

changes to its Charter to replace each supermajority voting requirement with a “majority of outstanding shares” voting standard. NASDAQ OMX believes this approach will strike an appropriate balance between responding to stockholder feedback and protecting the Company and its investors against hostile takeovers. In addition, the clarifying changes to the Charter will protect investors by making the Charter more concise and easier to understand. Both sets of changes to the Charter were approved by NASDAQ OMX’s investors at the most recent annual meeting of stockholders.

NASDAQ OMX also proposes to eliminate the Certificate of Designation relating to the Series A Convertible Preferred Stock, which is no longer outstanding. This proposed change will protect investors by enhancing the clarity of NASDAQ OMX’s Charter.

Finally, NASDAQ OMX proposes changes to its By-Laws: (i) To implement a stockholder right to call a special meeting; (ii) to enhance the “advance notice” procedures; (iii) to require certain information and agreements from director-nominees; (iv) to remove and replace the supermajority voting provisions to conform to the Charter amendments; (v) to clarify the procedures for filling Board vacancies; (vi) to allow the use of electronic means for certain notices and waivers; (vii) to conform the composition requirements for the Management Compensation Committee of NASDAQ OMX’s Board with the NASDAQ listing rules; (viii) [sic] to prevent the Board from amending or repealing By-Law amendments approved by the stockholders; and (ix) [sic] to make other non-substantive changes.

The proposals relating to the stockholder right to call a special meeting and to remove and replace the supermajority voting requirements are responsive to feedback from NASDAQ OMX’s stockholders. The additional procedural requirements relating to special and annual meetings will protect investors by stating clearly and explicitly the procedures stockholders must follow to propose business at such meetings. The requirement for certain information and agreements from director-nominees will enhance investor protection by ensuring that nominees provide adequate information about themselves and also comply with applicable law and certain NASDAQ OMX policies and procedures relating to the Board. The prohibition on the Board amending or repealing By-Law amendments approved by the stockholders is a stockholder-friendly provision that is intended to prevent the

Board from subsequently overriding stockholders’ wishes. Finally, the remaining changes are clarifying in nature, and they enhance investor protection by conforming NASDAQ OMX’s governance documents to current practices and applicable rules and by making them clearer and easier to understand.

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

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of the Exchange, the Exchange 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.

#### *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**

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–BX–2013–057 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–BX–2013–057. 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 offices 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–BX–2013–057, and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

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

[FR Doc. 2013–29610 Filed 12–11–13; 8:45 am]

**BILLING CODE 8011–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–71007; File No. SR–CBOE–2013–117]**

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Options Regulatory Fee**

December 6, 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>

<sup>41</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.

notice is hereby given that on November 27, 2013, the 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 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**

Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") proposes to amend the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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 has reevaluated the current amount of the Options Regulatory Fee ("ORF") in connection with its annual budget review. In light of increased regulatory costs, including the hiring of many new regulatory employees, and expected volume levels for 2014, the Exchange proposes to increase the ORF from \$.0074 per contract to \$.0095 per contract. The proposed fee change would be operative on January 1, 2014.

The ORF is assessed by the Exchange to each Trading Permit Holder for all options transactions executed or cleared by the Trading Permit Holder that are cleared by The Options Clearing

Corporation ("OCC") in the customer range (i.e., transactions that clear in a customer account at OCC) regardless of the marketplace of execution. In other words, the Exchange imposes the ORF on all customer-range transactions executed by a Trading Permit Holder, even if the transactions do not take place on the Exchange.<sup>3</sup> The ORF also is charged for transactions that are not executed by a Trading Permit Holder but are ultimately cleared by a Trading Permit Holder. In the case where a Trading Permit Holder executes a transaction and a different Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who executed the transaction. In the case where a non-Trading Permit Holder executes a transaction and a Trading Permit Holder clears the transaction, the ORF is assessed to the Trading Permit Holder who clears the transaction. The ORF is collected indirectly from Trading Permit Holders through their clearing firms by OCC on behalf of the Exchange.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of Trading Permit Holder customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange notes that its regulatory responsibilities with respect to Trading Permit Holder compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by

<sup>3</sup> Exchange rules require each Trading Permit Holder to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. CBOE order origin codes are defined in CBOE Regulatory Circular RG13-038. The Exchange represents that it has surveillances in place to verify that Trading Permit Holders mark orders with the correct account origin code.

submitting a fee change filing to the Commission. The Exchange notifies Trading Permit Holders of adjustments to the ORF via regulatory circular.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>5</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help the Exchange offset increased regulatory expenses, in particular the hiring of many new regulatory employees, but would not result in total regulatory revenue exceeding total regulatory costs. The Exchange believes the ORF is equitable and not unfairly discriminatory in that it is charged to all Trading Permit Holders on all their transactions that clear in the customer range at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those Trading Permit Holders that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., Trading Permit Holder proprietary transactions) of its regulatory program.<sup>7</sup>

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> *Id.* [sic]

<sup>7</sup> If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on Trading

### *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 proposed rule change is not designed to address any competitive issues. Rather, the proposed rule change is designed to help the Exchange to adequately fund its regulatory activities while seeking to ensure that total regulatory revenues do not exceed total regulatory costs.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f) of Rule 19b-4<sup>9</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-117 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-2013-117. 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 publicly available. All submissions should refer to File Number SR-CBOE-2013-117 and should be submitted on or before January 2, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-71016; File No. SR-NYSEArca-2013-136]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Raise the Take Liquidity Fee for Lead Market Maker and Market Maker Electronic Executions in Penny Pilot Issues**

December 6, 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 November 26, 2013, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 the Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Arca Options Fee Schedule ("Fee Schedule") to raise the Take Liquidity fee for Lead Market Maker ("LMM") and Market Maker electronic executions in Penny Pilot Issues. The Exchange proposes to implement the fee change effective December 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

Permit Holder proprietary transactions if the Exchange deems it advisable.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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

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