, the requirement to provide limited summary information regarding the documents only applies to firms that choose to file the documents with FINRA online using the new form; the requirement does not apply to firms that use other permissible electronic means (e.g., email) to file the documents with FINRA.<sup>13</sup>

<sup>4</sup> FINRA Rule 4530 replaced NASD Rule 3070 (Reporting Requirements) and the corresponding provisions in Incorporated NYSE Rule 351 (Reporting Requirements). See *Regulatory Notice* 11-06 (February 2011).

<sup>5</sup> The specified events and customer complaint information must be electronically reported to FINRA via an application on FINRA's Firm Gateway. See *Regulatory Notice* 11-10 (March 2011).

<sup>6</sup> This exception does not extend to the reporting of quarterly statistical and summary customer complaint information under the rule.

<sup>7</sup> For example, a registered person's Form U4 must be amended to report pending arbitration claims initiated by a customer where the registered person is the subject of such a claim, the customer alleges sales practice violations, and the customer claims damages in the amount of \$5,000 or more. A member must report such a matter promptly (in general, not later than 30 days after the member is served with the customer claim) and before the claim has a final disposition. In contrast, FINRA Rule 4530(a)(1)(G) requires the reporting of such matters only when there has been a final disposition that results in an award or a settlement for an amount exceeding \$15,000.

<sup>8</sup> FINRA Rules 4530(a)(1)(A) through (H), which address the reporting of regulatory, criminal and civil actions, in general, correspond with information disclosed on the Form U4. There is no corresponding provision on the Form U4 for matters reportable under FINRA Rule 4530(a)(2) (disciplinary actions taken by a member against an associated person) or FINRA Rule 4530(b) (a member's internal conclusions of violations).

<sup>9</sup> FINRA Rule 4530 provides an exception for any arbitration claim that is originally filed in the FINRA Dispute Resolution forum and for those documents that have already been requested by FINRA's Registration and Disclosure (RAD) staff, provided that the firm produces those requested documents to RAD staff within 30 days after receipt of such request.

<sup>10</sup> See proposed FINRA Rule 4530(g).

<sup>11</sup> See *supra* note 10.

<sup>12</sup> A copy of the proposed online form, including explanations of certain fields on the form, is attached as Exhibit 3. The Commission notes that Exhibit 3 is attached to the filing, not to this Notice.

<sup>13</sup> FINRA is not proposing to require firms that use other permissible electronic means to file the documents with FINRA to provide the summary information, because the functionality to prepopulate the centralized database with such information is limited to online filings.

## Exception for FINRA Findings and Actions

FINRA Rule 4530(a)(1)(A) requires a member to report external findings regarding the member or an associated person. FINRA Rules 4530(a)(1)(C) and (D) require a member to report regulatory actions against the member or an associated person. FINRA Rules 4530(a)(1)(A), (C) and (D) do not expressly exclude findings and actions by FINRA. However, since FINRA staff has access to such information through an enterprise-wide solution, FINRA proposes to add Supplementary Material .10 to FINRA Rule 4530 to provide that, for purposes of FINRA Rules 4530(a)(1)(A), (C) and (D) only, members are not required to report findings and actions by FINRA. This exception is, in general, consistent with the exception under FINRA Rule 4530(f) for arbitration claims filed in the FINRA Dispute Resolution forum.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following the date of filing. The implementation date will be no later than 180 days after the date of filing.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>14</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further these purposes by eliminating unnecessary duplicative reporting of information to FINRA and providing firms with the option to file documents required under FINRA Rule 4530 online. FINRA believes that the proposed rule change will serve to reduce potential burdens imposed by the rule without compromising the regulatory information available to FINRA.

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

FINRA 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.

The proposed amendment to FINRA Rule 4530(e) to provide an exception for information disclosed on the Form U4

will eliminate the burden on firms of having to report the same event twice. While firms will be required to affirmatively request that the data reported on a Form U4 be applied to satisfy a corresponding FINRA Rule 4530 reporting obligation, FINRA believes any resulting burden will be less than the current burden of separately reporting an event via the FINRA Rule 4530 application. In addition, as noted above, FINRA expects the affirmative designation requirement to facilitate the staff's review process and reduce the need for follow-up communications with firms.

The proposed change to FINRA Rule 4530(g) to provide firms the option of filing required documents online will not impact or burden firms that wish to continue filing the required documents via mail or email. With respect to those firms that choose to file the required documents online, FINRA believes that the burden on them will be negligible for the following reasons. All members have an existing obligation to have online access to FINRA, including a user ID and password, for purposes of other regulatory filings.<sup>15</sup> In addition, with respect to the requirement to attach to the online form a scanned copy of the required documents, FINRA believes that the requirement does not create an unreasonable burden for members given the widespread use of scanning technology, such as PDF. Further, the proposed rule change will require that they provide limited summary information regarding the documents. However, FINRA believes that any administrative burden imposed upon such members by this requirement would be outweighed by the benefit to FINRA's regulatory program in allowing the staff to retrieve and analyze information contained in these submissions from a consolidated source that is prepopulated by the firms' submissions.

Moreover, FINRA does not believe that the proposed change to FINRA Rule 4530(g) places members that cannot submit their documents electronically because they lack scanning technology at a disadvantage to those members that have the capability to do so. As noted above, members that cannot submit their documents electronically can continue to submit their documents via mail without any interruption to their existing processes. In addition, while such members will not have the benefit of tracking their submissions electronically, they can use non-

electronic means, such as a return receipt, for tracking purposes.

Finally, the addition of Supplementary Material .10 to FINRA Rule 4530 eliminates the burden on firms of having to report findings and actions by FINRA for purposes of FINRA Rules 4530(a)(1)(A), (C) and (D). FINRA staff will continue to have access to such information through an enterprise-wide solution.

## 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

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>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

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 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

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> See, e.g., FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms).

Number SR-FINRA-2013-006 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-FINRA-2013-006. 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 FINRA. 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-FINRA-2013-006 and should be submitted on or before February 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-01495 Filed 1-24-13; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68695; File No. SR-CBOE-2013-004]

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

January 18, 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 January 7, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission.

#### **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 Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to amend its Volume Incentive Program ("VIP"), through

which the Exchange credits each Trading Permit Holder ("TPH") the per contract amount resulting from each public customer ("C" origin code) order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding Qualified Contingent Cross ("QCC") trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the Trading Permit Holder meets certain volume thresholds in a month. First, the Exchange proposes to change the different fee tier thresholds in the VIP from nominal customer contracts per day thresholds (i.e. contracts 250,001-375,000 customer contracts per day ("CPD")) to a relative contracts per month threshold structure (i.e. 2.25%-3.50% of total national customer volume in multiply-listed options monthly). Going forward, qualification for the different fee rates at different tiers in the VIP will be based on a TPH's percentage of national customer volume in multiply-listed options monthly, and the heading for the different percentage tiers will be Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly).<sup>3</sup> The purpose of the change to move away from basing the fee tiers on a TPH's nominal customer contracts per day to a TPH's relative contracts per month (as a percentage of total national customer volume in multiply-listed options) is to control and account for changes in national industry-wide customer multiply-listed options volume. Corresponding to this change, the Exchange also proposes to amend the section of the "Notes" on the VIP table to state that, in the event of a CBOE System outage or other interruption of electronic trading on CBOE, the Exchange will adjust the national customer volume in multiply-listed options for the duration of the outage.<sup>4</sup>

<sup>3</sup> The Exchange uses contract sides, rather than contracts, to calculate the denominator for the percentage of national customer volume. See email from Jeff Dritz, Assistant Secretary, CBOE, to Richard Holley, Assistant Director, SEC Division of Trading and Markets, Office of Market Supervision, dated January 11, 2013.

<sup>4</sup> Currently, the relevant passage states that "In the event of a CBOE System outage or other interruption of electronic trading on CBOE, the Exchange will take into account, on a pro rata basis, the length of time of the interruption for purposes of calculating the contracts per day." However, this accounting (which is currently relevant as CBOE is measuring qualification for the VIP on a nominal customer contracts per day basis) will no longer be relevant under the proposed relative contracts per month VIP qualification structure.

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

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

<sup>18</sup> 17 CFR 200.30-3(a)(12).