execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30380 Filed 12–17–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68419; File No. TP 13–05]**

## Order Granting Exemptions From Certain Rules of Regulation SHO Related to Hurricane Sandy

December 12, 2012.

### I. Introduction

Hurricane Sandy made landfall along the mid-Atlantic Coast on October 29, 2012. The Depository Trust & Clearing Corporation (''DTCC'') reported that its headquarters location in lower Manhattan sustained significant water damage as a result of storm flooding. In particular, DTCC reported that significant flooding and water damage occurred throughout DTCC's vault at 55 Water Street (the ''Vault''), used as part of DTCC's Custody Service for the safekeeping of physical certificates. DTCC has stated that restoration of the physical certificates will take some time, possibly months. As a result, the physical certificates are considered inaccessible.[1] However, DTCC and The Securities Transfer Association, Inc. (''STA'') have recently announced an agreement on a protocol for the replacement and transfer of shares represented by the currently inaccessible physical certificates that were held in the Vault at the time Hurricane Sandy made landfall, facilitating DTCC's ability to continue physical processing.[2] Sales of owned securities, represented by physical certificates that were located in the Vault at the time Hurricane Sandy made landfall, whose settlement is dependent on the delivery of such physical certificates (or documentation with equivalent effect) (sales of ''Vault Securities''), may experience settlement delays as a result of the inaccessibility of such physical certificates.[3] Such settlement delays have implications for compliance with Regulation SHO under the Securities Exchange Act of 1934 (the ''Exchange Act'').[4] SIFMA has requested relief from certain provisions of Regulation SHO in connection with the inaccessible physical certificates that were in the Vault at the time Hurricane Sandy made landfall.[5]

The Commission is providing certain exemptions from the ''locate,'' short sale price test, and close-out requirements of Regulation SHO for sales of Vault Securities. Absent further action by the Commission, these exemptions will expire on February 1, 2013.

### II. Regulation SHO

#### *A. Marking, ''Locate,'' and Short Sale Price Test Requirements Under Rules 200, 203, and 201 of Regulation SHO*

Rule 200(g) of Regulation SHO[6] provides that broker-dealers must mark all sell orders of any equity security as ''long,'' ''short,'' or ''short exempt.'' Under Rule 200(g)(1), a broker-dealer may mark an order to sell ''long'' only if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of Rule 200 and either: (1) The security to be delivered is in the physical possession or control of the broker-dealer; or (2) it

[1] *See* ''DTCC Statement on Condition of Securities Vault,'' DTCC Press Release (Nov. 14, 2012) at *http://www.dtcc.com/news/press/releases/2012/statement_vault.php.*

[2] *See* ''DTCC and STA Agree on Protocol for Presentment of Physical Securities,'' DTCC Press Release (Nov. 20, 2012) at *http://www.dtcc.com/news/press/releases/2012/sta_statement.php.*

[3] As a result of Hurricane Sandy, DTCC did not receive any courier or mail shipments after October 26, 2012, and, as of November 1, 2012, made arrangements for all receipted packages to be routed to DTCC's recovery facility in Brooklyn, New York. In addition, processing of physical certificates was suspended between October 30, 2012, and November 2, 2012. Accordingly, the term ''Vault Securities'' does not include physical certificates submitted to DTCC for custody on or after October 29, 2012, because the settlement of sales of such securities is not dependent on the delivery of physical certificates that were located in the Vault at the time Hurricane Sandy made landfall. *See* ''DTCC Client Update on Superstorm Sandy—Current and Ongoing Operations as Markets Re-Open; Physical Certificates,'' Important Notice to All DTC, FICC and NSCC Participants (Oct. 30, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0033.pdf;* ''DTCC Client Update on Superstorm Sandy—Physical Processing and Custody Services,'' Important Notice to All DTC and NSCC Participants (Nov. 1, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0035.pdf;* ''DTCC Client Update on Superstorm Sandy,'' Important Notice to All DTC, FICC and NSCC Participants (Nov. 2, 2012) at *http://www.dtcc.com/downloads/legal/imp_notices/2012/dtcc/z0036.pdf.*

[4] 17 CFR 242.200 *et seq.*

[5] *See* letter from Ira Hammerman, General Counsel, Securities Industry and Financial Markets Association, dated Dec. 12, 2012. In its letter, SIFMA requests relief from the close-out requirement of Rule 204 of Regulation SHO and seeks ''clarification'' with respect to order marking under Rule 200 and the short sale price test restriction under Rule 201. Further, the letter from SIFMA seeks ''confirmation'' that a short sale order of a Vault Security that a person is deemed to own would qualify for ''short exempt'' marking under Rule 201(d)(1) and would meet the terms of the exception to the ''locate'' requirement in Rule 203(b)(2)(ii). However, as discussed in this Exemptive Order, absent relief, a sale of a Vault Security would not necessarily qualify for ''short exempt'' marking under Rule 201(d)(1) or for the exception to the ''locate'' requirement under Rule 203(b)(2)(ii). *See infra* notes 12 to 15 and accompanying text. Thus, we are treating SIFMA's request for ''confirmation'' as a request for relief from the ''locate'' requirement under Rule 203(b), the ''short exempt'' marking requirement under Rule 200(g)(2), and the close-out requirement under Rule 204.

[6] 17 CFR 242.200(g).

is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than the settlement of the transaction.

Pursuant to Rule 203(b) of Regulation SHO,[7] a broker-dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker-dealer has: (1) Borrowed the security, or entered into a *bona fide* arrangement to borrow the security; or (2) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due. This ''locate'' requirement must be met and documented prior to effecting a short sale.[8]

Rule 201 of Regulation SHO [9] establishes a short sale-related circuit breaker that, if triggered, imposes a restriction on the price at which a covered security [10] may be sold short (''short sale price test''). Paragraphs (c) and (d) of Rule 201 permit broker-dealers to mark certain short sale orders as ''short exempt,'' and trading centers' policies and procedures must be reasonably designed to permit the execution or display of orders marked ''short exempt'' without regard to whether the order is at a permissible price under the short sale price test.[11]

Certain types of Vault Security sales necessarily involve processing delays, notwithstanding the current inaccessibility of physical certificates that were held in the Vault at the time Hurricane Sandy made landfall. For example, this could include the sale of formerly restricted securities pursuant to Rule 144 of the Securities Act of 1933, where the security may not be capable of being delivered on the settlement date due to processing delays to remove the restricted legend. Further, processing delays could arise where a convertible security, option, or warrant has been tendered for conversion or exchange, such that the underlying security is not reasonably expected to be received by settlement date. Under these circumstances, a broker-dealer generally would not have a reasonable expectation that the securities would be in its physical possession or control by the settlement date. These types of sell orders cannot be marked ''long'' and must be marked ''short'' or ''short exempt.'' [12] The Commission has provided specific exceptions from the ''locate'' requirement and the short sale price test requirement of Regulation SHO for sales of securities that the person is deemed to own pursuant to Rule 200 of Regulation SHO, provided that the person intends to deliver the securities as soon as all restrictions on delivery have been removed.[13] In providing such exceptions, the Commission emphasized that these sales are treated as short sales solely because the seller is unable to deliver the security that it owns to its broker-dealer prior to settlement, based on circumstances outside the seller's control and through no fault of the seller or the broker-dealer.[14]

In addition, due to the inaccessibility of physical certificates in the Vault as a result of flooding from Hurricane Sandy, other sell orders for Vault Securities also may not qualify for ''long'' marking under Rule 200(g)(1).[15] In particular, a broker-dealer may not have a reasonable expectation that these Vault Securities will be in the physical possession or control of the broker-dealer by the settlement date. Absent relief, solely because the seller is unable to deliver the owned security to its broker-dealer prior to settlement due to the unusual circumstances of Hurricane Sandy that resulted in the current inaccessibility of physical certificates in the Vault, sales of these owned securities must be marked ''short'' or ''short exempt'' and may be subject to the ''locate'' and short sale price test requirements. As a result, we believe that the relief from the ''locate'' and short sale price test requirements of Regulation SHO provided by this Exemptive Order is appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[16] that a broker-dealer is exempt from the ''locate'' requirement of Rule 203(b), including the delivery requirement of Rule 203(b)(2)(ii),[17] with respect to a short sale order in a Vault Security, and is exempt from Rule 200(g)(2) with respect to such order, and thus may mark such order ''short exempt'' for purposes of the short sale price test of Rule 201 without meeting the requirements of Rule 201(c) or (d),[18] subject to the following conditions:

(a) The broker-dealer determines, prior to accepting such short sale order from another person, or effecting such short sale for its own account, that the sale is a sale of a Vault Security [19] that the seller is deemed to own pursuant to Rule 200 of Regulation SHO; [20] and

[7] 17 CFR 242.203(b).

[8] There are certain exceptions to the ''locate'' requirement in Rule 203(b)(2). *See* 17 CFR 242.203(b)(2).

[9] 17 CFR 242.201.

[10] The term ''covered security'' is defined as any NMS stock as defined in Rule 600(b)(47) of Regulation NMS. *See* 17 CFR 242.201(a)(1); 17 CFR 242.600(b)(47).

[11] *See* 17 CFR 242.201(c), (d), (b)(1)(iii)(B). Under Rule 200(g)(2), a sale order shall be marked ''short exempt'' only if the provisions of Rule 201(c) or (d) are met. *See* 17 CFR 242.200(g)(2).

[12] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48012, 48015 (Aug. 6, 2004) (''Regulation SHO Adopting Release'').

[13] *See* 17 CFR 242.203(b)(2)(ii); 242.201(d)(1); Regulation SHO Adopting Release, 69 FR at 48015; Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232, 11266 (Mar. 10, 2010) (''Rule 201 Adopting Release''). Under Rule 201(d)(1), a broker-dealer may mark a short sale order ''short exempt'' if the broker-dealer has a reasonable basis to believe that the short sale order is by a person that is deemed to own the covered security pursuant to Rule 200 of Regulation SHO, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed. *See* 17 CFR 242.201(d)(1).

[14] *See* Regulation SHO Adopting Release, 69 FR at 48015; Rule 201 Adopting Release, 75 FR at 11266.

[15] Depending on the circumstances, certain sell orders of Vault Security may be marked ''long.'' Consistent with Rule 200(g)(1) of Regulation SHO, a broker-dealer may mark a sell order of a Vault Security ''long'' if the broker-dealer has a reasonable expectation that the Vault Securities will be in the physical possession or control of the broker-dealer by the settlement date.

[16] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors. 15 U.S.C. 78mm(a).

[17] The exception to the ''locate'' requirement in Rule 203(b)(2)(ii) provides that if the seller has not delivered the security that it is deemed to own pursuant to Rule 200 of Regulation SHO within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity. *See* 17 CFR 242.203(b)(2)(ii). As discussed above, certain sell orders of Vault Securities may qualify for the exception from the ''locate'' requirement under Rule 203(b)(2)(ii). *See supra* notes 12 to 14 and accompanying text.

[18] We remind broker-dealers that, as a general matter, the ''short exempt'' marking provided by Rule 200(g)(2) is used to represent a short sale order that qualifies for an exception to the short sale price test requirement in Rule 201(d) or that meets the terms of the broker-dealer provision in Rule 201(c). The ''short exempt'' marking may not be used to represent that an exception to the ''locate'' requirement applies to the short sale order, unless the order can be marked ''short exempt'' pursuant to Rule 200(g)(2). *See* Rule 201 Adopting Release, 75 FR at 11266 n.472 (''To the extent that an exception to Regulation SHO's 'locate' requirement applies to a short sale order, such order must be marked 'short' in accordance with Rule 200(g) of Regulation SHO unless the order can be marked 'short exempt' pursuant to Rule 200(g)(2) of Regulation SHO.'').

[19] A Vault Security sale would include situations where the security to be sold, a security convertible into or exchangeable for it, or a right or warrant to subscribe to it, is represented by a physical certificate that was held in the Vault at the time Hurricane Sandy made landfall. Such determination could be based, for example, on records indicating that the sale involves a physical certificate custodied at DTCC and that the physical certificate was submitted to DTCC for custody on or before October 26, 2012. *See supra* note 3.

[20] 17 CFR 242.200.

(b) The broker-dealer documents the determination made pursuant to condition (a) above.

*B. Close-Out Requirements Under Rule 204 of Regulation SHO*

Rule 204(a) of Regulation SHO [21] generally requires that participants of a registered clearing agency (''Participants'') close out fail to deliver positions at a registered clearing agency [22] in any equity security for a sale transaction in that equity security by no later than the beginning of trading on the next settlement day after a fail to deliver resulting from a short sale (generally T+4), and no later than the beginning of trading on the third settlement day after a fail to deliver resulting from a long sale or a sale resulting from *bona fide* market making activities at the time of the sale (generally T+6). A close out is effected by purchasing or borrowing shares of like kind and quantity.

Rule 204(a)(2) provides an extended close-out timeframe (T+35) for fail to deliver positions at a registered clearing agency in any equity security resulting from a sale of a security that a person is deemed to own,[23] similar to the exceptions to the ''locate'' requirement and short sale price test requirement discussed above.[24] Thus, fails to deliver resulting from certain sales of Vault Securities would currently be eligible for the extended close-out timeframe provided by Rule 204(a)(2).[25]

Pursuant to Rule 204(b) of Regulation SHO,[26] a Participant that has not closed out a fail to deliver position in an equity security in accordance with Rule 204(a), and any broker-dealer from which the Participant receives trades for clearance and settlement, may not accept a short sale order in the equity security from another person or effect a short sale in the equity security for its own account, without first borrowing the security or entering into a *bona fide* arrangement to borrow the security, until the Participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency (the ''Penalty Box'').

SIFMA has stated that there may be situations where, in connection with the inaccessibility of the physical certificates that were located in the Vault following flooding from Hurricane Sandy, Vault Security sales may result in a CNS fail to deliver, such that Participants would be required to close out the fail to deliver position pursuant to Rule 204(a) [27] and, if they did not, would be subject to the Penalty Box.

Rule 204 is intended to help reduce fails to deliver and address potentially abusive ''naked'' short selling.[28] In providing an extended close-out timeframe for sales of deemed to own securities, the Commission stated that additional time is warranted for these sales and such additional time would not undermine the goal of reducing fails to deliver because ''these are sales of owned securities that cannot be delivered by settlement date due solely to processing delays outside the seller's or broker-dealer's control. Moreover, delivery will be made on such sales as soon as all restrictions on delivery have been removed.'' [29] We believe that, due to the inaccessibility of physical certificates that were held in the Vault at the time Hurricane Sandy made landfall, sales of Vault Securities raise similar policy considerations at this time. We do not believe that the fails to deliver that may occur as a result of Vault Security sales, due to the unusual and exigent circumstances of Hurricane Sandy, raise the concerns that Rule 204 was designed to address. Thus, we believe that the relief from the close-out requirement of Regulation SHO provided by this Exemptive Order is appropriate in the public interest and consistent with the protection of investors.

Accordingly, *it is further ordered,* pursuant to Section 36 of the Exchange Act,[30] that a Participant is exempt from the close-out requirement of Rule 204(a) [31] and the Penalty Box of Rule 204(b) [32] of Regulation SHO with respect to a fail to deliver position resulting from the sale of a Vault Security,[33] subject to the following conditions:

(a) The Participant must determine and document that the fail to deliver resulted from a sale of a Vault Security [34] that a person is deemed to own pursuant to Rule 200 of Regulation SHO; [35]

(b) The Participant must check DTCC systems on a daily basis to determine when a Vault Security, the sale of which resulted in a fail to deliver position, is available for settlement; [36]

(c) The Participant must deliver the Vault Security as soon as possible, and

[21] 17 CFR 242.204(a).

[22] The term ''registered clearing agency'' means a clearing agency, as defined in Section 3(a)(23)(A) of the Exchange Act, that is registered as such pursuant to Section 17A of the Exchange Act. *See* 15 U.S.C. 78c(a)(23)(A); 15 U.S.C. 78q–1. The majority of equity trades in the United States are cleared and settled through systems administered by clearing agencies registered with the Commission. The National Securities Clearing Corporation (''NSCC'') clears and settles the majority of equity securities trades conducted on the exchanges and in the over-the-counter market. NSCC clears and settles trades through the Continuous Net Settlement (''CNS'') system, which nets the securities delivery and payment obligations of all of its members. *See* Exchange Act Release No. 60388 (July 27, 2009), 74 FR 38266, 38268 n.35 (July 31, 2009) (''Rule 204 Adopting Release'').

[23] *See* 17 CFR 242.204(a)(2); *see also* Rule 204 Adopting Release, 74 FR at 38277 n.141. Under Rule 204(a)(2), a Participant that has a fail to deliver position resulting from a sale of a security that a person is deemed to own pursuant to Rule 200 of Regulation SHO and that such person intends to deliver as soon as all restrictions on delivery have been removed must, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity. *See* 17 CFR 242.204(a)(2).

[24] *See supra* notes 12 to 14 and accompanying text.

[25] *See* Rule 204 Adopting Release, 74 FR at 38277–38278.

[26] 17 CFR 242.204(b).

[27] 17 CFR 242.204(a).

[28] *See* Rule 204 Adopting Release, 74 FR at 38267–38269.

[29] *Id.*

[30] *See supra* note 16.

[31] 17 CFR 242.204(a).

[32] 17 CFR 242.204(b).

[33] Rule 203(b)(3) of Regulation SHO provides that if a Participant has a fail to deliver position at a registered clearing agency in a threshold security, as defined by Rule 203(c)(6), for thirteen consecutive settlement days, the Participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity. If the sale of a Vault Security resulted in a fail to deliver position in a threshold security and that fail to deliver position persisted for thirteen consecutive settlement days because the close-out date applicable under this Exemptive Order had not yet arrived, Rule 203(b)(3) would nonetheless require the Participant to close out the fail to deliver position. Accordingly, Participants are exempt from the close-out requirements of Rule 203(b)(3) with respect to fail to deliver positions in threshold securities resulting from Vault Security sales, provided that the Participants close out the fail to deliver positions in compliance with this Exemptive Order. *See* 17 CFR 242.203(b)(3).

[34] A Vault Security sale would include situations where the security sold, a security convertible into or exchangeable for it, or a right or warrant to subscribe to it, is represented by a physical certificate that was held in the Vault at the time Hurricane Sandy made landfall. Such determination could be based, for example, on records indicating that the sale involves a physical certificate custodied at DTCC and that the physical certificate was submitted to DTCC for custody on or before October 26, 2012. *See supra* note 3.

[35] 17 CFR 242.200.

[36] We understand that DTCC systems (including the Participant Browser System and the Participant Terminal System) enable Participants to verify their positions in Vault Securities and issue withdrawal instructions. We understand that these systems permit Participants, in conjunction with the Participant's own books and records, to track when Vault Securities have been debited (withdrawn) and sent to the transfer agent and when the Vault Securities are available for settlement after they have been returned to DTCC and are available for Participant pickup, are mailed directly to the customer, or are set up as a Direct Registration System account, and that Participants check these systems for completed status of physical certificate processing on a daily basis.

in any event must deliver the Vault Security or close out the fail to deliver position resulting from the Vault Security sale by purchasing or borrowing securities of like kind and quantity by no later than the beginning of regular trading hours on the fourth settlement day following the date on which the Participant determines, in accordance with condition (b) above, that the Vault Security, the sale of which resulted in the fail to deliver position, is available for settlement; [37] and

(d) The Participant's books and records must reflect that it made delivery of the Vault Security or closed out the fail to deliver position resulting from the Vault Security sale within the applicable time period, consistent with this Exemptive Order.

## III. Modification, Revocation, and Expiration of Exemptions

The exemptions granted herein are subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act, and, absent further action by the Commission, will expire on February 1, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–30427 Filed 12–17–12; 8:45 am]

**BILLING CODE 8011–01–P**

[37] For example, a Participant submitted a sale on October 16, 2012, for clearance and settlement with an original expected settlement date of October 19, 2012. The security sold was a restricted Vault Security under Rule 144 whose physical certificate was located in the Vault. The Participant determines, as a result of the daily check of DTCC systems for status of the Vault Securities, that the Vault Security is available for settlement on December 12, 2012. Normally Rule 204(a)(2) would apply and the Participant would be required to close out the resulting fail to deliver position thirty-five calendar days after trade date, on November 20, 2012. Because the Vault Security was not available due to Hurricane Sandy on November 20th, the Participant would be able to avail itself of the adjusted close-out timeframe provided in condition (c) above. In this limited instance, pursuant to this Exemptive Order, the Participant would be required to deliver the Vault Security as soon as possible, and in any event must deliver the Vault Security or close out the fail to deliver position by no later than the beginning of regular trading hours on December 18, 2012.

[38] *See* 17 CFR 200.30–3(a)(11).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 20, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Adjudicatory matters;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 13, 2012.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–30552 Filed 12–14–12; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68417; File No. SR–CBOE–2012–119]**

### 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

December 12, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 6, 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 the Fees Schedule for its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*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

CBSX proposes to increase the Initial Regulatory Review Fee from $3,000 to

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

[2] 17 CFR 240.19b–4.