

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70875; File No. SR-CBOE-2013-110)

November 14, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change to Eliminate the e-DPM Program

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 November 1, 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 the Substance of the Proposed Rule Change

The Exchange proposes to eliminate its e-DPM program. The text of the proposed rule change is available on the Exchange’s website

(<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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

In 2004, the Exchange adopted its Electronic DPM (“e-DPM”) Program (the “Program”), under which the Exchange has allowed TPHs to remotely function as a Designated Primary Market-Maker (“DPM”).³ e-DPMs act as specialists on CBOE by entering bids and offers electronically from locations other than the trading crowds where the applicable option classes are traded, and are not required to have traders physically present in the trading crowd. As specialists, e-DPMs share in the DPM participation right in their allocated classes and have similar rights and responsibilities to DPMs.

The Exchange has determined that the Program is no longer competitively necessary; the growing prevalence of Preferred Market-Maker (“PMM”) routing, which provides a higher participation entitlement on [sic] for orders on which a Market-Maker is labeled “preferred”, has rendered the initially-unique tenets of the Program less relevant and attractive to the e-DPMs. All e-DPMs are PMMs on orders to which the e-DPM is labeled “preferred”, and PMMs otherwise have many similar characteristics as e-DPMs. e-DPMs have similar or greater quoting obligations as PMMs despite this lower participation entitlement. On most transactions to which the e-DPM entitlement applies (if no party is labeled “preferred” for that order, or the party labeled “preferred” is not at the NBBO), e-DPMs are only guaranteed a maximum of 15% participation entitlement per order.⁴ However, PMMs have a maximum of 40% participation

³ For more information on the Program, see Securities Exchange Act Release Nos. 50003 (July 12, 2004) (SR-CBOE-2004-24) and 49577 (April 19, 2004) (SR-CBOE-2004-17).

⁴ On the vast majority of transactions to which the e-DPM entitlement applies, there are three or more Market-Makers also quoting at the Exchange's best bid/offer, which sets the collective DPM/e-DPM entitlement at 30% (See CBOE Rule 8.87(b)(2)). One-half of

entitlement on orders that are preferred to them.⁵ If an e-DPM is preferred to an order, the e-DPM is also the PMM and receives the 40% PMM entitlement instead of just the 15% e-DPM entitlement.⁶ Therefore, e-DPMs only benefit in circumstances in which an order is not preferred to any party, or the preferred party is not at the NBBO. However, over 85% of orders that come into the Exchange are preferred orders. The much greater participation entitlement for a PMM (40%) provides a much stronger incentive to quote at the NBBO than the lower (15%) entitlement for e-DPMs. Therefore, it is more beneficial in nearly all circumstances to be a PMM than to be an e-DPM.

The Exchange does not believe that the elimination of the Program will affect CBOE's market quality. This is because the Exchange does not expect any Market-Makers to cease doing business on the Exchange due to the elimination of the Program; instead, the Exchange expects them all to stay on as Market-Makers and, on an order-by-order basis, PMMs (as being a PMM is often more beneficial than being an e-DPM anyway). Also, the Exchange does not require DPMs in every class, but every class (except SPX) currently has a DPM (and SPX has LMMs instead of DPMs or e-DPMs). Further, other U.S. options exchanges do not have programs similar to the Program. As such, the Exchange now proposes to discontinue the Program, and delete Rules 8.92 (Electronic DPM Program), 8.93 (e-DPM Obligations) and 8.94 (Review of e-DPM Operations and Performance), along with all references to the Program, e-DPMs, and Rules 8.92-8.94, from the CBOE Rules.

this collective entitlement goes to the e-DPM(s) at the Exchange's best bid/offer (See CBOE Rule 8.87(b)(3)).

⁵ On the vast majority of transactions to which the PMM entitlement applies, there are two or more Market-Makers also quoting at the Exchange's best bid/offer, which sets the PMM entitlement at 40% (See CBOE Rule 8.13(c)).

⁶ See CBOE Rule 8.87(b)(4).

The Exchange proposes to eliminate the e-DPM Program because the Exchange believes that it is almost always redundant with the PMM program (but much less beneficial than the PMM program) and adds an unnecessary layer of complexity to CBOE rules, system processes, matching algorithm and trading procedures. Further, due to this redundancy (and programs at other exchanges that are similar to the PMM program⁷), the Exchange does not believe that the e-DPM Program provides CBOE with any competitive advantage. Moreover, the removal of the e-DPM complexity will provide the Exchange with more flexibility to consider other methods of encouraging DPM performance.

Upon approval of this proposed rule change, the Exchange will announce the impending elimination of the Program via a Regulatory Circular. This Regulatory Circular will include an end date for the Program that will be at least two weeks in advance in order for current e-DPMs to work with the Exchange to determine their preferred courses of action. The Exchange anticipates that most, if not all, e-DPMs will remain TPHs on the Exchange in a regular Market-Maker capacity (with the ability to act as a PMM on an order-by-order basis when they are preferred on an order) and will not be unduly harmed by the elimination of the Program (for the reasons described above). e-DPMs that desire to continue to act as Market-Makers (with the ability to act as a PMM on an order-by-order basis when they are preferred on an order) will be informed of the elimination of their e-DPM status and provided the opportunity to elect to become Market-Makers in those classes to which they are currently appointed as e-DPMs.

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

⁷ See NASDAQ OMX PHLX (“PHLX”) Directed Order program, described in PHLX Rules 1080(l) and 1014(g)(viii).

Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed elimination of the Program will not significantly harm market quality, as current e-DPMs will be able to act as PMMs for orders on which they are preferred (which is more beneficial anyway). Indeed, the much greater participation entitlement for a PMM provides a much stronger incentive to quote at the NBBO than the lower entitlement for e-DPMs, which provides for narrower spreads. Following the proposed elimination of the Program, all e-DPMs will still be Market-Makers with the ability to act as PMMs for orders on which they are preferred. This will place the former e-DPMs on the same competitive position as PMMs. Further, other U.S. options exchanges do not have programs similar to the Program, but do have programs similar to CBOE's PMM program.

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. The

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

Exchange does not believe that the proposed elimination of the Program will impose an unnecessary burden on intramarket competition because e-DPMs, who are all also PMMs (for orders on which they are preferred), will merely be placed in the same competitive position as PMMs (for orders on which they are preferred). The Exchange does not believe that the proposed elimination of the Program will impose an unnecessary burden on intermarket competition because other U.S. options exchanges do not have programs similar to the Program (though they do have programs similar to CBOE's PMM program), and because the elimination of Program only affects e-DPMs on CBOE.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-110 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-2013-110. This file number should be included on the subject line if e-mail 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 website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 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 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-2013-110, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).