submit a license amendment application for the design and installation of the replacement steam generators. The petitioner also requests that the NRC suspend the licenses for Units 2 and 3, until they are amended.

As the basis for this request, the petitioner states that SCE violated Title 10 of the *Code of Federal Regulations* (10 CFR) 50.59 when it replaced its steam generators in 2010 and 2011 without first obtaining NRC approval of the design changes via a license amendment.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time.

Further, FOE submitted on April 4, 2013, a cover letter and technical review entitled *Review of Tube Wear Identified in the San Onofre Replacement Steam Generators—Mitsubishi Reports UES–20120254 Rev.0 (3/64) and L5–04GA588(0) together with Other Relevant Information* conducted by Large & Associates, Consulting Engineers retained by FOE (ADAMS Accession No. ML13116A266 and ML13116A267, respectively). The PRB will also consider the safety significance and complexity of this information and determine if the information should be consolidated with the existing petition, or if it will be treated as a new petition.

A copy of the transcript of the January 16, 2013, meeting is available at ADAMS Accession No. ML13029A643.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 30th day of April 2013.

**Daniel H. Dorman,**

*Deputy Director for Engineering and Corporate Support, Office of Nuclear Reactor Regulation.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69513; File Nos. SR–NYSE–2013–08; SR–NYSEMKT–2013–07]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting Approval to Proposed Rule Changes Amending the Attestation Requirement of Rule 107C (NYSE) and 107C—Equities (NYSE MKT) To Allow a Retail Member Organization To Attest That ''Substantially All'' Orders Submitted to the Retail Liquidity Program Will Qualify as ''Retail Orders''

May 3, 2013.

### I. Introduction

On January 17, 2013, the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'' and together with NYSE, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes to allow Retail Member Organizations (''RMOs'') to attest that ''substantially all,'' rather than all, orders submitted to the Exchanges' respective Retail Liquidity Programs (''Programs'') qualify as ''Retail Orders.'' The proposed rule changes were published for comment in the **Federal Register** on February 4, 2013.[3] The Commission received one comment on the proposals.[4] On March 20, 2013, the Commission extended the time for Commission action on the proposed rule changes until May 5, 2013.[5] The Exchanges submitted a response to the comment letter on April 2, 2013.[6] This order approves the proposed rule changes.

### II. Description of the Proposals

The Exchanges began operating their respective Programs after they were approved by the Commission on a pilot basis in July, 2012.[7] Under the current rules, a member organization that wishes to participate in the Programs as an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that ''any order'' submitted as a Retail Order [8] will qualify as such under Rule 107C.[9]

The proposals seek to lessen the attestation requirements of RMOs that submit ''Retail Orders'' eligible to receive potential price improvement through participation in the Programs. Specifically, the Exchanges propose to amend Rule 107C (NYSE) and 107C—Equities (NYSE MKT) to provide that an RMO may attest that ''substantially all''—rather than all—of the orders it submits to the Program are Retail Orders as defined in Rule 107C.

The Exchanges represented that they believe the categorical nature of the current ''any order'' attestation requirement is preventing certain member organizations with retail customer business from participating in the Programs. According to the Exchanges, some of these member organizations that wish to participate in the Programs represent both ''Retail Orders,'' as defined in Rule 107C(a)(3), as well as other agency flow that may not meet the strict definition of ''Retail Order.'' The Exchanges understand that, due to technical limitations in order management systems and routing networks, such member organizations may not be able to fully segregate Retail Orders from other agency, non-Retail Order flow. As a result, the Exchanges believe that some member organizations choose not to participate in the Program because they cannot satisfy the current categorical attestation requirement, although they could satisfy the proposed ''substantially all'' requirement.

The Exchanges clarified in their proposals that the ''substantially all'' standard is meant to allow only *de minimis* amounts of orders to participate in the Programs that do not meet the definition of a Retail Order in Rule 107C and that cannot be segregated from bona fide Retail Orders due to

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 68747 (Jan. 28, 2013), 78 FR 7824 (SR–NYSE–2013–08); and 68746 (Jan. 28, 2013), 78 FR 7842 (SR–NYSEMKT–2013–07).

[4] *See* Letter to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (SIFMA), dated March 11, 2013.

[5] *See* Securities Exchange Act Release No. 69187, 78 FR 18402 (March 26, 2013).

[6] *See* Letter to the Commission from Janet McGinnis, General Counsel, NYSE Markets, dated April 2, 2013 (''Exchanges' Response Letter'').

[7] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (''RLP Approval Order'').

[8] A Retail Order is defined in Rule 107C(a)(3) as ''an agency order or a riskless principal order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[9] Given that the rules governing the NYSE and NYSE MKT Retail Liquidity Programs are virtually identical, and that the rationale for the adoption of the proposed rule text is the same, references to the text of NYSE Rule 107C in this order and the rationale for its adoption, unless otherwise noted, apply equally to NYSE MKT Rule 107C—Equities.

systems limitations. Under the proposals, the Exchanges would require that RMOs retain in their books and records adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchange.[10]

**III. Comment Letters and the Exchanges' Responses**

The Commission received one comment on the proposals. The comment letter expressed concern over the proposed ''substantially all'' attestation requirement primarily for four reasons.

First, the comment letter questioned whether the proposals would undermine the rationale on which the Commission approved the Retail Liquidity Programs. According to the commenter, when the Commission granted approval to the Programs, along with exemptive relief in connection with the operation of the Programs, it did so with the understanding that the Programs would service ''only'' retail order flow. To the extent the proposals would potentially allow non-Retail Orders to receive price improvement in the Programs, the commenter suggested that the Commission should reexamine its rationale for granting the exemptive relief relating to the Programs.

In response, the Exchanges noted that the proposed amendments are designed to permit isolated and *de minimis* quantities of agency orders that do not qualify as Retail Orders to participate in the Programs, because such orders cannot be segregated from Retail Orders due to systems limitations. The Exchanges also noted that several significant retail brokers choose not to participate in the Programs currently because of the categorical ''any order'' standard, and that the proposed ''substantially all'' standard would allow the significant amount of retail order flow represented by these brokers the opportunity to receive the benefits of the Programs. Additionally, the Exchanges note that the Programs are designed to replicate the existing practices of broker-dealers that internalize much of the market's retail order flow off-exchange, and that the Programs, as modified by the ''substantially all'' proposals, would offer a competitive and more transparent alternative to internalization.

Second, the commenter expressed its belief that the Exchanges did not sufficiently explain why retail brokers are not able to separate all Retail and non-Retail Orders, and thereby satisfy the current attestation requirement. The commenter expressed its belief that the Commission should require additional explanation as to how retail brokers could satisfy the proposed ''substantially all'' standard if they could not satisfy the current standard, including an analysis of the costs and benefits to retail brokers of implementing technology changes to identify orders as Retail or non-Retail. Furthermore, the commenter suggested that the Exchanges' proposals are at odds with the situation found in options markets where exchanges and brokers distinguish between public and professional customers—a distinction the commenter analogized to the Retail v. non-Retail distinction.

The Exchanges responded that several retail brokers have explained that their order flow is routed in aggregate for retail execution purposes and that a *de minimis* amount of such flow may have been generated electronically, thus not meeting the strict Retail Order definition. According to the Exchanges, these retail brokers have chosen not to direct any of their significant shares of retail order flow to the Programs because the cost of complying with the current ''any order'' standard, such as implementing any necessary systems changes, is too high. The Exchanges represented that the retail brokers have indicated their willingness to comply with the proposed ''substantially all'' standard, as well as their ability to implement the proposed standard on their systems with confidence. The Exchanges further responded that the distinction between public and professional customers in the options market is not like distinction between Retail and non-Retail Orders; the former distinction turns on volume and is thus an easier bright-line threshold to implement, while the distinction between Retail and non-Retail Orders turns on whether the order originated from a natural person, which imposes a higher threshold for order flow segmentation purposes.

Third, the commenter contended that the proposed ''substantially all'' standard is overly vague. According to the commenter, the Exchanges' proposed guidance on what constitutes ''substantially all'' is so vague that it could allow a material amount of non-retail order flow to qualify for the Programs. The commenter suggested that, should the Commission approve the proposals, it should first establish a bright-line rule to define what constitutes ''substantially all'' retail order flow.[11]

The Exchanges responded that the proposals represent only a modest modification of the attestation requirement. In this respect, the Exchanges noted that the proposals would permit only isolated and *de minimis* quantities of agency orders to participate in the Programs that do not satisfy the strict definition of a Retail Order but that cannot be segregated from Retail Orders due to systems limitations. Furthermore, the Exchanges noted that an RMO's compliance with this requirement would be monitored and subject to books and record-keeping requirements.

Fourth, the commenter stated that the proposals may cause an exponential increase in monitoring and recordkeeping burdens associated with the Programs. The commenter expressed its belief that it could be especially difficult for the Exchanges not just to identify non-retail order flow, but also to monitor whether such flow exceeded a *de minimis* amount. The commenter also questioned whether the potential difficulty of the Exchanges monitoring their respective Programs might increase the likelihood that members may be subject to unfair discrimination in the Programs' approval and disqualification process.

In response, the Exchanges note that they will issue Trader Alerts to provide clear guidance on how the ''substantially all'' standard will be implemented and monitored. The Exchanges also noted that the Programs are designed to attract as much retail order flow as possible, and that, should RMOs begin submitting substantial amounts of non-retail order flow, Retail Liquidity Providers would become less willing to participate in the Programs. Finally, the Exchanges disagreed with the commenter's statement that a standard that provides a *de minimis* number of exceptions would be any harder to enforce than an standard that permitted no exceptions.

**IV. Discussion and Commission Findings**

After careful review of the proposals, the comment letter received, and the Exchanges' response, the Commission

[10] The Exchanges note that the Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchanges, will review a member organization's compliance with these requirements.

[11] The commenter cited one example where a ''de minimis'' transaction is defined in 17 CFR 242.101(b)(7), in connection with a distribution of securities, as ''less than 2%.''

finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,[13] 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 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; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the proposed ''substantially all'' standard is a limited and sufficiently-defined modification to the Programs' current RMO attestation requirements that does not constitute a significant departure from the Programs as initially approved by the Commission.[14] The proposals make clear that to comply with the standard, RMOs may submit only isolated and *de minimis* amounts of agency orders that cannot be segregated from Retail Orders due to systems limitations.[15] Furthermore, as the Exchanges note, RMOs will need to adequately document their compliance with the ''substantially all'' standard in their books and records. Specifically, an RMO would need to retain adequate documentation that substantially all orders sent to the Exchanges as Retail Orders met that definition, and that those orders not meeting that definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are *de minimis* in terms of the overall number of Retail Orders sent to the Exchanges. The Commission also notes that FINRA will monitor an RMO's compliance with this requirement.

Additionally, the Commission finds that the Exchanges have provided adequate justification for the proposals. The Exchanges represented that, as several significant retail brokers explained to them, the current ''any order'' standard is effectively prohibitive, given the brokers' order flow aggregation and management systems. The Exchanges further represented that these retail brokers indicated their systems would allow them to comply with the ''substantially all'' standard, as proposed. By allowing these retail brokers to participate in the Programs, the proposals could bring the potential benefits of the Programs, including price improvement and increased transparency,[16] to the retail order flow that these brokers represent.[17]

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[18] that the proposed rules changes (SR–NYSE–2013–08; SR–NYSEMKT–2013–07) be, and hereby are, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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[12] In approving the proposals, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Commission notes that it approved the Programs on a pilot basis subject to ongoing Commission review.

[15] While the Commission recognizes the potential benefit of the commenter's suggestion concerning a bright-line definition of *de minimis, see supra* note 11, the Commission believes that, in light of the facts surrounding the instant proposals, the proposals, and the guidance that the Exchanges will provide to their members on this point, are sufficiently clear. The Commission also notes that the example the commenter cites is found in Regulation M, which governs different circumstances than those at issue here.

[16] For a more detailed discussion of the Program's potential benefits, *see* RLP Approval Order, *supra* note 7.

[17] The commenter also expressed concern that this proposal may increase the burden upon the Exchanges in monitoring compliance with the Programs. The Commission finds that any potential concerns raised by this assertion, which are disputed by the Exchanges, are outweighed by the potential benefits of the proposals; namely, that the proposals may allow more retail orders the opportunity to participate in the Programs and receive the attendant benefits of the Programs. With respect to the commenter's concern that members may be subject to unfair discrimination in the approval and disqualification process for participation in the Programs, the Commission notes that it previously found that the Programs' provisions concerning the certification, approval, and potential disqualification of RMOs and Retail Liquidity Providers are not inconsistent with the Act. *See* RLP Approval Order, *supra* note 7.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–69512; File No. SR–BOX–2013–23]**

## Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change To Provide for the Manner in Which Mini Options Will Trade as a Complex Order Pursuant to BOX Rule 7240

May 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

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

The Exchange proposes to amend BOX Rule 7240 (Complex Orders). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

### 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 self-regulatory organization 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 self-regulatory organization 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 purpose of the proposed rule change is to provide for the manner in which Mini Options will trade as a Complex Order pursuant to BOX Rule

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

[2] 17 CFR 240.19b–4.