

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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) <sup>11</sup> of the Act and Rule 19b-4(f)(6) <sup>12</sup> thereunder. The Exchange provided the Commission with written notice of its 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 the proposed rule change.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because this rule will offer Exchange members the same potential for relief that is available at other options exchanges for certain obvious and catastrophic errors involving complex orders. Therefore, the Commission designates the proposal operative upon filing. <sup>13</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.

**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-ISE-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-ISE-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 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-ISE-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>14</sup>

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

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68696; File No. SR-CBOE-2013-005]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the BBO Data Feed for CBOE Listed Options and a BBO Data Feed for Flexible Exchange Options**

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 11, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 identify certain additional market data made available by Market Data Express, LLC ("MDX"), an affiliate of CBOE, as part of the BBO Data Feed for CBOE listed options ("BBO Data Feed") and as a separate data feed. 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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</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.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to reflect MDX's current practice of making certain additional market data available as part of the BBO Data Feed<sup>3</sup> and as a separate data feed.

The BBO Data Feed is a real-time, low latency data feed that includes CBOE "BBO data" and last sale data.<sup>4</sup> The BBO and last sale data contained in the BBO Data Feed is identical to the data that CBOE sends to the Options Price Reporting Authority ("OPRA") for redistribution to the public.<sup>5</sup>

The BBO Data Feed also includes certain data that is not included in the data sent to OPRA, namely, totals of customer versus non-customer contracts at the BBO, All-or-None contingency orders priced better than or equal to the BBO, and BBO data and last sale data for complex strategies (e.g., spreads, straddles, buy-writes, etc.). MDX charges Customers a "direct connect fee" of \$3,500 per connection per month and a "per user fee" of \$25 per month per "Authorized User" or "Device" for receipt of the BBO Data Feed by Subscribers.<sup>6</sup> Either a CBOE Trading

Permit Holder or a non-CBOE Trading Permit Holder may be a Customer. All Customers are assessed the same fees.

MDX currently makes available two additional sets of data as part of the BBO Data Feed at no additional charge to Customers. Specifically, the BBO Data Feed also includes (i) BBO data and last sale data for Flexible Exchange ("FLEX") options traded on the CBOE FLEX Hybrid Trading System,<sup>7</sup> including BBO data and last sale data for FLEX complex strategies (collectively, "FLEX BBO data"), and (ii) expected opening price ("EOP") and expected opening size ("EOS") information that is disseminated prior to the opening of the market and during trading rotations (collectively, "EOP/EOS data"). EOP/EOS data is calculated by the CBOE Hybrid Trading System based on resting orders in the Book that remain from the prior business day and any orders and quotes submitted before the opening.<sup>8</sup> The EOP is the price at which the greatest number of orders and quotes in the Book are expected to trade.<sup>9</sup>

MDX also makes the FLEX BBO data available as a separate data feed at no charge to any Customer that wishes to subscribe to only that data. EOP/EOS data is not offered separate from the BBO Data Feed.

1. Statutory Basis

The Exchange believes the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act")<sup>10</sup> in general and with Section 6(b)(5) of the Act<sup>11</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed rule change is in keeping with those principles by promoting increased transparency through the dissemination of more useful proprietary data and also by clarifying its availability to market participants.

Additionally, the Exchange believes the proposed rule change would not permit unfair discrimination because the BBO Data Feed, including FLEX BBO data and EOP/EOS data, and the separate FLEX BBO data feed are made equally available by MDX to any market participant that wishes to subscribe to them. The Exchange notes that other exchanges make information relating to the market opening available to members and non-members.<sup>12</sup>

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the BBO Data Feed, including FLEX BBO data and EOP/EOS data, and the separate FLEX BBO data feed offered by MDX will help attract new users and new order flow to the Exchange, thereby improving the Exchange's ability to compete in the market for options order flow and executions.

*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.

<sup>3</sup> The BBO Data Feed and the fees charged by MDX for the BBO Data Feed were established in March 2011. See Securities Exchange Act Release No. 63997 (March 1, 2011), 76 FR 12388 (March 7, 2011).

<sup>4</sup> The BBO Data Feed includes the "best bid and offer," or "BBO", consisting of all outstanding quotes and standing orders at the best available price level on each side of the market, with aggregate size ("BBO data," sometimes referred to as "top of book data"). Data with respect to executed trades is referred to as "last sale" data.

<sup>5</sup> The Exchange notes that MDX makes available to "Customers" the BBO data and last sale data that is included in the BBO Data Feed no earlier than the time at which the Exchange sends that data to OPRA. A "Customer" is any entity that receives the BBO Data Feed directly from MDX's system and then distributes it either internally or externally to Subscribers. A "Subscriber" is a person (other than an employee of a Customer) that receives the BBO Data Feed from a Customer for its own internal use.

<sup>6</sup> An "Authorized User" is defined as an individual user (an individual human being) who is uniquely identified (by user ID and confidential password or other unambiguous method reasonably acceptable to MDX) and authorized by a Customer to access the BBO Data Feed supplied by the Customer. A "Device" is defined as any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.

<sup>7</sup> See Chapter 24.B of CBOE Rules.

<sup>8</sup> See CBOE Rule 6.2B(a)(ii) ("Hybrid Opening System"). The Exchange has filed a separate proposed rule change to amend CBOE Rule 6.2B(a)(ii) to provide that such pre-opening information will be disseminated to users that have elected to receive such information and to remove the existing reference to such pre-opening information being disseminated to market participants (as defined in CBOE Rules 6.45A and 6.45B). See SR-CBOE-2013-006.

<sup>9</sup> Id.

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

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5). [sic]

<sup>12</sup> See e.g., Securities Exchange Act Release No. 66967 (May 11, 2012), 77 FR 29440 (May 17, 2012) (SR-PHLX-2012-60); and Securities Exchange Act Release No. 67720 (August 23, 2012), 77 FR 52769 (August 30, 2012) (SR-NYSEARCA-2012-89). In addition, the Nasdaq Options Market ("NOM") disseminates certain pre-opening order imbalance information every five seconds for a period of time prior to the open and this information is made available via subscription. See NOM Chapter VI, Section 8(b)(1) and Chapter XV, Section 4(e); see also <http://www.nasdaqtrader.com/trader.aspx?id=openclose>.

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

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. 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>13</sup> and Rule 19b-4(f)(6)<sup>14</sup> thereunder.

At any time within 60 days of the filing of this 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.

### 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-2013-005 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-2013-005. 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-CBOE-2013-005, 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>15</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68694; File No. SR-NASDAQ-2012-129]

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Establish the Retail Price Improvement Program on a Pilot Basis Until 12 Months From the Date of Implementation**

January 18, 2013.

On November 19, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to establish a Retail Price Improvement Program to attract additional retail order flow to the Exchange while also providing the potential for price improvement to such order flow. The proposed rule change was published for comment in the **Federal Register** on

December 7, 2012.<sup>3</sup> The Commission did not receive any comments on the proposed rule change.

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,<sup>4</sup> which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than \$1.00 per share in an increment smaller than \$0.01.<sup>5</sup> On January 14, 2013, the Exchange submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (the "Quote Rule") based on the Exchange's and its Members' participation in the Program.<sup>6</sup>

Section 19(b)(2) of the Act<sup>7</sup> provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is January 21, 2013.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period to take action on the proposed rule change so that it has sufficient time to consider the Exchange's proposal, which would allow the Exchange to utilize non-displayed orders that offer price improvement to retail order flow potentially in sub-penny increments, as well as the Exchange's attendant requests for exemptive and no-action relief.

Accordingly, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> the Commission designates March 7, 2013 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to

<sup>3</sup> See Securities Exchange Act Release No. 68336 (December 3, 2012), 77 FR 73097 (SR-NASDAQ-2012-129).

<sup>4</sup> 17 CFR 242.612 (the "Sub-Penny Rule").

<sup>5</sup> See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to Elizabeth M. Murphy, Secretary, Commission, dated November 19, 2012).

<sup>6</sup> See Letter from Jeffrey Davis, Deputy General Counsel, The NASDAQ Stock Market LLC, to John Ramsay, Division of Trading and Markets, Commission, dated January 14, 2013.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</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.