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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-01668 Filed 1-26-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76953; File No. SR-BYX-2012-019]

### Self-Regulatory Organization; BATS Y-Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program

January 21, 2016.

On November 27, 2012, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")<sup>1</sup> that granted the BATS Y-Exchange, Inc. ("BYX" or the "Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement ("RPI") Program (the "Program"). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.<sup>2</sup> The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended twice;<sup>3</sup>

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 17 CFR 242.612(c).

<sup>2</sup> See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019).

<sup>3</sup> See Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (extending the pilot period); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2014) (Order Granting an Extension to Limited

both the pilot Program and exemption are scheduled to expire on January 31, 2016.

The Exchange now seeks to extend the exemption until July 31, 2016.<sup>4</sup> The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until July 31, 2015.<sup>5</sup> In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission.<sup>6</sup> For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

*Therefore, it is hereby ordered*, that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its RPI Program.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR-BYX-2015-05) (extending the pilot period); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program).

<sup>4</sup> See letter from Anders Franzon, Senior Vice President and Associate General Counsel, BYX, to Elizabeth M. Murphy, Secretary, Commission, dated January 12, 2016.

<sup>5</sup> See SR-BYX-2016-01.

<sup>6</sup> See RPI Approval Order, *supra* note 2, at 77 FR at 71657.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76960; File No. SR-CBOE-2015-107]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to Price Protection Mechanisms for Quotes and Orders

January 21, 2016.

#### I. Introduction

Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed on November 24, 2015, with the Securities and Exchange Commission (the "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 proposal to enhance its current price protection mechanisms and adopt certain new price protection functionality for orders and quotes. On December 4, 2015, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 11, 2015.<sup>3</sup> On December 29, 2015, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission received no

<sup>7</sup> 17 CFR 200.30-3(a)(83).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 76585 (December 8, 2015), 80 FR 77038 (December 11, 2015) ("Notice").

<sup>4</sup> In Amendment No. 2, the Exchange amended the proposed rule language to (i) clarify that it will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.14(a)(ii) and (ii) limit the potential range of the percentage amount used to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.53C, Interpretation and Policy .08(g)(1)(iii). In Amendment No. 2, CBOE also represented that it will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.14(a)(ii), including the reason for the decision. See Amendment No. 2 to File No. SR-CBOE-2015-107, dated December 29, 2015

substantive comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

## II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to adopt new Exchange Rule 6.14 and amend Exchange Rule 6.53C, Interpretation and Policy .08, to enhance its current price protection mechanisms for orders and quotes in order to help prevent potentially erroneous executions.<sup>5</sup>

### A. Put Strike Price and Call Underlying Value Checks

Proposed Exchange Rule 6.14(a) will provide a new price protection functionality pursuant to which the Exchange's Hybrid Trading System ("System") will reject back to the Trading Permit Holder a quote or buy limit order for (i) a put if the price of the quote bid or order is equal to or greater than the strike price of the option or (ii) a call if the price of the quote bid or order is equal to or greater than the consolidated last sale price of the underlying security, with respect to equity and exchange-traded fund options, or the last disseminated underlying index value, with respect to index options.<sup>6</sup> The Exchange may determine not to apply this proposed price protection mechanism if a senior official at the Exchange's Help Desk determines the applicable check should not apply in the interest of maintaining a fair and orderly market.<sup>7</sup>

("Amendment No. 2"). To promote transparency of its proposed amendment, when CBOE filed Amendment No. 2 with the Commission, it also submitted Amendment No. 2 as a comment letter to the file, which the Commission posted on its Web site and placed in the public comment file for SR-CBOE-2015-107. The Exchange also posted a copy of its Amendment No. 2 on its Web site (<http://www.cboe.com/aboutcboe/legal/submittedsecfilings.aspx>) when it filed the amendment with the Commission.

<sup>5</sup> For a more detailed description of each proposed price protection mechanism, see Notice, *supra* note 3.

<sup>6</sup> If the System rejects a Market Maker's quote pursuant to either proposed price check, the Exchange will cancel any resting quote of the Market Maker in the same series. See proposed Exchange Rule 6.14(a); see also Notice, *supra* note 3, at 77038. These proposed checks will also apply to buy auction responses in the same manner as it does to orders and quotes, as well as pairs of orders submitted to the Exchange's Automated Improvement Mechanism ("AIM"), Solicitation Auction Mechanism ("SAM"), or as a qualified cross-contingent order ("QCC order"). See *id.*

<sup>7</sup> See proposed Exchange Rule 6.14(a)(ii); see also Notice, *supra* note 3, at 77039. The Exchange represented that it will document, retain, and periodically review any decision to not apply the put check or call check, including the reason for the decision. See Amendment No. 2, *supra* note 4.

### B. Quote Inverting NBBO Check

Proposed Exchange Rule 6.14(b) will apply new a price reasonability check to Market Maker quotes based on the national best bid or offer ("NBBO") or the Exchange's best bid or offer if the NBBO is unavailable.<sup>8</sup> Specifically, if CBOE is at the NBBO, the System will reject a quote back to a Market Maker if the quote bid or offer crosses the opposite side of the NBBO by more than a number of ticks specified by the Exchange.<sup>9</sup> If CBOE is not at the NBBO, the System will reject a quote back to a Market-Maker if the quote bid or offer locks or crosses the opposite side of the NBBO.<sup>10</sup> The Exchange may determine not to apply this check to quotes entered during the pre-opening, a trading rotation, or a trading halt, and would announce to Trading Permit Holders any such determination through a Regulatory Circular.<sup>11</sup>

### C. Debit/Credit Price Reasonability Checks

The Exchange proposes to amend its price check parameters applicable to complex orders that are contained in current Exchange Rule 6.53C, Interpretation and Policy .08(c), to prevent the automatic execution of complex orders that appear to be erroneously priced based on general options volatility and pricing principles.<sup>12</sup> Under current Exchange Rule 6.53C, Interpretation and Policy .08(c), the System will not automatically execute (i) a limit order for a debit strategy with a net credit price that should have been entered at a net debit price, (ii) a limit order for a credit strategy with a net debit price that should have been entered at a net credit price, and (iii) a market order for a

<sup>8</sup> See proposed Exchange Rule 6.14(b); see also Notice, *supra* note 3, at 77039-41.

<sup>9</sup> The Exchange states that the number of ticks will be no less than three minimum increment ticks and announced to Trading Permit Holders by Regulatory Circular. See proposed Exchange Rule 6.14(b); see also Notice, *supra* note 3, at 77040. In addition, proposed Exchange Rule 6.14(b)(iii) addresses situations where CBOE accepts a quote that locks or crosses the NBBO.

<sup>10</sup> See proposed Exchange Rule 6.14(b)(i); see also Notice, *supra* note 3, at 77040. As an additional risk control feature, if a Market Maker submits a quote in a series in which the Market Maker already has a resting quote and the Exchange rejects that quote pursuant to this proposed check, the Exchange will cancel the Market Maker's resting quote in the series. See Notice, *supra* note 3, at 77040.

<sup>11</sup> See proposed Exchange Rule 6.14(b)(ii); see also Notice, *supra* note 3, at 77040. Additionally, this proposed check will not apply if a senior official at the Exchange's Help Desk determines it should not apply in the interest of maintaining a fair and orderly market. See *id.*

<sup>12</sup> See proposed Exchange Rule 6.53C, Interpretation and Policy .08(c); see also Notice, *supra* note 3, at 77041-43.

credit strategy that would be executed at a net debit price when it should execute at a net credit price.<sup>13</sup> The amended rule expands this check to certain complex orders which the System can determine are credits or debits.<sup>14</sup>

### D. Maximum Value Acceptable Price Range Check

Finally, the Exchange proposes to amend Exchange Rule 6.53C, Interpretation and Policy .08, to add an additional price check for complex orders. The new price check would apply to vertical, true butterfly, and box spreads, and would block executions of such strategies at prices that exceed their quantifiable maximum possible values by more than a reasonable amount.<sup>15</sup> Under the proposed rule, the Exchange will determine the acceptable price range for these strategies and will reject back to the Trading Permit Holder any limit order and cancel any market order that does not satisfy this proposed check.<sup>16</sup>

## III. Discussion and Commission Findings

After careful review, 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 and, in particular, with section 6(b) of the Act.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with sections 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the rules of a national securities 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

<sup>13</sup> See Notice, *supra* note 3, at 77041.

<sup>14</sup> See *id.* at 77041. The proposed rule contains new definitions of vertical spread, butterfly spread and box spread, and states how the System will define a complex order as a debit or credit. See *id.* at 77041-43; see also proposed Exchange Rule 6.53C, Interpretation and Policy .08(c). These checks will also apply to buy auction responses and pairs of orders submitted to AIM, SAM, or as a QCC order. See proposed Exchange Rule 6.53C, Interpretation and Policy .08(c)(4)-(5); see also Notice, *supra* note 3, at 77043.

<sup>15</sup> See proposed Exchange Rule 6.53C, Interpretation and Policy .08(g); see also Notice, *supra* note 3, at 77044-45.

<sup>16</sup> See Notice, *supra* note 3, at 77044-45. The proposed check will also apply to auction responses and pairs of orders submitted to AIM, SAM, or as a QCC order. See *id.*

<sup>17</sup> 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

facilitating 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.

The Commission believes that the proposed new price protection mechanisms are reasonably designed to promote just and equitable principles of trade to the extent they are able to mitigate potential risks associated with market participants entering orders at what CBOE believes are clearly unintended prices and executing trades at prices that are both extreme and potentially erroneous.<sup>19</sup> Specifically, the Commission believes that the proposed price protection for simple orders to buy put and call options based on the strike price or underlying value, respectively, is designed to promote fair and orderly markets and protect investors by rejecting quotes and orders that exceed the strike price for puts and the value of the underlying for calls, which may likely have occurred due to human or operational error. The Commission also believes that the proposed quote inverting NBBO check is reasonably designed to promote just and equitable principles of trade by preventing potential price dislocation that could result from erroneous Market Maker quotes sweeping through multiple price points.<sup>20</sup>

In addition, the proposed enhanced price checks that would apply to complex orders, including the debit and credit price reasonability checks and the maximum value acceptable price range checks, are designed to mitigate the potential risks associated with complex orders trading at prices that likely are inconsistent with their strategies and could potentially result in erroneous executions.<sup>21</sup> Furthermore, the Commission believes that the proposed maximum value acceptable price range adds a second layer of price protection to complex strategies that is reasonably designed to mitigate the potential risks associated with orders that have complex strategies with quantifiable maximum values trading at prices that are potentially erroneous.<sup>22</sup>

Accordingly, for the reasons discussed above, the Commission believes that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 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-2015-107 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2015-107. 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-2015-107 and should be submitted on or before February 17, 2016.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Commission finds good cause, pursuant to section 19(b)(2) of the Act, to approve the proposed rule change, as

modified by Amendment Nos. 1 and 2, prior to the 30th day after the date of publication of Amendment No. 2 in the **Federal Register**. As discussed above, Amendment No. 2 clarified that the Exchange will notify Trading Permit Holders by electronic message if the Exchange determines that the put strike price or call underlying value check should not apply in the interest of maintaining a fair and orderly market under proposed Exchange Rule 6.14(a)(ii).<sup>23</sup> CBOE also represented in Amendment No. 2 that the Exchange will document, retain, and periodically review any Exchange decision to not apply the put check or call check under proposed Exchange Rule 6.14(a)(ii), including the reason for the decision.<sup>24</sup> Lastly, in Amendment No. 2, CBOE clarified that the potential range of the percentage amount it will use to calculate the maximum value acceptable price range check in proposed Exchange Rule 6.53C, Interpretation and Policy .08(g)(1)(iii), is between 1% and 5%.<sup>25</sup> The Commission believes that these changes provide greater clarity and remove any possible uncertainty regarding the potential exercise of Exchange discretion with regard to the proposed price protection mechanisms. In particular, the representation about documenting, retaining, and periodically reviewing decisions to suspend a price check will enable CBOE to monitor the actions of its senior Help Desk personnel and assure that the suspension of any price check is appropriate and consistent with CBOE's responsibilities as a self-regulatory organization and the principles articulated in the Act that are applicable to exchanges. Further, clarifying the possible range of the maximum value acceptable price range provides valuable information to Trading Permit Holders to help them better understand and evaluate this price protection functionality. Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis, pursuant to section 19(b)(2) of the Act.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>26</sup> that the proposed rule change (SR-CBOE-2015-107), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

<sup>23</sup> See Amendment No. 2, *supra* note 4.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> 15 U.S.C. 78f(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

<sup>19</sup> See Notice, *supra* note 3, at 77045.

<sup>20</sup> See Notice, *supra* note 3, at 77045.

<sup>21</sup> See Notice, *supra* note 3, at 77046.

<sup>22</sup> See Notice, *supra* note 3, at 77046.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Brent J. Fields,**

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76967; File No. SR-NASDAQ-2016-004]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NOM Rules at Chapter XV, Section 2

January 22, 2016.

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> notice is hereby given that, on January 11, 2016, 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 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 Chapter XV, entitled “Options Pricing,” at Section 2, which governs pricing for Exchange members using the NASDAQ Options Market (“NOM”), the Exchange’s facility for executing and routing standardized equity and index options.

The Exchange purposes [sic] to amend its NOM Market Maker<sup>3</sup> and Non-NOM Market Maker<sup>4</sup> Fees for Removing Liquidity in Penny Pilot Options to offer Participants an incentive to direct a greater amount of order flow to NOM

from January 11, 2016 through January 29, 2016.

The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaq.cchwallstreet.com>, at 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 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 certain amendments to the NOM transaction fees set forth at Chapter XV, Section 2 for executing and routing standardized equity and index options under the Penny Pilot Options program. The Exchange desires to incentivize NOM Participants to add an even greater amount of liquidity to NOM from January 11, 2016 through January 29, 2016. Specifically, the Exchange proposes to incentivize Participants by offering the opportunity to reduce the NOM Market Maker and Non-NOM Market Maker Penny Pilot Options Fees for Removing Liquidity from \$0.50 to \$0.48 per contract, for the time period from January 11, 2016 through January 29, 2016, provided the Participant adds 1.30% of Customer,<sup>5</sup> Professional,<sup>6</sup>

Firm,<sup>7</sup> Broker-Dealer<sup>8</sup> or Non-NOM Market Maker liquidity and the Participant is (i) both the buyer and seller or (ii) the Participant removes liquidity from another Participant under Common Ownership.<sup>9</sup>

This incentive offer will not apply to volume transacted prior to January 11, 2016 or after January 29, 2016.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>10</sup> in general, and with Section 6(b)(4) and 6(b)(5) of the Act,<sup>11</sup> 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 the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Attracting order flow to the Exchange benefits all Participants who have the opportunity to interact with this order flow.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’. . . .”<sup>12</sup> Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets and this proposal

<sup>7</sup> The term “Firm” or (“F”) applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

<sup>8</sup> The term “Broker-Dealer” or (“B”) applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

<sup>9</sup> The term “Common Ownership” shall mean Participants under 75% common ownership or control. Common Ownership shall apply to all pricing in Chapter XV, Section 2 for which a volume threshold or volume percentage is required to obtain the pricing.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>12</sup> *Id.* [sic] at 539 (quoting Securities Exchange Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21) at 73 FR at 74782-74783).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The term “NOM Market Maker” is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

<sup>4</sup> A “Non-NOM Market Maker” is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

<sup>5</sup> The term “Customer” or (“C”) applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a “Professional” (as that term is defined in Chapter I, Section 1(a)(48)).

<sup>6</sup> The term “Professional” or (“P”) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.