

shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGX-2016-36 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-BatsEDGX-2016-36. 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 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-BatsEDGX-2016-36 and should be submitted on or before August 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78461; File No. SR-C2-2016-015]

### **Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopting a Principles-Based Approach To Prohibit the Misuse of Material Nonpublic Information by Market-Makers and Designated Primary Market-Makers ("DPMs")**

August 2, 2016.

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 July 28, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to delete Rules 8.9 and 8.21 related to information barriers. 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.

<sup>9</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.

#### **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 adopt a principles-based approach to prohibit the misuse of material, nonpublic information by Market-Makers and DPMs by deleting Rule 8.9 and Rule 8.21. In so doing, the Exchange would harmonize its rules related to the preventing the misuse of material, nonpublic information for every Trading Permit Holder ("TPH"). The Exchange believes that Rule 8.9 and Rule 8.21 are no longer necessary because all TPHs, including Market-Makers and DPMs, are subject to the Exchange's general principles-based requirements governing the protection against misuse of material, nonpublic information, pursuant to Chapter 4 and incorporated therein [sic] CBOE Rule 4.18<sup>3</sup> (Prevention of the Misuse of Material, Nonpublic Information), which obviates the need for separately prescribed requirements for a subset of market participants on the Exchange.

##### **Background**

Pursuant to Rule 8.1, TPHs registered as Market-Makers have certain rights and bear certain responsibilities beyond those of other TPHs. All Market-Makers are subject to the requirements of Rule 8.5, which sets forth the obligations of Market-Makers, including providing continuous electronic quotes.

Rule 8.17 outlines the obligations of DPMs, which must fulfill a number of increased obligations in addition to the Market-Maker obligations of Rule 8.5, including providing continuous

<sup>3</sup> Chapter 4 of the CBOE rulebook has been incorporated into Chapter 4 of the C2 Rules. CBOE Rule 4.18, as incorporated in the C2 Rules, will hereafter be referenced as "Rule 4.18."

electronic quotes in a larger percentage of series.<sup>4</sup>

Pursuant to Rule 8.19, the Exchange may establish participation entitlements for DPMs appointed pursuant to the aforementioned Rules. DPMs must meet specific obligations prior to being awarded a participation entitlements.

All Market-Makers and DPMs have access to the same information in the Book that is available to all other market participants. Moreover, none of the Exchange's Market-Makers have agency obligations to the Book.

Despite the fact that Market-Makers and DPMs have access to the same trading information as all other market participants on the Exchange, the Exchange has distinct rules governing how Market-Makers and DPMs may operate. Rule 8.9 states that a Market-Maker shall maintain information barriers that are reasonably designed to prevent the misuse of material, nonpublic information with any affiliates that may conduct a brokerage business in option classes allocated to the Market-maker or that may act as a specialist or market-maker in any security underlying options allocated to the Market-Maker. Rule 8.21 states that a DPM shall maintain information barriers that are reasonably designed to prevent the misuse of material, nonpublic information with any affiliates that may conduct a brokerage business in option classes allocated to the DPM or act as a specialist or market-maker in any security underlying options allocated to the DPM. Rule 8.21 also requires a DPM provide its information barriers to the Exchange and obtain prior written approval.

#### Proposed Rule Change

The Exchange believes that Rule 4.18 governing the misuse of material, nonpublic information provides for an appropriate, principles-based approach to prevent the type of market abuses Rules 8.9 and 8.21 are designed to address. Specifically, Rule 4.18 requires every TPH to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such TPH's business, to prevent the misuse, in violation of the Securities Exchange Act of 1934 (the "Act") and Exchange Rules, of material, nonpublic information by

such TPH or persons associated with such TPH. For the purposes of Rule 4.18, conduct constituting the misuse of material, nonpublic information in violation of the Act and Exchange Rules includes, but is not limited to, the following:

(a) Trading in any securities issued by a corporation, partnership, Trust Issued Receipts or Units (as defined in Exchange Rules) or a trust or similar entities, or in any related securities or related options or other derivative securities, or in any related non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, or in any related commodity, related commodity futures or options on commodity futures or in any related commodity derivatives, while in possession of material, nonpublic information concerning that corporation, partnership, Trust Issued Receipts, or those Units, or that trust or similar entities;

(b) Trading in an underlying security or related options or other derivative securities, or in any related non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodities derivatives, or any other derivatives based on such currency while in possession of material nonpublic information concerning imminent transactions in the above; and

(c) Disclosing to another person or entity any material, nonpublic information involving a corporation, partnership, Trust Issued Receipts, or Units or a trust or similar entities whose shares are publicly traded or an imminent transactions in an underlying security or related securities or in the underlying non-U.S. currency of any related non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency, or in any related commodity, related commodity futures or options on commodity futures or any other related commodity derivatives, for the purpose of facilitating the possible misuse of such material, nonpublic information.

Because Market-Makers and DPMs are already subject to the requirements of Rule 4.18, the Exchange does not believe that it is necessary to require all Market-Makers and DPMs to explicitly maintain information barriers. Deleting Rules 8.9 and 8.21 would provide Market-Makers and DPMs with the flexibility to adapt their policies and procedures as appropriate to reflect changes to their business model,

business activities, or the securities market in a manner similar to how other TPHs on the Exchange currently operate consistent with Rule 4.18.

Neither the obligations nor the entitlements associated with Market-Makers and DPMs provide different or greater access to nonpublic information than any other market participant on the Exchange. Specifically, neither Market-Makers nor DPMs on the Exchange have access to trading information provided by the Exchange, either at, or prior to, the point of execution, that is not made available to all other market participants on the Exchange in a similar manner. Further, as noted above, Market-Makers and DPMs on the Exchange do not have any agency responsibilities for orders in the Book. Accordingly, because Market-Makers and DPMs do not have any trading advantages at the Exchange due to their market roles, the Exchange believes that they should be subject to the same rules regarding the prevention of the misuse of material, nonpublic information, specifically Rule 4.18.<sup>5</sup>

The Exchange notes that its proposed approach to use a principles-based approach to protecting against the misuse of material nonpublic information for all of its registered Market-Makers is consistent with recently filed rule changes for the Chicago Board Options Exchange, Incorporated ("CBOE"), NYSE MKT, LLC on behalf of NYSE Amex Options, International Securities Exchange, LLC ("ISE"), BOX Options Exchange, LLC ("BOX"), BATS Exchange, Inc. ("BATS") on behalf of BATS Options Market ("BATS Options"), NASDAQ OMX PHLX, LLC ("PHLX"), and NASDAQ BX, Inc. ("BX Options")<sup>6</sup> The

<sup>5</sup> The Exchange notes that by deleting Rules 8.9 and 8.21, the Exchange would no longer require information barriers for Market-Makers or DPMs or, with respect to DPMs, require pre-approval of any information barriers that a DPM would erect for purposes of protecting against the misuse of material nonpublic information. However, information barriers of new entrants, including new Market-Makers and DPMs, would be subject to review as part of a new firm application. Moreover, the policies and procedures of Market-Makers and DPMs, including those relating to information barriers, would be subject to review by FINRA, on behalf of the Exchange, pursuant to a Regulatory Services Agreement.

<sup>6</sup> See Securities Exchange Act Release Nos. 77081 (February 8, 2016), 81 FR 7609 (February 12, 2016) (SR-CBOE-2016-007) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Designated Primary Market-Makers ("DPMs") and Lead Market-Makers ("LMMs")); 75432 (July 13, 2015), 80 FR 42597 (July 17, 2015) (Order Approving Adopting a Principles-Based Approach to Prohibit the Misuse of Material Nonpublic Information by Specialists and e-Specialists by Deleting Rule 927.3NY and Section

<sup>4</sup> Compare Rule 8.17(a)(1) ("[Each DPM shall] provide continuous electronic quotes . . . in at least the lesser of 99% of the non-adjusted options series (as defined in Rule 8.5(a)(1)) or 100% of the non-adjusted option series minus one call-put pair . . .") with Rule 8.5(a)(1) ("During trading hours a Market-Maker must maintain a continuous two-sided market in 60% of the non-adjusted option series of each registered class that have a time to expiration of less than nine months.").

proposed approach is also consistent with approved rule changes for NYSE Arca Equities Inc. ("NYSE Arca"), BATS, and New York Stock Exchange, LLC ("NYSE") rules governing cash equity Market-Makers on those respective exchanges.<sup>7</sup> Except for prescribed rules relating to floor-based designated Market-Makers on the NYSE, who have access to specified nonpublic trading information, each of these exchanges have moved to a principles-based approach to protecting against the misuse of material, nonpublic information. In connection with approving those rule changes, the Securities and Exchange Commission (the "Commission") found that, with adequate oversight [sic] by the exchanges of their members, eliminating redundant information barrier requirements should not reduce the effectiveness of exchange rules requiring its members or participants to establish and maintain systems to supervise the activities of its members, including written procedures reasonably designed to ensure compliance with applicable federal

(f) of Rule 927.5NY; 75792 (August 31, 2015), 80 FR 53606 (September 4, 2015) (SR-ISE-2015-26) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting a Principles-Based Approach to Prohibit the Misuse of Material, Nonpublic Information by Market Makers by Deleting Rule 810); 75916 (September 14, 2015), 80 FR 56503 (September 18, 2015) (SR-BOX-2015-31) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Principles-based Approach to Prohibit the Misuse of Material Nonpublic Information by Market Makers); 76327 (November 2, 2015), 80 FR 68884 (November 6, 2015) (SR-BATS-2015-093) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Rule 22.10, Limitations on Dealings); 76687 (December 18, 2015), 80 FR 80403 (December 24, 2015) (SR-PHLX-2015-85) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Sections (e) Through (h) of Exchange Rule 1020, Registration and Functions of Options Specialists); 77461 (March 28, 2016), 81 FR 18907 (April 1, 2016) (SR-BX-2016-018) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete From the Exchange's Rulebook Section 10, Limitations on Dealings, of Chapter VII, Market Participants).

<sup>7</sup> See Securities Exchange Act Release Nos. 60604 (Sept. 2, 2009), 76 FR 46272 (Sept. 8, 2009) (SR-NYSEArca-2009-78) (Order approving elimination of NYSE Arca rule that required market makers to establish and maintain specifically prescribed information barriers, including discussion of NYSE Arca and Nasdaq rules) ("Arca Approval Order"); 61574 (Feb. 23, 2010), 75 FR 9455 (Mar. 2, 2010) (SR-BATS-2010-003) (Order approving amendments to BATS Rule 5.5 to move to a principles-based approach to protecting against the misuse of material, nonpublic information, and noting that the proposed change is consistent with the approaches of NYSE Arca and Nasdaq) ("BATS Approval Order"); and 72534 (July 3, 2014), 79 FR 39440 (July 10, 2014) (SR-NYSE-2014-12) (Order approving amendments to NYSE Rule 98 governing designated market makers to move to a principles-based approach to prohibit the misuse of material nonpublic information) ("NYSE Approval Order").

securities law and regulations, and with the rules of the applicable exchange.<sup>8</sup>

The Exchange notes that even with this proposed rule change, pursuant to Rule 4.18, a Market-Maker or DPM would still be obligated to ensure that its policies and procedures reflect the current state of its business and continue to be reasonably designed to prevent the misuse of material, nonpublic information. While information barriers would not specifically be required under the proposal, Rule 4.18 already requires that a TPH consider the nature of the TPH's business in structuring its policies and procedures, which may dictate that an information barrier or a functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities law and regulations, and with applicable Exchange rules.

The Exchange is not proposing to change what is considered to be material, nonpublic information and, thus, does not expect there to be any changes to the types of information that an affiliated brokerage business of a Market-Maker or DPM could share with such Market-Maker or DPM. In that regard, the proposed rule change will not permit the brokerage unit of a TPH firm to have access to any nonpublic order or quote information of an affiliated Market-Maker or DPM, including hidden or undisplayed orders and quotes on the Exchange. TPHs do not expect to receive any additional order or quote information as a result of this proposed rule change.

Further, the Exchange does not believe that there will be any material change to TPH information barriers as a result of removal of the Exchange's pre-approval requirements for DPMs. In fact, the Exchange anticipates that eliminating the pre-approval requirement should facilitate implementation of changes to TPH information barriers as necessary to protect against the misuse of material, nonpublic information. The Exchange also suggests that the pre-approval requirement is unnecessary because DPMs do not have agency responsibilities to the Book. However, information barriers of new entrants would be subject to review as part of a new firm application. Moreover, the policies and procedures of Market-Makers and DPMs, including those relating to information barriers, would be subject to review by FINRA, on

behalf of the Exchange, pursuant to a Regulatory Services Agreement.

The Exchange further notes that under Rule 4.18, a TPH would be able to provide for its options Market-Makers or DPMs, as applicable, to be structured with its equities and customer-facing businesses, provided that any such structuring would be done in a manner reasonably designed to protect against the misuse of material, nonpublic information. For example, pursuant to Rule 4.18, a Market-Maker or DPM on the Exchange could be in the same independent trading unit, a defined in Rule 200(f) of Regulation SHO,<sup>9</sup> as an equities Market-Maker and other trading desks within the firm, including options trading desks, so that the firm could share post-trade information to better manage its risk across related securities. The Exchange believes it is appropriate, and consistent with Rule 4.18 and Section 15(g) of the Act<sup>10</sup> for a firm to share options position and related hedging position information (e.g., equities, futures, and foreign currency) within a firm to better manage risk on a firm-wide basis. The Exchange notes, however, that if so structured, a firm would need to have appropriate policies and procedures, including information barriers as applicable, to protect against the misuse of material nonpublic information, and specifically customer information consistent with Rule 4.18. The Exchange further notes that federal rules supersede Exchange rules in the event of any conflicts regarding the misuse of material nonpublic information.

The Exchange believes that the proposed reliance on the principles-based Rule 4.18 would ensure that a TPH that operates a Market-Maker or DPM would be required to protect against the misuse of any material nonpublic information. As noted above, Rule 4.18 already requires that firms refrain from trading while in possession of material nonpublic information concerning imminent transactions in a security or related product. The Exchange believes that moving to a principles-based approach based on Rule 4.18 would still provide TPHs operating Market-Makers or DPMs with appropriate tools to better manage risk across a firm, including integrating options positions with other positions of the firm or, as applicable, by the respective independent trading unit. Specifically, the Exchange believes that it is appropriate for risk management purposes for a TPH operating a Market-Maker or DPM to be able to consider

<sup>8</sup> See, e.g., BATS Approval Order, *supra* note 4 at 9458.

<sup>9</sup> 17 CFR part 242.200(f).

<sup>10</sup> 15 U.S.C. 78o(g).

both Market-Maker or DPM traded-positions for the purposes of calculating net positions consistent with Rule 200 of Regulation SHO,<sup>11</sup> calculating intraday net capital positions, and managing risk both generally as well as in compliance with Rule 15c3-5 under the Act (the “Market Access Rule”).<sup>12</sup> The Exchange notes that any risk management operations would need to operate consistent with the requirement to protect against the misuse of material nonpublic information.

The Exchange further notes that if options Market-Makers or DPMs are integrated with other Market-Making operations, they would be subject to existing rules that prohibit TPHs from disadvantaging their customers or other market participants by improperly capitalizing of a TPH organization’s access to the receipt of material nonpublic information. As such, a TPH organization that integrates its options Market-Making or DPM operations together with equity Market-Making, would need to protect customer information consistent with existing obligations to protect such information. The Exchange has rules prohibiting TPHs from disadvantaging their customers or other market participants by improperly capitalizing on the TPH’s access to or receipt of material nonpublic information. For example, Rule 4.24(e) requires Each TPH shall establish, maintain, and enforce written supervisory procedures reasonably designed to prevent and detect violations of applicable securities laws and regulations, and applicable Exchange rules. Additionally Rule 6.9(e) prevents a TPH or person associated with a TPH, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument unless certain circumstances are met.

## 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>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

6(b)(5)<sup>14</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>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by adopting a principles-based approach to permit a TPH operating a Market-Maker or DPM to maintain and enforce policies and procedures to, among other things, prohibit the misuse of material nonpublic information. The proposed rule change would further eliminate restrictions on how a TPH structures its Market-Maker or DPM operations. The Exchange notes that the proposed rule change is based on an approved rule of the Exchange to which Market-Makers and DPMs are already subject (Rule 4.18) and harmonizes the rules governing Market-Makers, DPMs, and other market participants. Moreover, TPHs operating Market-Makers and DPMs would continue to be subject to federal and Exchange requirements for protecting material nonpublic order information.<sup>16</sup> The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market because it would harmonize the Exchange’s approach to protecting against the misuse of material nonpublic information and no longer subject Market-Makers and DPMs to redundant requirements. The Exchange does not believe that the existing requirements applicable to Market-Makers and DPMs are narrowly tailored to their respective roles because neither market participant has access to Exchange trading information in a manner different from any other market participant on the Exchange and they do not have agency responsibilities to the Book.

The Exchange further believes the proposal is designed to prevent

fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because existing rules make clear to all TPHs the type of conduct that is prohibited by the Exchange. While the proposal eliminates certain requirements relating to the misuse of material nonpublic information, Market-Makers, DPMs and all other TPHs would remain subject to existing Exchange Rules requiring them to establish and maintain systems to supervise their activities, and to create, implement, and maintain written procedures that are reasonably designed to comply with applicable securities laws and Exchange Rules, including the prohibition on the misuse of material nonpublic information.

The Exchange notes that the proposed rule change would still require that TPHs operating Market-Makers and DPMs maintain and enforce policies and procedures designed to ensure compliance with applicable federal securities laws and regulations and with Exchange Rules. Even though there would no longer be pre-approval of DPM information barriers, both Market-Maker and DPM written policies and procedures would continue to be subject to oversight by the Exchange and therefore the elimination of the pre-approval requirements should not reduce the effectiveness of the Exchange rules to protect against the misuse of material nonpublic information. Market-Makers and DPMs will be able to utilize a flexible, principles-based approach to modify their policies and procedures as appropriate to reflect changes to their business model, business activities, or to the securities market itself. Moreover the Exchange notes that a TPH’s business model or business activities may dictate that an information barrier or functional separation be part of the appropriate set of policies and procedures that would be reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange Rules. The Exchange therefore believes that the proposed rule change will maintain the existing protection of investors and the public interest that is currently applicable to Market-Makers and DPMs, while at the same time removing impediments to and perfecting a free and open market by moving to a principles-based approach to protect against the misuse of material nonpublic information.

## 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

<sup>11</sup> 17 CFR part 242.200.

<sup>12</sup> 17 CFR part 240.15c3-5.

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

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

<sup>16</sup> See 15 U.S.C. 78o(g) and Rule 4.18.

necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will enhance competition by allowing Market-Makers and DPMs to comply with applicable Exchange Rules in a manner best suited to their business models, business activities and the securities markets, thus reducing regulatory burdens while still ensuring compliance with applicable securities laws and regulations and Exchange rules. The Exchange believes that the proposal will foster a fair and orderly marketplace without being overly burdensome upon Market-Makers and DPMs.

Moreover, the Exchange believes that the proposed rule change would eliminate a burden on competition for TPHs that currently exists as a result of disparate rule treatment between the options and equities markets regarding how to protect against the misuse of material, nonpublic information. For those TPHs that are also members of equities exchanges, their respective equity Market-Maker operations are now subject to a principles-based approach to protecting against the misuse of material nonpublic information. The Exchange believes it would remove a burden on competition to enable TPHs to similarly apply a principles-based approach to protecting against the misuse of material nonpublic information in the options space. To this end, the Exchange notes that Rule 4.18 still requires a TPH, which operates as a Market-Maker or DPM on the Exchange, to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material, nonpublic information. However, with this proposed rule change, a TPH that trades equities and options could look at its firm more holistically to structure its operations in a manner that provides it with better tools to manage risks across multiple security classes, while at the same time protecting against the misuse of material nonpublic information.

### *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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would help facilitate the harmonization of information barrier rules across options exchanges. The Exchange represents that Exchange rules still require a Market Maker to evaluate its business to assure that its policies and procedures are reasonably designed to protect against the misuse of material nonpublic information. Further, the Exchange states that the proposed rule change is designed to provide more flexibility to market participants, while not decreasing the protections against the misuse of material, non-public information. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest.<sup>18</sup> The Commission hereby grants the waiver and designates the proposal operative upon filing.

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.

<sup>17</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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. The Exchange has satisfied this requirement.

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

### **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-C2-2016-015 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-C2-2016-015. 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-C2-2016-015 and should be submitted on or before August 29, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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