

*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-CFE-2012-001 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-CFE-2012-001. 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 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 offices 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-CFE-2012-001, and should be submitted on or before November 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68095, File No. SR-CBOE-2012-085]

**Self-Regulatory Organizations;  
Chicago Board Options Exchange,  
Incorporated; Order Approving  
Proposed Rule Change Relating to the  
Complex Order Auction Process**

October 24, 2012.

**I. Introduction**

On August 30, 2012, the Chicago Board Options Exchange ("Exchange" or "CBOE") 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 modify CBOE Rule 6.53C(d), "Process for Complex Order RFR Auction," to: (i) Include the side of the market in the request for response ("RFR") message sent to Trading Permit Holders at the start of a Complex Order Auction ("COA"); and (ii) require responses to an RFR message ("RFR Responses") to be on the opposite side of the market from the order being auctioned in a COA. The proposed rule change was published for comment in the *Federal Register* on September 17, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

COA is an automated RFR auction process for COA-eligible orders.<sup>4</sup> On receipt of a COA-eligible order and a request from the Trading Permit Holder representing the order that the order be subjected to a COA, CBOE sends an RFR message to all Trading Permit Holders that have elected to receive RFR messages.<sup>5</sup> The RFR message identifies the component series, the size of the COA-eligible order, and any contingencies, if applicable, but not the side of the market (*i.e.* whether the order is to buy or to sell).<sup>6</sup> Responders to the COA, who do not know the side of the market of the order being auctioned, may submit RFR Responses on both

sides of the market.<sup>7</sup> Because RFR Responses on the same side of the market as the COA-eligible order cannot trade with the order and thus are unnecessary, CBOE's trading system automatically rejects these RFR Responses.<sup>8</sup>

The Exchange proposes to amend CBOE Rule 6.53C(d) to: (i) Include the side of the market in the RFR message sent to Trading Permit Holders at the start of a COA; and (ii) require RFR Responses to be on the opposite side of the market from the order being auctioned in a COA. CBOE believes that these proposed changes will make the COA process more efficient by eliminating the entry of unnecessary RFR Responses that cannot trade with the COA order.<sup>9</sup> CBOE also believes that this increased efficiency could lead to more meaningful and competitively priced RFR Responses, which could result in better prices for customers.<sup>10</sup>

**III. Discussion**

After careful consideration of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>11</sup> The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed 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. More specifically, the Commission believes that the proposal could improve the efficiency of the COA process by eliminating unnecessary RFR Responses, which otherwise would have been rejected automatically by CBOE's trading system.

**IV. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the

<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. 67827 (September 11, 2012), 77 FR 57171 ("Notice").

<sup>4</sup> A "COA-eligible order" is a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type, and complex order origin type. See CBOE Rule 6.53C(d)(i)(2).

<sup>5</sup> See CBOE Rule 6.53C(d)(ii).

<sup>6</sup> See *id.*

<sup>7</sup> See Notice, *supra* note 3, at 57172.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

<sup>11</sup> 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>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

proposed rule change (SR-CBOE-2012-085) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68099; File No. SR-NYSEARCA-2012-115]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Change the Monthly Cost for Option Trading Permits

October 24, 2012.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act"),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on October 16, 2012, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 the NYSE Arca Options Fee Schedule ("Fee Schedule") to change the monthly cost for Option Trading Permits ("OTPs"). The text of the proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://www.nyse.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 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 those 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 parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend its Fee Schedule to change the monthly cost for OTPs. The Exchange proposes to make the change immediately operative.

The Exchange requires that a Market Maker have an OTP in order to operate on the Exchange. For electronic Market Making, a Market Maker must have four OTPs in order to submit electronic quotations in every class on the Exchange. These four Market Maker OTPs also permit the firm to have at least one trader on the Floor of the Exchange as a Floor-based open outcry Market Maker. However, the manner in which those OTPs are assigned to individual traders may reduce the permissible number of issues in which electronic quotes are assigned. For instance, two associated Market Makers may assign OTP 1, 2, and 3 to trader A, while the fourth is assigned to trader B. Trader A may now only stream quotes electronically in 750 issues, while trader B may submit quotes electronically in 100 issues. To retain the appointment in more than 750 issues, all four OTPs must be in the same name, and to have an additional individual Market Maker on the Floor, a fifth OTP must be acquired.

To remain competitive in fixed fees among exchanges with trading floors, the Exchange is proposing to reduce the cost of additional Market Maker OTPs beyond the minimum of four that are required to submit electronic quotations in all issues listed on the Exchange. Accordingly, the Exchange proposes to specify that the existing fee of \$4,000 per OTP per month would apply to a Market Maker firm that has between one and four Market Maker OTPs.<sup>4</sup> The Exchange would also specify that a Market Maker firm would be charged \$2,000 per OTP per month for each additional Market Maker OTP. As described above, each additional Market Maker OTP would permit the Market Maker firm, which already has the ability to make electronic markets in every class on the Exchange, to have an

additional trader on the Floor of the Exchange as an open outcry Market Maker.

The Exchange also proposes to adopt a similar reduction for additional OTPs for Floor Brokers as well as for Office and Clearing Firms.<sup>5</sup> In this regard, a firm is required to have one OTP per trader that operates as a Floor Broker on the Exchange. The OTP permits the Floor Broker to accept orders from all other firms and in all classes traded on the Exchange. However, for operational or administrative reasons, Floor Brokers often require an additional OTP in order to have sufficient clerical staff to satisfy their order entry obligations, including that orders be entered into the Exchange's systems via the Electronic Order Capture Device ("EOC") prior to representation in the Trading Crowd.<sup>6</sup> The additional OTP is assigned to the same Floor Broker, and only that same Floor Broker may represent orders and execute trades on the Floor of the Exchange. The Exchange requires an additional OTP for each EOC login. However, the additional OTP assigned to a Floor Broker would not permit the firm to have an additional Floor Broker on the Floor.<sup>7</sup>

Accordingly, the Exchange proposes to specify that the existing fee of \$1,000 per OTP per month would apply to a Floor Broker's first OTP and a charge of \$250 per OTP per month would apply for each additional OTP.<sup>8</sup>

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not

<sup>5</sup> While the proposed change would technically apply to Office and Clearing Firms, these firms only need one OTP because they do not have personnel on the Floor of the Exchange.

<sup>6</sup> See Rule 6.1(b)(30), which defines Trading Crowd to mean all Market Makers who hold an appointment in the option classes at the trading post where such trading crowd is located and all Market Makers who regularly effect transactions in person for their Market Maker accounts at that trading post, but generally will consist of the individuals present at the trading post.

<sup>7</sup> The Exchange proposes to specify in the Fee Schedule that the additional OTP would not enable a second Floor Broker to operate on the Floor. A firm would be charged \$1,000 for an OTP for a second trader acting as a Floor Broker on the Exchange.

<sup>8</sup> The Exchange notes that this proposed change would not have an impact on a firm that currently has one Floor Broker OTP.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Exchange notes that this proposed change would not have an impact on a firm that currently has between one and four Market Maker OTPs.