

national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange's rules 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 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 CBOE's proposed rule change is designed to facilitate the production of uniform data by TPHs, which will permit the Exchange's regulatory staff to make use of the data more readily than is currently the case. In particular, Exchange staff will no longer have to take time to reconcile data that is submitted in disparate formats. In turn, this should benefit the Exchange's regulatory reviews by permitting more efficient use of Exchange resources. To this extent, the rule change is designed to help prevent fraudulent and manipulative practices, consistent with the Act, because obtaining data from TPHs in a uniform format will aid the Exchange's regulatory staff in the exercise of its regulatory authority. New Interpretations and Policies .04 should help facilitate the Exchange's decision making regarding determining causes of action and considering the appropriate regulatory response to a complaint or investigation, which will further the Act's goal of promoting just and equitable principles of trade.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2012-087) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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<sup>9</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>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68174; File No. SR-NYSEArca-2012-118]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Options Regulatory Fee and To Revise the Circumstances Under Which NYSE Arca, Inc. Will Collect the Options Regulatory Fee

November 7, 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 November 1, 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 the Substance of the Proposed Rule Change

The Exchange proposes to increase its Options Regulatory Fee ("ORF") and to revise the circumstances under which the Exchange will collect the ORF. 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.

<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.

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

##### 1. Purpose

The Exchange proposes to increase its ORF and to revise the circumstances under which the Exchange will collect the ORF.

##### Background

The ORF, which is currently \$0.004 per contract, is assessed by the Exchange on each OTP Holder or OTP Firm for all options transactions executed or cleared by the OTP Holder or OTP Firm that are cleared by The Options Clearing Corporation ("OCC") in the customer range, i.e., transactions that clear in the customer account of the OTP Holder's or OTP Firm's clearing firm at OCC, regardless of the marketplace of execution.<sup>4</sup> In other words, the Exchange imposes the ORF on all customer-range transactions executed by an OTP Holder or OTP Firm even if the transactions do not take place on the Exchange. In the case where an OTP Holder or OTP Firm executes a transaction and a different OTP Holder or OTP Firm clears the transaction, the ORF is assessed to the OTP Holder or OTP Firm who executes the transaction. In the case where a non-OTP Holder or non-OTP Firm executes a transaction and an OTP Holder or OTP Firm clears the transaction, the ORF is assessed to the OTP Holder or OTP Firm who clears the transaction.

The dues and fees paid by OTP Holders and OTP Firms go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. In particular, the ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of OTP Holder and OTP Firms, including performing routine surveillance and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange monitors the amount of revenue collected from the ORF so that, in combination with other regulatory fees and fines, it does not exceed regulatory costs. The ORF is collected indirectly from OTP Holders and OTP Firms through their clearing firms by OCC on behalf of the Exchange.

##### Proposed Change

The Exchange proposes to (1) increase the ORF from \$0.004 per contract to

<sup>4</sup> See Securities Exchange Act Release No. 64399 (May 4, 2011), 76 FR 27114 (May 10, 2011) (SR-NYSEArca-2011-20).

\$0.005 per contract in order to recoup increased regulatory expenses while also monitoring the revenue collected so that the ORF will not exceed such expenses, and (2) revise the circumstances in which the Exchange will collect the ORF from OTP Holders and OTP Firms. Transaction volumes across the industry have declined, thereby reducing ORF revenue, but the Exchange's regulatory expenses have not declined. The Exchange believes that revenue generated from the proposed ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The Exchange will continue to monitor the amount of revenue collected from the ORF so that, in combination with the Exchange's other regulatory fees and fines, it does not exceed regulatory costs. If the Exchange determines that regulatory revenues exceed regulatory costs, the Exchange will adjust the ORF by submitting a proposed rule change to the Commission.<sup>5</sup>

Additionally, the Exchange proposes to revise the manner in which it assesses the ORF. Currently, upon becoming an OTP Holder or OTP Firm, a participant immediately becomes liable for the ORF. In certain instances, particularly at the outset of becoming an OTP Holder or OTP Firm, a participant may be registered with the Exchange prior to obtaining the requisite technological certification needed to act as a Floor Broker, Market Maker, Clearing Member or Order Flow Provider. The Exchange believes that it is not equitable to assess the ORF on an OTP Holder or OTP Firm that, prior to initially satisfying certain technology requirements, is not capable of availing itself of the benefits of its status as an OTP Holder or OTP Firm.<sup>6</sup> The Exchange does not desire to assess the ORF on such OTP Holders or OTP Firms until they have satisfied applicable technological requirements necessary to commence operations on the Exchange. The proposed change will have no effect on the assessment of fees for current OTP Holders or OTP Firms that are fully certified to transact business on the Exchange, as described above. The Exchange notes that at least one other

exchange has such a provision for assessing the options regulatory fee after satisfaction of applicable technology requirements.<sup>7</sup>

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding the ORF and that the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change. The Exchange proposes to implement these changes on December 1, 2012.

## 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>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Exchange believes that the proposal is reasonable because the Exchange's revenue from the collection of the ORF has declined due to a decrease in industry volume, but the Exchange's regulatory expenses have not declined. As described above, through the ORF the Exchange seeks to recover the costs of supervising and regulating OTP Holders and OTP Firms, including performing routine surveillance and investigations, as well as policy, rulemaking, interpretive and enforcement activities. The proposed ORF increase will help to maintain the total revenue collected to offset these regulatory expenses, but would not exceed those regulatory costs. The Exchange further notes that another options exchange has raised its options regulatory fee to \$0.0065 per contract, so the Exchange's proposed ORF of \$0.005 per contract will still be below that level.<sup>10</sup>

The Exchange believes that the proposed ORF increase is equitable and not unfairly discriminatory because it is objectively allocated to all OTP Holder and OTP Firms on all of their transactions that clear in the customer range at OCC. Moreover, the Exchange believes that the ORF is equitable and not unfairly discriminatory because it results in fees being charged to those OTP Holder and OTP Firms that require more Exchange regulatory services

based on the amount of customer options business they conduct. In this regard, regulating customer trading activity is more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity. Surveillance and regulation of non-customer trading activity generally tends to be more automated and less labor intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are anticipated to be higher than the costs associated with administering the non-customer component of its regulatory program. As such, the Exchange proposes to continue to assess the ORF to those OTP Holder and OTP Firms that will require more Exchange regulatory services based on the amount of customer options business they conduct.<sup>11</sup>

The Exchange believes that the ORF will continue to be equitable and not unfairly discriminatory because the fee increase is objectively allocated to all OTP Holders and OTP Firms. The only OTP Holders or OTP Firms that would not pay the fee will be those that have not yet achieved the technical certifications that are needed to actually begin acting as a Floor Broker, Market Maker, Clearing Member or Order Flow Provider on the Exchange. The Exchange believes that this exception is reasonable, equitable and not unfairly discriminatory. Not assessing the ORF on an OTP Holder or OTP Firm that is not yet able to act in the capacity for which it is attempting to obtain certification is reasonable because the OTP Holder or OTP Firm is not yet able to generate the revenue associated with serving in that capacity. In this respect, it is equitable and not unfairly discriminatory to not begin charging the ORF until the OTP Holder or OTP Firm can generate the revenue to pay the fee. It is also equitable and not unfairly discriminatory because it will apply in an objective manner to all similarly situated OTP Holders and OTP Firms.

As noted above, the Exchange will continue to monitor the amount of revenue collected from the ORF so that, in combination with its other regulatory fees and fines, it does not exceed regulatory costs. If the Exchange determines that regulatory revenues

<sup>5</sup> The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to the Financial Industry Regulatory Authority, Inc. ("FINRA") under an SEC Rule 17d-2 agreement. The ORF is not designed to cover the cost of options sales practice regulation. See *supra* note 4.

<sup>6</sup> The Exchange anticipates that any delay in satisfying applicable technological requirements necessary to commence operations on the Exchange would be brief.

<sup>7</sup> See Securities Exchange Act Release No. 62804 (August 31, 2010), 75 FR 54688 (September 8, 2010) (SR-BX-2010-060).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See Securities Exchange Act Release No. 67597 (August 6, 2012), 77 FR 47887 (August 10, 2012) (SR-CBOE-2012-065).

<sup>11</sup> The ORF is not charged for orders that clear in categories other than the customer range (e.g., market maker orders) because OTP Holders or OTP Firms incur the costs of acquiring trading permits and through these permits are charged transaction fees, dues and other fees that go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation.

exceed regulatory costs, the Exchange will adjust the ORF by submitting a proposed rule change to the Commission.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>13</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such 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-NYSEArca-2012-118 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-NYSEArca-2012-118. 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-NYSEArca-2012-118, and should be submitted on or before December 5, 2012.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-27597 Filed 11-13-12; 8:45 am]

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68178; File No. SR-CBOE-2012-104]

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

November 7, 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 October 26, 2012, Chicago Board Options

Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site ([www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx](http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx)), at the Exchange's Office of the Secretary, and at the Commission.

#### **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 to amend its Fees Schedule to remove dividend spreads from the list of strategy executions for which fee caps apply. Under the Exchange's current Fees Schedule, Market-maker, Clearing Trading Permit Holder, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at \$1,000 for a number of strategy executions.<sup>3</sup> The cap applies to each strategy execution executed on the same trading day in the same option class. Transaction fees for these strategies are further capped at \$25,000 per month per initiating Trading Permit Holder or Clearing Trading Permit Holder (both caps described herein collectively as the "Strategy Caps").<sup>4</sup> The Strategy Caps

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

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

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

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

<sup>3</sup> See CBOE Fees Schedule, Footnote 13.

<sup>4</sup> *Id.*