

## Information Circular IC13-024

**Date:** March 11, 2013

**To:** Trading Permit Holders

**From:** CBSX

**RE:** Rule Change Relating to Implementation of an Amended Equity Participation Entitlement Program

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### Overview

The CBOE Stock Exchange, LLC ("CBSX") filed a rule change relating to its implementation of an amended equity participation entitlement program ("EPE" or the "Program") pursuant to which EPE Units ("Units") may be awarded to Program participants ("Participants") that would represent the right to acquire Series B shares of CBSX pursuant to the terms of the Program. Units are awarded to participants based on, among other things, a participating Trading Permit Holder's ("TPH") trading volumes executed on CBSX, as such volumes compare to the total consolidated average volume adjusted for odd-lot trades ("TCAV") over two fixed measurement periods.

This Circular is meant to inform CBSX participants of the Program, provide a brief description of the Program, and instruct interested parties to contact CBSX for further Program details, as well as announce the Enrollment Period pursuant to the Program. Additional details regarding the Program are contained in rule change SR-CBOE-2013-031.

### Enrollment Period

CBSX requests that any CBSX TPH interested in participating in the Program should send an email indicating such interest to the CBSX Help Desk at [cbsxhelpdesk@cboe.com](mailto:cbsxhelpdesk@cboe.com) by the close of trading on Monday March 25, 2013. After indicating interest, a TPH will receive further information about the administration of the Program, including a description of the Enrollment Period and the planned effective start date of the Program. Indicating interest does not bind the TPH to participate in the Program.

### Eligibility

All owners of Series B shares of CBSX at the date of effectiveness of the Program, and any other TPH that purchases Series B Shares in an amount equaling 0.01% of the outstanding CBSX equity and otherwise qualifies for Program participation in an Enrollment Period, may request designation as a Participant under the Program. The CBSX board of directors has authorized the issuance sale of Series B shares to TPHs in connection with the Program. In addition, to be designated as a Participant: (i) an applicant must be a TPH in good standing on CBSX; (ii) an applicant must qualify as an "accredited investor" as such term is defined in Regulation D of the Securities Act of 1933, as amended (the "Securities Act"); and (iii) an applicant must have executed all required documentation for Program participation. All applicants will be subject to the same eligibility and designation criteria, and all Participants will participate in the Program on the same terms, conditions and restrictions. The CBSX board of directors or its designee will determine whether applicants satisfy the eligibility criteria and will designate eligible TPHs as Participants.

A qualifying owner of Series B shares designated to participate in the Program will become a Participant as of the date of its acceptance of such designation and will continue to participate under the Program until the earlier of the date the Participant no longer owns any Series B shares or the Program is terminated.

### **EPE Unit Earning Formula**

#### Measurement Period One EPE Unit Earn-Out.

A Participant will be eligible to earn EPE Units in Measurement Period One provided that the Participant is and remains a TPH in good standing of CBSX and has achieved the MADV during such period. "Measurement Period One" means the period of time commencing on the date specified as the effective start date of the Program and ending on the earlier of the date of the occurrence of a liquidity event or the third anniversary of the effective start date of the Program. "MADV" means a "minimum average daily volume" of executions by the Participant at CBSX that equals at least 0.25% of TCAV. Upon achieving the MADV, a Participant will receive EPE Units in an amount equal to CBSX outstanding equity (an "Earn-Out Percentage") of one and four tenths percent (1.4%). For each one hundredth of one percent (0.01%) contribution of TCAV above MADV, the Participant's EPE Unit Earn-Out will increase sixteen hundredths of one percent (0.16%) up to a maximum of 15% of CBSX outstanding equity (the "Measurement Period One Cap"). In no event may such number of EPE Units exceed the Measurement Period One Cap. Notwithstanding the foregoing, in the event any of certain liquidity events occurs in the first year of Measurement Period One, the EPE Unit Earn-Out may not exceed seven and a half percent (7.5%).

#### Measurement Period Two EPE Unit Earn-Out.

A Participant will be eligible to earn EPE Units in Measurement Period Two provided that the Participant is and remains a TPH in good standing of CBSX and that the Participant achieved the MADV in Measurement Period One. "Measurement Period Two" means the period of time commencing on the third anniversary of the effective start date of the Program, and ending on the earlier of the date of the occurrence of a liquidity event or the fifth anniversary of the effective start date of the Program. No EPE Units will be earned for contributions of TCAV by Participant that is less than the MADV during Measurement Period Two. For each one hundredth of one percent (0.01%) contribution of TCAV above MADV in Measurement Period Two, the Participant will receive an EPE Unit Earn-Out of five hundred eighty seven ten thousandths of one percent (0.058706%), up to a maximum of 5% of CBSX outstanding equity (the "Measurement Period Two Cap"). In no event may such number of EPE Units exceed the Measurement Period Two Cap.

Subsequent to the time that any EPE Units are credited to a Participant pursuant to the EPE Unit earning formula, such EPE Units will be subject to proportional adjustment for stock splits, stock dividends, recapitalizations and similar changes in the capital structure of CBSX. Notwithstanding the foregoing, for purposes of clarity with respect to this paragraph, the Participant Cap will continue to apply, and the Participant Cap may not be exceeded with respect to any Participant.

### **Maximum Number of EPE Units Issuable Under the Program and Claw-Back**

No additional EPE Units may be earned or issued under the Program if those additional EPE Units, together with the EPE Units outstanding at the time, would be convertible into Series B shares representing more than 33% of CBSX outstanding equity (the "Program Cap"). Accordingly, notwithstanding anything to the contrary, if the total number of earned EPE Units that would otherwise be issued to all Participants after any Measurement Period before applying any adjustment of the type in this sentence (the "Total Earned Units") exceeds the Program Cap, then the number of EPE Units issuable under the Program to each Participant after such Measurement Period will be determined by multiplying (A) the total number of EPE Units that the Participant has been and would otherwise be issued by (B) a fraction, the numerator of which is the number of shares reflecting a thirty-three percent (33%) interest in CBSX outstanding equity and the denominator of which is the number of Total Earned Units.

### **Conversion, Call, and Put Rights**

EPE Units earned by a Participant will, at Participant's election, automatically convert into Series B shares, and the holder thereof will have all the rights and obligations of a Series B shareholder with respect thereto, upon the occurrence of certain conversion events.

With respect to any or all Series B shares and/or EPE Units held by a Participant, CBSX will have the right to purchase from such Participant up to all of the Participant's Series B shares or EPE Units at a price based on a valuation provide by an independent third party agreed upon by CBSX and the Participant (the "Independent Auditor"). CBSX may exercise its call right at any time, in CBSX's sole discretion, after Measurement Period Two, but no more than one (1) time with respect to any Participant.

With respect to any or all Series B shares held by a Participant that have been earned under the Program, the Participant will have the right to sell to the CBSX up to all of the Participant's Series B shares so earned at a price based on a valuation provided by the Independent Auditor. The Participant may exercise its put right at any time, in the Participant's sole discretion, after two years after the occurrence of a conversion event, provided that (i) no more than 20% of Participant's ownership (as of the date of the first put exercise) may be put in any 12-month period; (ii) exercise of the put right in any given period shall be limited to the extent necessary to preclude the Independent Auditor from issuing an opinion that raises substantial doubt about CBSX's ability to continue as a going concern for the subsequent 12 months; and (iii) exercise of the put right will remain subject to the terms and conditions of Section 1.8 of the Operating Agreement. The costs of the Independent Auditor's valuation and going concern assessment will be borne solely by the Participants seeking to exercise the put right.

To exercise any conversion, call or put right, the party exercising the right must submit its intent to do so in writing to the other party not less than twenty (20) business days following the date that such right becomes exercisable. The closing of such exercise must occur as soon as reasonably practicable thereafter

### **Conversion; Conversion Ratio; Adjustments**

A Participant's earned and issued EPE Units will be convertible, but only upon the occurrence of a liquidity event or a conversion event, into the number of Series B shares that represents the applicable Earn-Out Percentage of outstanding CBSX equity at the time of conversion. If at any time prior to the date of conversion into Series B shares, CBSX subdivides (by any stock split, stock dividend, recapitalization, or otherwise) the outstanding Series B shares into a greater number of shares, or if outstanding CBSX equity is otherwise increased after the date the EPE

Units are earned and issued, the number of EPE Units owned by a Participant and convertible will be proportionately increased to maintain a constant Earn-Out Percentage. If at any time prior to the date of conversion into Series B shares, CBSX combines (by combination, reverse stock split, or otherwise) the outstanding Series B shares into a smaller number of shares, or if outstanding CBSX equity is otherwise decreased after the date the EPE Units are earned and issued, the number of EPE Units owned by a Participant and convertible will be proportionately decreased to maintain a constant Earn-Out Percentage. Any adjustment under this anti-dilution mechanism to EPE Units earned by a Participant will become effective at the close of business on the date the subdivision or combination becomes effective. For purposes of clarity, this anti-dilution mechanism will apply only to EPE Units prior to conversion to Series B Shares, and will not apply to Series B Shares held by a Participant after conversion or otherwise

### **Limitations on Transferability of EPE Units**

EPE Units granted under the Program will not be transferable other than to an Affiliate or by operation of law to a successor entity of a Participant. The EPE Units and the Series B Voting shares issuable on conversion thereof have not been registered under the Securities Act of 1933, as amended (the "Act"), or any applicable state securities laws, and may not be sold, pledged or otherwise transferred unless the same have been registered and qualified in accordance with the Act and applicable state securities laws, or in the opinion of counsel reasonably satisfactory to the Company, such registration and qualification is not required. This limitation is in addition to further restrictions that are set forth in the Program.

### **Records of EPE Units Earned**

EPE Units will be earned and issued on the day following the end of the applicable Measurement Period. EPE Units will not be certificated. A statement of account, reflecting EPE Units credited to, and standing in the name of, the Participant under the Program, will be provided periodically to each Participant.

### **Definitive Documents**

This information circular is for informational purposes only and is not a substitute for the definitive Program documents, which are available upon request to interested parties. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the definitive Program documents. Interested parties should consult such definitive Program documents for all terms, conditions, and other relevant information respecting the Program.

### **Contact Information**

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