

trade, 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.

According to CBOE, several Market-Makers have communicated to the Exchange that their trading systems do not automatically produce continuous quotes in Intra-day Adds on the trading day during which those series are added and that the only way they could quote in these series on the trading day during which they were added would be to shut down and restart their systems.¹³ Further, the Exchange states that Market-Makers have indicated that the work that would be required to modify their systems to permit quoting in Intra-day Adds would be significant and costly.¹⁴ In addition, the Exchange indicates that Intra-day Adds represent only approximately 0.0046% of the average number of series listed on the Exchange each trading day, and that Market-Makers will still be obligated to provide continuous two-sided markets in a substantial number of series in their appointed classes.¹⁵

In addition, the Exchange intends to implement changes to continuous quoting obligations. The Exchange represents that given the pending heightened quoting obligations and the considerable costs that would otherwise be involved for Market-Makers to adjust their systems to quote Intra-day Adds on the trading day during which they are listed, several PMMs have informed the Exchange that they intend to withdraw from the PMM program, while other Market-Makers have requested that the Exchange suspend their pending applications to join the PMM program.

The Exchange believes that it would be impracticable, particularly given that a number of Market-Makers use their systems to quote on multiple markets and not solely on the Exchange, for Market-Makers to turn off their entire systems to accommodate quoting in Intra-day Adds on the day during which those series are added on the Exchange. In addition, the Exchange believes this would interfere with the continuity of its market and reduce liquidity, which would ultimately harm investors and contradicts the purpose of the Market-Maker continuous quoting obligations.

The Exchange does not believe that the proposed rule change would adversely affect the quality of the Exchange's markets or lead to a material decrease in liquidity. Rather, the Exchange believes that its current

market structure, with its high rate of participation by Market-Makers, permits the proposed rule change without fear of losing liquidity. The Exchange also believes that market-making activity and liquidity could materially decrease without the proposed rule change to exclude Intra-day Adds from Market-Maker continuous quoting obligations on the trading day during which they are added for trading.

The Exchange believes that this proposed relief will encourage Market-Makers to continue appointments and other TPHs to request Market-Maker appointments, and, as a result, expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its TPHs and public customers. The Exchange believes that its Market-Makers would be disadvantaged without this proposed relief, and other TPHs and public customers would also be disadvantaged if Market-Makers withdrew from appointments in options classes, resulting in reduced liquidity and volume in these classes.

In addition, the Exchange believes that the proposed rule change to clarify that Market-Makers may receive participation entitlements in Intraday Adds on the day during which such series are added for trading if it satisfies the other entitlement requirements as set forth in Exchange rules, even if the rules do not require the Market-Makers to continuously quote in those series, will incentivize Market-Makers to quote in series in which they are not required to quote, which may increase liquidity in their appointed classes.

The Exchange's proposal to exclude Intra-day Adds from Market-Makers' continuous electronic quoting obligations on the day during which such series are added for trading would not affect Market-Makers' other obligations. For example, Market-Makers will still be required to engage in activities that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market,¹⁶ including (1) to compete with other Market-Makers to improve markets in all series of options classes comprising their appointments; (2) to make markets that, absent changed market conditions, will be honored in accordance with firm quote rules; and (3) to update market quotations in response to changed market conditions in their appointed options classes and to assure that any market quote it causes to be disseminated is accurate.¹⁷ In addition, the proposed rule change would not excuse a Market-Maker from

its obligation to submit a single quote or to maintain continuous quotes in one or more series of a class to which the Market-Maker is appointed when called upon by an Exchange official if, in the judgment of such official, it is necessary to do so in the interest of maintaining a fair and orderly market.¹⁸

The Commission notes that the Exchange believes that Market-Makers would be required to shut down and restart their systems, or make costly systems changes, in order to quote in Intra-day Adds. A requirement for Market-Makers to maintain continuous electronic quotes in Intra-day Adds, which represents a minor part of Market-Makers' overall obligations, may not justify the system resources, or the disruption to trading, the Exchange states would be necessary to accommodate quoting in Intra-day Adds. Accordingly, the Commission believes that the Exchange's proposal concerning Intra-day Adds would 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.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-CBOE-2013-019) is approved.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69343; File No. SR-BX-2013-026]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Granting Accelerated Approval of a Proposed Rule Change To Adopt Chapter V, Section 3 Subparagraph (d)(iv) Regarding Obvious Error or Catastrophic Error Review

April 8, 2013.

I. Introduction

On March 14, 2013, NASDAQ OMX BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section

¹³ See Notice, *supra* note 4, 78 FR at 12378.

¹⁴ See *id.*

¹⁵ See *id.* at 12379.

¹⁶ See CBOE Rule 8.7(a).

¹⁷ See CBOE Rule 8.7(b).

¹⁸ See CBOE Rule 8.7(d)(iv).

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).

19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for how the Exchange proposes to treat obvious and catastrophic options errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility (the “Plan”). The proposed rule change was published for comment in the **Federal Register** on March 20, 2013.³ The Commission received one comment letter on the proposal.⁴ This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

Since May 6, 2010, when the financial markets experienced a severe disruption, the equities exchanges and the Financial Industry Regulatory Authority have developed market-wide measures to help prevent a recurrence. In particular, on May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.⁵ The Plan is designed to prevent trades in individual NMS stocks from occurring outside of specified Price Bands, creating a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in NMS Stocks.⁶

In connection with the implementation of the Plan, the Exchange proposes to adopt new Chapter V, Section 3(d)(iv) to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Chapter V, Sections 6(b) or 6(f), for a one year pilot basis from the date of adoption of the proposed rule change.⁷ The Exchange proposes to retain the ability to review trades that occur during a Limit State or Straddle State by Exchange motion pursuant to Chapter V, Section 6(d)(i).

Under Sections 6(b)(i) and (f)(i), obvious and catastrophic errors are calculated by determining a theoretical price and applying such price to ascertain whether the trade should be nullified or adjusted. Obvious and catastrophic errors are determined by comparing the theoretical price of the option, calculated by one of the methods in Section 6(c), to an adjustment table in Section 6(b)(i) for obvious errors or Section 6(f)(i) for catastrophic errors. Generally, the theoretical price of an option is the National Best Bid and Offer (“NBBO”) of the option. In certain circumstances, Exchange officials have the discretion to determine the theoretical price.⁸

The Exchange believes that neither of these methods is appropriate during a Limit State or Straddle State. Under Section 6(c)(i), the theoretical price is determined with respect to the NBBO for an option series just prior to the trade. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Section 6(c)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State. Additionally, because the Exchange system will only trade through the theoretical bid or offer if the Exchange or the participant (via an ISO order) has accessed all better priced interest away in accordance with the Options Order Protection and Locked/Crossed Markets Plan, the Exchange believes potential trade reviews of executions that occurred at the participant’s limit price and also in compliance with the aforementioned Plan could harm liquidity and also create an advantage to either side of an execution depending on the future movement of the underlying stock.

With respect to Section 6(c)(ii), affording discretion to Exchange staff to determine the theoretical price and

thereby, ultimately, whether a trade is busted or adjusted and to what price, the Exchange notes that it would be difficult to exercise such discretion in periods of extraordinary market volatility and, in particular, when the price of the underlying security is unreliable. The Exchange again notes that the theoretical price in this context would be subjective. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Additionally, the Exchange proposes to provide that trades would not be subject to review under Section 6(b)(ii) during a Limit or Straddle State. Under Section 6(b)(ii), a trade may be nullified or adjusted where an execution occurred in a series quoted no bid. The Exchange believes that these situations are not appropriate for an error review because they are more likely to result in a windfall to one party at the expense of another in a Limit State or Straddle State, because the criteria for meeting the no-bid provision are more likely to be met in a Limit State or Straddle State, and unlike normal circumstances, may not be a true reflection of the value of the series being quoted.

In response to these concerns, the Exchange proposes to adopt Section 3(d)(iv) to provide that trades are not subject to an obvious error or catastrophic error review pursuant to Section 6(b) and 6(f) during a Limit State or Straddle State. In addition, proposed Section 3(d)(iv) also will include a qualification that nothing in proposed Section 3(d)(iv) will prevent electronic trades from being reviewed on Exchange motion pursuant to Section 6(d)(i). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 69140 (March 15, 2013), 78 FR 17255 (“Notice”).

⁴ See Letter to Heather Seidel, Associate Director, Division of Trading and Markets, Commission, from Thomas A. Wittman, Senior Vice President, BX, dated April 5, 2013 (“BX Letter”).

⁵ Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498.

⁶ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁷ The Exchange stated that various members of the Exchange staff have spoken to a number of member organizations about obvious and catastrophic errors during a Limit State or Straddle State and that a variety of viewpoints emerged, mostly focused on having many trades stand, on fairness and fair and orderly markets, and on being able to re-address the details during the course of the pilot, if needed.

⁸ Specifically, under Section 6(c), the theoretical price is determined in one of two ways: (i) If the series is traded on at least one other options exchange, the last National Best Bid price with respect to an erroneous sell transaction and the last National Best Offer price with respect to an erroneous buy transaction, just prior to the transaction; or (ii) as determined by MarketWatch as defined in Chapter I, if there are no quotes for comparison purposes.

which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors.

III. Discussion

The Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that suspending certain aspects of Chapter V, Section 6 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.*, nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should

encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude trades that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Section 6(b) or 6(f). The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and stop orders, and cancelling pending market orders and stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3-5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be

executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it recognizes that this provision is limited and that it will administer the provision in a manner that is consistent with the principles of the Act. In addition, the Exchange represents that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 5, 2013, the Exchange submitted a letter stating that it would provide specific data to

⁹In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰15 U.S.C. 78f(b)(5).

the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.¹¹ This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

Finally, the Commission notes that the Plan, to which these rules relate, will be implemented on April 8, 2013. Accordingly, for the reasons stated above, and in consideration of the April 8, 2013 implementation date of the Plan, the Commission finds good cause,

¹¹ In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Section 3(d)(iv), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) The options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. See BX Letter, *supra* note 4.

pursuant to Section 19(b)(2) of the Act,¹² for approving the Exchange's proposal prior to the 30th day after the publication of the notice in the **Federal Register**.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-BX-2013-026), be, and hereby is, approved on an accelerated basis.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69345; File No. SR-C2-2013-013]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 8, 2013.

I. Introduction

On March 7, 2013, C2 Options Exchange, Incorporated ("C2" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify its rules to address certain option order types, order handling procedures, obvious error and market-maker quoting obligations on the Exchange after the implementation of the National Market System Plan to Address Extraordinary Market Volatility ("Limit up-Limit Down Plan"). The proposed rule change was published for comment in the **Federal Register** on

¹² 15 U.S.C. 78s(b)(2). The Commission noticed substantially similar rules proposed by NYSE MKT LLC and NYSE Arca, Inc. with a full 21 day comment period. See Securities Exchange Act Release No. 69033, 78 FR 15067 (March 8, 2013) and Securities Exchange Act Release No. 69032, 78 FR 15080 (March 8, 2013).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

March 14, 2013.³ On March 26, 2013, C2 filed Amendment No. 1 to the proposed rule change.⁴ In Amendment No. 1, the Exchange, among other things, proposed to add rule text to give the Exchange authority to review transactions in certain limited circumstances.⁵ On April 4, C2 filed Amendment No. 2 to the proposed rule change.⁶ The Commission received one comment letter on the proposed rule change.⁷ The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.⁸ This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.⁹ The

³ See Securities Exchange Act Release No. 69083 (March 8, 2013), 78 FR 16320 ("Notice").

⁴ See Amendment No. 1 dated March 26, 2013 ("Amendment No. 1").

⁵ *Id.* Additionally, the Exchange provided rationale for terminating the HAL auction early and cancelling of the market orders, discussed *infra*.

⁶ See Amendment No. 2 dated April 4, 2013 ("Amendment No. 2"). Amendment No. 2 expanded upon the Exchange's rationale for its proposal to accept certain types of market orders during a limit up-limit down state, its proposal to cancel and replace limit orders with market orders during a limit up-limit down state, and its proposed treatment of stock-option orders in a limit up-limit down state. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

⁷ See Letter to Elizabeth M. Murphy, Secretary, Commission, from Angelo Evangelou, Associate General Counsel, C2, dated April 4, 2013 ("C2 Letter").

⁸ The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission ("CFTC") and the Commission. See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, "Findings Regarding the Market Events of May 6, 2010," dated September 30, 2010, available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>.

⁹ For further discussion on the development of the single-stock circuit breaker pilot program, see Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) ("Limit Up-Limit Down Plan" or "Plan").