

charged are designed to defray expenses incurred or resources expended by the Exchange.<sup>13</sup> For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein, the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.<sup>14</sup> Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

<sup>14</sup> A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSEArca-2012-63) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Elizabeth M. Murphy**,  
Secretary.

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**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67668; File No. SR-CBOE-2012-078]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

August 15, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("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 comment 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 the Fees Schedule of its CBOE Stock Exchange ("CBSX"). The text of the proposed rule change is available on the Exchange's Web site (<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.

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

##### 1. Purpose

CBSX recently moved its trading systems over to the Equinix NY4 facility ("NY4"). In addition to 1 Gigabit Ethernet network access, NY4 has capacity to accommodate 10 Gigabit Ethernet network access. The Exchange made such a connection available to CBSX market participants, and wants to encourage market participants to connect to CBSX via a 10 Gigabit Network Access Port in order to receive higher-speed executions (which is important in today's marketplace). Due to the newness of this NY4 system to CBSX, the Exchange wishes to ensure that market participants feel comfortable connecting to CBSX via the 10 Gigabit Network Access Ports and assuage any kind of concerns CBSX market participants may have regarding any kind of possible disruption in access to CBSX via the 10 Gigabit Network Access Ports. Therefore, CBSX now proposes to add a sentence to its Fees Schedule stating that participants requesting a 10 Gigabit Network Access Port to access CBSX are eligible to receive (upon request) one redundant 10 Gigabit Network Access Port at no extra charge.

##### 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.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>4</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Providing CBSX market participants who access the CBSX System via a 10 Gigabit Network Access Port on NY4 the opportunity to request a redundant 10

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78f(b).

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

Gigabit Network Access Port to act as a backup is reasonable because such market participants will receive a backup redundant 10 Gigabit Network Access Port free of charge.

Providing CBSX market participants who access the CBSX System via a 10 Gigabit Network Access Port on NY4 the opportunity to request a redundant 10 Gigabit Network Access Port to act as a backup while not providing the same opportunity to CBSX market participants who access the CBSX System via a 1 Gigabit Network Access Port is equitable and not unfairly discriminatory because providing such opportunity would cause an increase in the price of accessing the CBSX System via a 1 Gigabit Network Access Port. Moreover, as faster access continues to grow in importance to trading and CBSX continues to develop technologies that provide faster access to CBSX, CBSX wants to encourage the election to connect to CBSX via a higher-speed Network Access Port in order to provide better trading opportunities on CBSX. Further, while a 10 Gigabit Network Access Port connection is more costly than a 1 Gigabit Network Access Port connection, considering the fact that a 10 Gigabit Network Access Port provides a connection that is ten times faster than a 1 Gigabit Network Access Port, a 10 Gigabit Network Access Port actually provides a less expensive connection on a per-Gigabit basis.<sup>5</sup> Finally, any CBSX market participant may elect to connect to CBSX via a 10 Gigabit Network Access Port (and therefore be eligible to request a redundant 10 Gigabit Network Access Port).

#### *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.

#### *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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>6</sup> of the Act and paragraph (f)

of Rule 19b-4<sup>7</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-078 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-2012-078. 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 such 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-2012-078 and should be submitted on or before September 12, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2012-20571 Filed 8-21-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67669; File No. SR-NYSEArca-2012-62]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Provide for Additional Co-location Services and Establish Related Fees**

August 15, 2012.

#### **I. Introduction**

On June 13, 2012, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("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 proposed rule change to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.<sup>4</sup> The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<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. 67263 (June 26, 2012), 77 FR 39305 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

<sup>5</sup> See CBSX Fees Schedule, Section 8.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f).