Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.

• Second, FINRA will monitor NOS for compliance with NASDAQ's trading rules, and will collect and maintain certain related information.[19]

• Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or NASDAQ rules.

• Fourth, the Exchange has in place NASDAQ Rule 2160(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[20] In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of BX, to route orders inbound to NOM on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,[23] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's Rule 2160(c) is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NASDAQ–2013–070) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14536 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69758; File No. SR–NASDAQ–2013–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Changes to NASDAQ's Pricing Incentive Programs and Schedule of Fees and Credits

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 3, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ is proposing to make minor modifications to pricing incentive programs under Rule 7014 and NASDAQ's schedule of fees and credits applicable to execution and routing of orders in securities priced at $1 or more per share under Rule 7018, and to make a conforming change to the fee schedule under Rule 7015. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on June 3, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to NOM) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 78 FR at 26820 n.12.

[20] *See* Notice, 78 FR at 26821.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR-Phlx-2013–15); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, 78 FR at 26820 n.10 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange included statements concerning the purpose of and basis for 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

NASDAQ Rule 7014 contains a number of pricing incentive programs that are designed to encourage participation in NASDAQ by members representing retail investors and to increase the extent to which members offer to provide liquidity at the national best bid and/or national best offer (''NBBO''). NASDAQ is proposing to make a minor modification to reduce the costs of the programs in a period of persistent low trading volumes without materially diminishing the incentives offered by these programs.

Under the NBBO Setter Incentive program, NASDAQ provides an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the NBBO or cause NASDAQ to join another trading center with a protected quotation at the NBBO. Under the Qualified Market Maker (''QMM'') Program, a member may be designated as a QMM with respect to one or more of its market participant identifiers (''MPIDs'') if (i) the member is not assessed any ''Excess Order Fee'' under Rule 7018 during the month; [3] and (ii) through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours [4] in an average of at least 1,000 securities per day during the month.[5] The financial incentives received by a QMM include an NBBO Setter Incentive credit that may be higher than the NBBO Setter Incentive paid to members that do not qualify for the QMM program. Finally, under the Investor Support Program (the ''ISP''), NASDAQ pays an enhanced liquidity provider credit to members for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities. Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution.

At present, if a member is a participant in both the QMM program and the ISP, it may receive a supplemental credit of $0.00005, $0.0001, or $0.0002 per share executed for displayed liquidity-providing orders that qualify for the ISP, *and* an NBBO Setter Incentive credit or $0.0002 or $0.0005 per share executed for displayed liquidity-providing orders that set the NBBO or allow NASDAQ to join another market at the NBBO.[6] Under the proposed change, NASDAQ will pay the greater of the applicable credit under the ISP or the NBBO Setter Incentive Program, but not a credit under both programs. At present, this means that the applicable credit would be paid under the NBBO Setter Incentive program, since the credits under that program equal or exceed ISP credits, but NASDAQ is adopting language to provide for the greater credit under either program, to cover the possibility that ISP credits may be increased at some point in the future. Orders receiving the NBBO Setter Incentive credit would continue to be included in calculations to determine a member's eligibility for the ISP. Thus, under the change, the ISP would continue to incentivize members representing retail and institutional investors to bring orders to NASDAQ. Moreover, to the extent that such orders enhance NASDAQ's market quality by allowing it to set or join the NBBO, the NBBO Setter Incentive credit would be paid. However, NASDAQ believes that paying both rebates would be unwarranted under these circumstances, since members representing retail or institutional orders are not in a position to influence the pricing of such orders.

In addition to the NBBO Setter Incentive credit described above, QMMs are also eligible to receive a discount on fees for ports used by the QMM for entering orders under the program. Effective April 1, 2013, NASDAQ reduced the applicable discount from (i) 25%, up to a total discount of $10,000 per MPID per month, to (ii) the lesser of the QMM's total fees for such ports or $5,000.[7] The change is reflected in the text of Rule 7014. However, NASDAQ did not make a conforming change to the text of Rule 7015, and is proposing to do so now.

Currently, NASDAQ pays a credit of $0.0020 per share executed for midpoint pegged and midpoint post-only orders (''midpoint orders'') if a member provides an average daily volume of more than 5 million shares through midpoint orders during the month and the member's average daily volume of liquidity provided through midpoint orders during the month is at least 2 million shares more than in April 2013. NASDAQ pays a credit of $0.0017 per share executed for midpoint orders if the member provides an average daily volume of 3 million or more shares through midpoint orders during the month (but does not qualify for the $0.0020 tier), and a credit of $0.0015 per share executed for midpoint orders if the member provides an average daily volume of less than 3 million shares through midpoint orders during the month. NASDAQ is proposing to increase the requirement for the $0.0017 per share executed tier to an average daily volume of 5 million or more shares through midpoint orders (but without the requirement for an increase in volume over April 2013 applicable to the $0.0020 per share rebate). In addition, NASDAQ proposes to reduce the midpoint order rebate for members not reaching these tiers (*i.e.,* with an average daily volume of less than 5 million shares provided through

[3] Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

[4] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[5] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

[6] The ISP credit and the NBBO Setter Incentive credit are both in addition to the rebate otherwise applicable under NASDAQ's main schedule of fees and credits under Rule 7018.

[7] Securities Exchange Act Release No. 69376 (April 15, 2013), 78 FR 23611 (April 19, 2013) (SR–NASDAQ–2013–063).

midpoint orders during the month) from $0.0015 to $0.0014 per share executed. The changes are intended to reduce costs during a period of persistent low trading volumes. In addition, the changes maintain NASDAQ's established policy of encouraging use of displayed orders through rebates that are higher than those paid for non-displayed orders, but paying higher rebates for midpoint orders, which offer price improvement, than for other forms of non-displayed orders.

Finally, under both Rule 7014 and Rule 7018, various pricing tiers depend upon the extent of a member's trading activity, expressed as a percentage of, or a ratio to, Consolidated Volume.[8] For example, NASDAQ pays a rebate of $0.00295 per share executed with respect to displayed orders that provide liquidity if a member has shares of liquidity provided in all securities through one of its Nasdaq Market Center MPIDs that represent more than 0.90% of Consolidated Volume during the month. NASDAQ has determined that it would be beneficial to members to exclude the date of the annual reconstitution of the Russell Investments Indexes (the ''Russell Reconstitution'') (in 2013, June 28) from calculations of Consolidated Volume. Trades occurring on that date would be excluded from the calculation of total Consolidated Volume and from the calculation of the member's trading activity (i.e., they would be excluded from both the numerator and the denominator of the calculation of a member's percentage or ratio).[9]

Trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month, and members that are not otherwise active on NASDAQ to a great extent often participate in the NASDAQ Closing Cross on that date. As a result, the trading activity of members that are regular daily participants in NASDAQ, expressed as a percentage of Consolidated Volume, is likely to be lower than their percentage of Consolidated Volume on other days during the month. Including the date of the Russell Reconstitution in calculations of Consolidated Volume is therefore likely to make it more difficult for members to achieve particular pricing tiers during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any members, since a member that was not, on other days during the month, trading in NASDAQ at volume levels that would allow it qualify for a particular pricing tier would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed change to provide that members participating in both the QMM program and the ISP may not receive both an ISP credit and an NBBO Setter Incentive credit with respect to the same order (but rather would receive the higher of the two credits), is reasonable because such members will continue to receive an enhanced rebate of $0.0002 or $0.0005 per share executed with respect to such orders. NASDAQ does not believe, however, that it is reasonable to pay an added credit with respect to ISP-qualified orders that set or join the NBBO, since a member entering retail or institutional orders is not in a position to influence their pricing. NASDAQ further believes that the change is consistent with an equitable allocation of fees because NASDAQ will continue to pay the higher of the two credits to reflect the fact that such orders improve NASDAQ's market quality by setting or allowing NASDAQ to join the NBBO. NASDAQ further believes that the change is not unfairly discriminatory because the change will eliminate an instance in which members may receive credits that are high in relation to those paid to other members while still paying credits that reflect the value of applicable orders as both retail or institutional orders and orders that set or join the NBBO. Finally, the change does not unfairly burden competition because it does not disadvantage affected members in a manner that would impair their ability to compete, in that they will continue to receive enhanced rebates. The change with respect to the text of Rule 7015 is reasonable, consistent with an equitable allocation, not unfairly discriminatory, and does not burden competition, in that is designed merely to ensure that the fee language of Rule 7015 reflects a change that was made to Rule 7014 in April 2013. As such, it is not a substantive change.

The changes to increase the required threshold for a rebate of $0.0017 per share executed for midpoint orders and to reduce the rebate for midpoint orders for members not reaching this tier from $0.0015 to $0.0014 per share executed are reasonable, consistent with an equitable allocation, not unfairly discriminatory, and do not burden competition. Specifically, the change in the threshold is reasonable because it provides an incentive for members that wish to receive a higher rebate to increase their levels of liquidity provision, while continuing to provide a rebate for midpoint orders, whether or not a member reaches the tier threshold, that is higher than the rebate for other non-displayed orders. The change to the threshold is consistent with an equitable allocation of fees and not unfairly discriminatory because although it will affect only a small number of market participants, it is designed to incentivize all market participants that use midpoint orders to increase their volumes of liquidity provision in order to achieve a higher rebate for such orders, or, in the alternative, to increase use of displayed orders to receive a still higher rebate. Thus, the change is consistent with NASDAQ's longstanding policy of encouraging the use of displayed orders, which promote price discovery, while nevertheless favoring midpoint orders over other non-displayed orders due to the price improvement they offer. The change does not burden competition since affected members may readily adjust trading behavior to maintain or increase their rebates, and will therefore not be disadvantaged in their ability to compete.

The change in the applicable rebate for midpoint orders to which a pricing tier does not apply is reasonable because it reflects a reduction of only $0.0001 to the applicable rebate. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it provides further incentives for members to

[8] ''Consolidated Volume'' is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

[9] NASDAQ is also moving the location of the definition of Consolidated Volume in Rule 7018.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

increase their volume of liquidity provision through midpoint orders and/or increase their use of displayed orders in order to earn a higher rebate. As such, the change is consistent with NASDAQ's policy of encouraging the use of displayed orders, while nevertheless favoring midpoint orders over other non-displayed orders. Moreover, the impact of the change will be spread across a large number of firms that use midpoint orders. Finally, the change does not burden competition since affected members may readily adjust trading behavior to increase rebates, or alternatively, will see only a small reduction in rebates with respect to continued use of the midpoint orders. Accordingly, affected members will not be disadvantaged in their ability to compete.

NASDAQ believes that the proposed change to exclude the date of the Russell Reconstitution from calculations of Consolidated Volume under Rules 7014 and 7018 is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. NASDAQ further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on the date of the Russell Reconstitution will be excluded from determinations of a member's percentage of Consolidated Volume, NASDAQ believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active in NASDAQ at a significant level throughout the month, excluding the date of the Russell Reconstitution, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on the date of Russell Reconstitution than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, NASDAQ believes that the change will benefit members that are in a position to achieve volume levels required by the NASDAQ pricing schedule but without harming the ability of any members to reach such levels. Finally, NASDAQ believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of the Russell Reconstitution, and therefore will not impact the ability of such members to compete.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although certain of the proposed changes have the effect of reducing certain rebates or limiting their availability, the rebates in question remain in place and are themselves reflective of the need for exchanges to offer significant financial incentives to attract order flow. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. In addition, the change with respect to the Russell Reconstitution is designed to protect members from the possibility of a *de facto* price increase. As a result of all of these considerations, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and paragraph (f) of Rule 19b–4 thereunder.[13] 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.* Please include File Number SR–NASDAQ–2013–081 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–NASDAQ–2013–081. 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 20549–1090, 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 NASDAQ. All comments received will be posted without change;

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

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–NASDAQ–2013–081, and should be submitted on or before July 10, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14608 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69760; File No. SR–CBOE–2013–058]

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

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 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 amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission'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 proposes to amend its Fees Schedule. In 2002, the Exchange added to its Fees Schedule a rebate for duplicate fees related to manual data entry (''keypunch'') errors.[3] This change was made due to the possibility that an options trade could be matched and cleared inappropriately as a result of a keypunch error. Indeed, the example given in SR–CBOE–2002–013 describes a situation involving a member's clerk, or other similar personnel, inputting the wrong clearing firm code into the appropriate form or program. As a result, the trade is cleared through the wrong clearing firm and, in order to correct the situation, corrective transactions are entered to reverse the error trades and then new trades are submitted to reflect the original intentions of the parties. Without the keypunch error rebate program, the clearing firm whose code was erroneously entered would have to pay Exchange transaction fees for any transactions necessary to reverse the initial trade (despite not having been a party to such trade).

In a recent overall review of the Fees Schedule, the Exchange reviewed the ''Keypunch Error'' rebate program and has determined to modify the rebate. The term ''keypunch'' is open to interpretation and could be read to include a variety of types of errors that involve the erroneous entry of any type of trade information (beyond just the wrong clearing firm). As such, the Exchange proposes to delete the current language associated with the keypunch error rebate program, re-title it ''Clearing Trading Permit Holder Position Re-Assignment'' and add the following language: CBOE will rebate assessed transaction fees to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party's transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed.

If a market participant makes an error that requires a corrective transaction, the Exchange believes that the market participant should be responsible for the fees involved in correcting that transaction (as the Exchange must expend resources in order to process such transactions). However, when a Clearing Trading Permit Holder is required to re-assign a position, that Clearing Trading Permit Holder may have been assigned that position by another market participant and therefore the Exchange does not wish to assess fees for such re-assignment to the Clearing Trading Permit Holder. The reason that the rebate is limited to a business day following the original trade is because if an error is discovered on the day it occurs, it can be corrected prior to clearing and accurate fees will be assessed. The Exchange determined to eliminate the stipulation that, in order to qualify for the rebate, a transaction be of a minimum of 500 contracts because the Exchange believes that any transaction, regardless of size, should be eligible for the rebate, and a *de minimis* requirement is not necessary.

Because the Exchange may not always be able to automatically identify these situations, in order to receive a rebate, a written request with all supporting documentation (trade detail regarding both the original and re-assigning

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45675 (March 29, 2002), 67 FR 16480 (April 5, 2002) (SR–CBOE–2002–013). The Section of the Fees Schedule describing the keypunch error rebate program currently states:

On occasion, options transactions are matched and cleared as a result of certain keypunch errors and Trading Permit Holders are forced to execute subsequent transactions to achieve the originally intended results. A qualifying error is any error that is inadvertent and creates a duplicate fee or fees to be charged in the matching and clearing of corrective options trades. Only those transactions that require a minimum of 500 contracts to correct the error or errors shall be eligible for this rebate. The CBOE shall have the discretion to rebate any duplicate transaction fees incurred in the course of correcting such errors. A written request with all supporting documentation (trade date, options class, executing firm and broker, opposite firm and broker, premium, and quantity) and a summary of the reasons for the error must be submitted within 60 days after the last day of the month in which the error occurred.