

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70996; File No. SR-CBOE-2013-114)

December 5, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Amend CBOE Rule 18.2 (Procedures in Trading Permit Holder Controversies)

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 22, 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 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 to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to amend CBOE Rule 18.2 to provide that arbitrators in controversies between parties who are Trading Permit Holders (“TPHs”) or associated persons of TPHs (such controversies herein referred to as “TPH controversies”) may be selected from CBOE’s Arbitration Committee (“Committee”) or, if necessary, from rosters provided by the Financial Industry Regulatory Authority Inc. (“FINRA”) of qualified non-public arbitrators and non-public chairperson-qualified arbitrators, as defined by FINRA.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available on the Exchange's website at <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 V 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 seeks to amend Rule 18.2 (Procedures in Trading Permit Holder Controversies) to provide more flexibility with regards to the selection of the arbitration panel for TPH controversies. By way of background, the Exchange offers an arbitration facility for TPHs and associated persons of TPHs to arbitrate disputes, claims or controversies arising out of Exchange business.³

Under Exchange rules, any arbitration between parties who are TPHs or persons associated with a TPH shall be resolved by an arbitration panel that consists of three members of the Committee, which is maintained primarily as a means for managing a pool of qualified

³ For the purposes of CBOE's arbitration rules, the term "Exchange business" does not include a dispute, claim or controversy alleging employment discrimination, including sexual harassment. The Exchange may, however, make its arbitration facilities available for the resolution of employment discrimination claims if the parties mutually agree to arbitrate the claim after it has arisen. See CBOE Rule 18.1 Interpretation and Policy .03.

industry arbitrators that generally is composed of a cross-section of Exchange TPHs and/or former TPHs or associated persons of TPHs or other individuals who are knowledgeable about the securities industry.

For TPH controversies, CBOE Rule 18.2(a) currently provides that the arbitration panel appointed to hear such controversies be comprised of no fewer than three arbitrators from the Committee.⁴ In this proposal, the Exchange seeks to amend Rule 18.2 to provide greater flexibility with regard to the selection of the arbitration panel for TPH controversies. Specifically, CBOE proposes to amend the rule to provide that arbitrators may be selected from the Committee or, if necessary, from rosters provided by FINRA of qualified non-public arbitrators and non-public chairperson-qualified arbitrators (as defined by FINRA’s rules governing arbitration of industry disputes) that have indicated that they would be willing to serve as an arbitrator for another self-regulatory organization.⁵

⁴ In practice, however, arbitration panels for TPH controversies typically consist of three Committee members.

⁵ FINRA Rule 13100(p) defines the term “non-public arbitrator” as a person who is otherwise qualified to serve as an arbitrator and: (1) is or, within the past five years, was: (A) associated with, including registered through, a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer); (B) registered under the Commodity Exchange Act; (C) a member of a commodities exchange or a registered futures association; or (D) associated with a person or firm registered under the Commodity Exchange Act; (2) is retired from, or spent a substantial part of a career engaging in, any of the business activities listed in paragraph (p)(1); (3) is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in paragraph (p)(1); or (4) is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities. For purposes of FINRA Rule 13100(p), the term “professional work” does not include mediation services performed by mediators who are also arbitrators, provided that the mediator acts in the capacity of a mediator and does not represent a party in the mediation. The Exchange’s guidelines classifying whether an arbitrator is deemed to be

Over the years, fewer TPHs have made themselves available to serve on the Committee. Consequently, it has become increasingly burdensome for the Exchange to select a sufficient number of arbitrators solely from the Committee to sit on any given arbitration panel. In addition, it has become increasingly difficult not only to find three arbitrators to sit on an arbitration panel, but also to ensure that at least one of the arbitrators is qualified to serve as a chairperson on the panel. Moreover, there are instances in which many Committee members have interests, relationships, or circumstances that might preclude them from being able to render an objective and impartial determination in a particular arbitration matter. The Exchange believes that eliminating the requirement that all arbitrators for TPH controversies be selected from the Committee would provide the Exchange with additional flexibility and help ensure that the Exchange would have a sufficient number of qualified non-public arbitrators readily available at all times.

The proposed rule change would provide the Exchange with the ability to appoint arbitrators identified in the FINRA-provided rosters in instances in which the Exchange is unable to select a sufficient number of arbitrators from its Committee. For example, the Exchange may be unable to select a sufficient number of arbitrators from the Committee if all the arbitrators from the Committee who are eligible to serve as a panel chairperson are unavailable to serve as the panel chairperson in a particular arbitration matter, due to either scheduling conflicts or the fact that they have interests, relationships, or circumstances which preclude them from being able to render an objective and impartial determination in that matter. In such instances, it would be necessary for the Exchange to select one arbitrator from a FINRA-provided roster of non-

from the securities industry is substantially similar to FINRA's definition of "non-public arbitrator." See CBOE Rule 18.10.

public, chairperson-qualified arbitrators, as defined by FINRA⁶ to serve as the panel chairperson. Under the proposal, the Exchange would only appoint as many arbitrators from outside the Committee as necessary. For example, in the scenario described above, if the Exchange is able to appoint to the panel the other two “non-chairperson” arbitrators from the Committee, it would do so.

The Exchange believes that FINRA maintains a comprehensive roster of arbitrators that are in good standing and qualified to sit on an arbitration panel. The Exchange also believes that the qualification requirements to become a FINRA arbitrator are similar to the qualification requirements to become and stay a member of the Committee. For example, similar to the Exchange’s requirements, in order for an individual to become a FINRA arbitrator, the individual must have a minimum of five years of business and/or professional experience and must have attended an introductory arbitrator training course. Accordingly, the Exchange believes that the arbitrators named on any FINRA non-public arbitrator roster would be sufficiently qualified to serve on any CBOE arbitration panel.

The applicable rules of Chapter XVIII of CBOE’s Rules would continue to apply to all arbitrators, regardless of whether they were selected from the Committee or from a FINRA-provided roster. In addition, all arbitrators, whether or not selected from the Committee, would be screened for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment and would be required to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.

⁶ See FINRA Rule 13400.

FINRA is aware of the Exchange's proposal and has indicated that it has no objection. If this filing is approved, the Exchange expects to enter into a written agreement with FINRA under which FINRA would agree to provide to the Exchange lists of qualified non-public arbitrators and non-public chairperson-qualified arbitrators upon the Exchange's request when the Exchange determines that it does not have sufficient arbitrators to handle a case. The Exchange further expects FINRA to agree to provide these lists to CBOE to the extent that FINRA has sufficient non-public arbitrators in a specified location at the time of the request.

The proposed rule change will become effective upon approval by the Commission. CBOE has requested the Commission to find good cause pursuant to Section 19(b)(2)⁷ of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act⁹ which requires 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 facilitating transactions in

⁷ 15 U.S.C. 78s(b)(2).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

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.

In particular, the Exchange notes that the purpose of the Exchange providing an arbitration forum is, among other things, to provide TPHs and associated persons of TPHs with a simple and inexpensive procedure for resolution of their controversies with other TPHs or associated persons of TPHs. The Exchange believes that the proposed rule change is consistent with the provisions of the Act because it would help ensure that the Exchange has a sufficient number of qualified arbitrators readily available to resolve TPH controversies. In addition, the Exchange believes that providing it with greater flexibility in its selection of qualified arbitration panels would prevent unnecessary delays in, and improve the administration of, its arbitration forum for resolving disputes and enhancing the forum for its users. As such, the Exchange believes the proposed rule change meets the requirements of Section 6(b)(5) of the Act.

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. Specifically, the Exchange believes the proposed rule change will not impose any burden on competition because the Exchange is merely providing greater flexibility in its selection of arbitrators for arbitration panels to facilitate and improve the administration of its arbitration forum and ensure that the Exchange has a sufficient number of qualified non-public arbitrators readily available.

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. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with, and would further the purposes of, Section 6(b)(5) of the Act¹¹ by providing the Exchange with a mechanism to ensure that it has a sufficient number of qualified non-public arbitrators readily available to resolve TPH controversies. Section 6(b)(5) of the Act specifically provides, among other things, that the rules of a national securities exchange should foster cooperation and coordination with persons engaged in regulating securities.¹² The Commission believes that the proposed rule change would foster cooperation between CBOE and FINRA to help facilitate and improve the administration of CBOE's arbitration forum. In addition, the proposed rule change would provide the Exchange with greater flexibility in its selection of qualified non-public arbitration panels, which would prevent unnecessary delays in, and improve the administration of, its arbitration forum for resolving disputes.

The Commission 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 because the proposed rule change merely helps ensure that CBOE has a sufficient number of qualified non-public arbitrators readily available for TPH controversies. Moreover, the proposed rule change would be neutrally applied to all TPH controversies.

¹⁰ In approving this proposal, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

IV. Accelerated Approval

In its filing, CBOE requested that the Commission approve the proposed rule change on an accelerated basis so that the proposal may become operative as soon as practicable. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving the proposed rule change prior to the 30th day after the date of publication in the Federal Register. In particular, CBOE represented to the Commission staff that there are pending TPH controversies that cannot be heard in arbitration because there are not enough eligible arbitrators on the Committee because many Committee members have interests, relationships, or circumstances that preclude them from being able to render an objective and impartial determination in these matters.¹⁴ The Exchange has also represented that the delay in resolving these TPH controversies has created an undue hardship on the parties involved.¹⁵ The Commission believes that granting CBOE's request for accelerated approval would allow the Exchange to more readily select the arbitration panels for these pending TPH controversies, thus preventing further delay in hearing the parties' claims. Accordingly, the Commission finds that good cause exists to approve the proposed rule change on an accelerated basis.

V. 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:

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ See email from Corinne Klott, Attorney, CBOE, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated December 3, 2013.

¹⁵ Id.

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-2013-114 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-2013-114. 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, 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-2013-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-CBOE-2013-114) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Kevin M. O'Neill
Deputy Secretary

¹⁶ Id.

¹⁷ 17 CFR 200.30-3(a)(12).