

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 filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site ([https://www.theice.com/publicdocs/regulatory\\_filings/ICEclearCredit\\_111312.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEclearCredit_111312.pdf)).

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-ICC-2012-21 and should be submitted on or before December 24, 2012.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68301; File No. SR-CBOE-2012-111]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 6.18 Concerning the Exchange's Disaster Recovery Facility

November 27, 2012.

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 November 13, 2012, 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 and II below, which Items have been

substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

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

The Exchange proposes to modify the text of Rule 6.18, "Disaster Recovery Facility," to clarify how the Exchange intends to continue to operate in the event the Exchange's trading floor or trading systems are compromised. The text of the proposed rule change is available on the Exchange's Web site ([www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx](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

CBOE Rule 6.18 (Disaster Recovery Facility) currently provides for a disaster recovery site in the event that open outcry trading is not available. In such an event, Trading Permit Holders ("TPHs") are required to utilize a floorless configuration of the trading system similar to the electronic component of the Exchange's Hybrid System platform, the primary difference being that this configuration is not programmed to require open outcry. Because of a change in location of the Exchange's back-up data center (the Exchange is moving its primary data center to the East coast and will use its current Chicago data center as the back-up data center), the Exchange is proposing to amend Rule 6.18 in order to provide that (1) in the case the Exchange must use the back-up data center, the Exchange's trading floor may

still be operable, and (2) TPHs will need to use the alternate trading system if the Exchange's trading floor should become inoperable. Finally, the Exchange is proposing to make conforming changes to the entire rule to reflect this change in location by eliminating references to a "Disaster Recovery Facility" and eliminating portions of the rule that are no longer relevant. This change in location of the Exchange's primary and back-up data centers is anticipated to take effect on December 3, 2012.

First, the Exchange is proposing to modify Rule 6.18 to clarify that when an event or other circumstance renders the Exchange's primary electronic platform inoperable, assuming the trading floor has not been affected, TPHs may still be able to utilize the Exchange's trading floor. The Exchange's current Rule 6.18 specifies that if the Disaster Recovery Facility were used, no open outcry trading would be available. Because of the change of location of the back-up data center, this will no longer be the case. In the event the Exchange back-up data center must be utilized, the Exchange's trading floor may still be operable and all Exchange rules associated with the trading floor, including those codifying the integration of the electronic trading platform with the trading floor, will remain in effect. As such, trading on the Exchange would not change.

Second, the Exchange is proposing to amend Rule 6.18 to clarify that TPHs will need to use the floorless configuration in the event a disaster or other unusual circumstance renders the Exchange trading floor inoperable. In the current Exchange rules, TPHs must only utilize a floorless configuration in the event the Disaster Recovery Facility is utilized. In the proposed changes, TPHs will need to use this configuration of the trading system if the trading floor is inoperable which could be the case in an instance when the primary data center is still operating. In this configuration, there will be no change in the Exchange trading rules associated with electronic trading. TPHs will be required to follow the same rules associated with electronic trading as they would if the trading floor were operable. This proposed change is also a result of the change in location of the Exchange's various data centers.

Finally, other conforming changes have been made throughout the rule to eliminate references to a Disaster Recovery "Facility" to reflect that dual locations may now be used in the event the Exchange experiences an event or other circumstance rendering either the trading floor or the primary data center inoperable. In addition, references to

<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.

portions of the rule that are no longer relevant have been eliminated from the rule text. More specifically, section (e) of the Rule has been eliminated because the back-up data center in Chicago will have the capacity to accommodate all TPHs.<sup>3</sup>

It should be noted, however, that no material changes are being made to the Exchange Rule 6.18(b) which states that the Exchange will announce, prior to the commencement of trading, all classes that will continue to trade. Depending upon the specifics of the circumstances, the Exchange's trading floor may or may not be operable. In this announcement, the Exchange will clarify the current status of the trading floor. In addition, pursuant to the current Exchange Rule 6.18(d), TPHs will still be required to maintain access to both the primary electronic platform and the back-up data center in order to continue trading in all circumstances.

## 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>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the modification to Exchange Rule 6.18 fully clarifies how TPHs can trade in the event that unforeseen circumstances arise. The proposed changes promote just and equitable principles of trading by putting all TPHs, and other market centers, on notice about how the Exchange intends to operate in the event either the primary data center or the trading floor becomes inoperable which also provides for a free and open market for all TPHs. The proposed changes also prevent fraudulent and manipulative acts on the Exchange as the changes more clearly explain different venues available to the TPHs and alert TPHs of how the Exchange will operate if such

circumstance should arise. Finally, it protects investors by alerting all TPHs to the different trading alternatives if one of these events should occur so they are aware of their options.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>6</sup> which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. By clearly stating what will happen in the event that normal trading venues are not available, the Exchange is explicitly stating its capacity to operate in any unusual or unpredictable circumstance that may arise. Thus, the Exchange is preparing to exercise its obligations as a Self-Regulatory Organization ("SRO") under the Act in the event of unusual circumstances.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## 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. 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-2012-111 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-2012-111. 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-CBOE-2012-111 and should be submitted on or before December 24, 2012.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6(b) of the Act,<sup>7</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup>

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis pursuant to Section 19(b)(2) of the Act, so that the proposal may become operative in time to accommodate the Exchange's planned transfer of its primary data center to the East coast of the United States.<sup>9</sup> The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> for approving the

<sup>3</sup> The Commission notes that CBOE Rule 6.18(e) currently authorizes the Exchange to restrict access to the Disaster Recovery Facility if necessitated by system capacity limitations, and priority access would have been afforded to TPHs subject to certain conditions. See CBOE Rule 6.18(e).

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(1).

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

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> *Id.*

proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Currently, CBOE's electronic systems and its floor are housed in close proximity to one another and, as a result, in the event that one is rendered inoperable or inaccessible, it is possible that the other could be compromised as well. As CBOE notes above, CBOE's current Rule 6.18 acknowledges this by presuming that if the Disaster Recovery Facility is used, no open outcry trading would be available. However, CBOE now plans to relocate its primary electronic systems to a different location on the East coast of the United States, and thus the primary electronic systems and the physical floor will be in separate locations. Accordingly, CBOE is proposing to clarify Rule 6.18 to reflect that it may, to the extent possible, continue to operate its physical trading floor in Chicago in the event that it needs to operate in disaster recovery mode on account of its primary data systems on the East coast being unavailable.

CBOE also has proposed to eliminate paragraph (e) of Rule 6.18, as its new back-up systems will no longer necessitate that it retain the ability to restrict access to its back-up data facility. Other than the elimination of paragraph (e), CBOE has not proposed any material changes to Rule 6.18, or how it would operate in recovery mode.

Finally, CBOE's Rule 6.18 will continue to require TPHs to take action to be able to accommodate CBOE's ability to trade options through the back-up data center in the event that CBOE operates in disaster recovery mode.

Accordingly, the Commission believes that accelerated approval of the proposed rule change to clarify the operation of CBOE Rule 6.18 in light of CBOE's planned relocation of its primary data facility to the East coast will allow CBOE to effectively revise its disaster recovery rule without delay and thereby avoid any potential interruption to CBOE's exchange operations. CBOE's proposed changes to Rule 6.18 are not material and consist of technical updates to its rule to allow for CBOE to resume operations on its physical floor in Chicago (along with its back-up data center in Chicago) in the event of a disruption to its primary data center on the East coast. Thus, accelerated approval of this proposed rule change will grant CBOE the ability to continue its operations to the fullest extent possible under its rules if a disaster recovery situation were to occur between the time of transfer of its

primary data center to the East coast on December 3, 2012 and the time that CBOE would have otherwise been able to obtain Commission action on its proposed rule change under Section 19(b)(2) of the Act<sup>11</sup> had the Commission not granted accelerated approval to its proposal.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2012-111) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68303; File No. SR-BYX-2012-019]

### Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 2, To Adopt a Retail Price Improvement Program

November 27, 2012.

## I. Introduction

On August 14, 2012, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") 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 ("Program") on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule change was published for comment in the **Federal Register** on

<sup>11</sup> 15 U.S.C. 78s(b)(2). As provided by Section 19(b)(2) of the Act, the Commission must, within 45 days of the date of publication of notice of a proposed rule change in the **Federal Register** (unless such period is extended by the Exchange or the Commission) either: (1) By order approve or disapprove such proposed rule change, or (2) institute proceedings to determine whether the proposed rule change should be disapproved. See *id.* Section 19(b)(2) also provides that the Commission may not approve a proposed rule change earlier than 30 days after the date of publication unless it finds good cause for doing so and publishes the reason for the finding. See *id.*

<sup>12</sup> *Id.*

<sup>13</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.

August 31, 2012.<sup>3</sup> The Commission received one comment on the BYX proposal.<sup>4</sup> On October 12, 2012, the Commission extended the time for Commission action on the proposed rule change until November 29, 2012.<sup>5</sup> The Exchange submitted a response letter on November 13, 2012.<sup>6</sup> On October 4, 2012, the Exchange filed Amendment No. 1 to its proposal.<sup>7</sup> On November 13, 2012, the Exchange filed Amendment No. 2 to its proposal.<sup>8</sup>

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,<sup>9</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>10</sup> On November 19, 2012, 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 ("Quote Rule") based on the Exchange's and its members' participation in the Program ("No-Action Request Letter").<sup>11</sup>

<sup>3</sup> See Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR-BYX-2012-019) ("Notice").

<sup>4</sup> See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 26, 2012 ("SIFMA Letter").

<sup>5</sup> See Securities Exchange Act Release No. 68049, 77 FR 64180 (October 18, 2012).

<sup>6</sup> See Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Elizabeth M. Murphy, Secretary, Commission, dated November 13, 2012 ("Exchange Response to Comments").

<sup>7</sup> The Exchange withdrew Amendment No. 1 on October 4, 2012.

<sup>8</sup> In Amendment No. 2, the Exchange proposes to delete a statement explaining that a Retail Liquidity Identifier for Tape C securities would not be published until after October 1, 2012. The Exchange is deleting this statement because the processor is currently able to disseminate the identifier. The Exchange also proposes to clarify that the securities will be phased into the Program, and modify its statutory basis discussion to support this change. Finally, the Exchange proposes to modify the Rule Text to state that the Exchange will notify its membership regarding the securities included in the Program through an information circular ("Amendment No. 2"). Because the changes made in Amendment No. 2 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

<sup>9</sup> 17 CFR 242.612 ("Sub-Penny Rule").

<sup>10</sup> See Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Elizabeth M. Murphy, Secretary, Commission, dated August 14, 2012 ("Request for Sub-Penny Rule Exemption").

<sup>11</sup> See Letter from Eric J. Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Robert Cook, Division of Trading and Markets, Commission, dated November 19, 2012 ("No-Action Letter").