

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68647; File No. SR-CHX-2013-01]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Amending Its Price With Respect to Regulatory Fees Related to the Continuing Education Regulatory Element, Certain Examinations and Central Registration Depository, Which Are Collected By the Financial Industry Regulatory Authority, Inc.

January 14, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 2, 2013, the Chicago Stock Exchange, Inc. (“CHX” or the “Exchange”) 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 CHX.<sup>3</sup> CHX has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>4</sup> which makes it effective upon filing with the Commission. 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

CHX proposes to amend its Schedule of Fees and Assessments (the “Fee Schedule”), effective January 2, 2013, relating to certain fees for services provided by the Financial Industry Regulatory Authority, Inc. (“FINRA”) to Exchange Participants who are not members of FINRA (“Non-FINRA Participants”). The text of this proposed rule change is available on the Exchange’s Web site at ([www.chx.com](http://www.chx.com)) and in 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. 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 Section J.5 of the Fee Schedule to update certain fees for education, examination and Web Central Registration Depository (“CRD”) system<sup>5</sup> services that are offered by FINRA to Non-FINRA Participants. In doing so, the Exchange initially proposes to clarify that the fees enumerated under Section J.5 apply to Participants that are not FINRA members and that all fees under Section J.5 fall under two categories. Specifically, the Exchange proposes to amend the title to Section J.5 to read, “Fees for FINRA-provided services (paid directly to FINRA) for Participants that are not FINRA members.”<sup>6</sup>

Moreover the Exchange proposes to reorganize all such fees under two new subsections entitled “Education and Examination Fees” and “Central Registration Depository (“CRD”) Fees.”

##### Education and Examination Fees

The Exchange proposes to amend Section J.5 of the Fee Schedule to update certain fees for education and examination services provided by FINRA to non-FINRA Participants, so as to mirror the corresponding fees listed under the current Schedule A to the FINRA By-Laws. The most recent updates to these fees by FINRA are not currently reflected in the Fee Schedule.<sup>7</sup> There is no distinction in the cost incurred by FINRA for providing such education and examination services if the Participant is a FINRA member or a

Non-FINRA Participant. The proposed changes are as follows:<sup>8</sup>

- \$100 for the Continuing Education Regulatory Element registration fee;<sup>9</sup>
- Deletion of reference to the Series 7A Examination and its corresponding registration fee of \$250;<sup>10</sup>
- \$290 for the Series 7 Examination registration fee;<sup>11</sup>
- \$115 for the Series 27 Examination registration fee;<sup>12</sup> and

The Exchange notes that the proposed changes are not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that Participants would have in complying with the proposed changes.

As for implementation of the proposed education and examination fees, the Exchange has filed the proposed rule change for immediate effectiveness and proposes an implementation date of January 2, 2013. This date is the same as FINRA’s implementation date for its proposed Web CRD system fees, as discussed below.<sup>13</sup>

##### Central Registration Depository (“CRD”) Fees

The Exchange further proposes to amend Section J.5 of the Fee Schedule with respect to certain fees related to the CRD system which are collected by FINRA. These fees have not been updated since the Exchange required its Participants to register certain associated persons through the Web CRD System.<sup>14</sup>

FINRA collects and retains certain regulatory fees via the CRD system for the registration of employees of non-FINRA Participants. FINRA recently amended some of the fees assessed for use of the CRD system and those amendments will become effective January 2, 2013.<sup>15</sup>

<sup>8</sup> [sic]

<sup>9</sup> See Section 4(f) of Schedule A to the FINRA By-Laws. The current corresponding CHX fee is \$75. Participation in the Regulatory Element is mandatory for CHX Participants pursuant to CHX Article 6, Rule 11(a).

<sup>10</sup> Since the Exchange has retired it [sic] trading floor, the Series 7A Examination has become obsolete.

<sup>11</sup> See Section 4(c) of Schedule A to the FINRA By-Laws. The current corresponding CHX fee is \$250.

<sup>12</sup> See Section 4(c) of Schedule A to the FINRA By-Laws. The current corresponding CHX fee is \$85.

<sup>13</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

<sup>14</sup> See Securities Exchange Act Release No. 57587 (March 31, 2008), 73 FR 18598 (April 4, 2008) (SR-CHX-2007-21).

<sup>15</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

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

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

<sup>3</sup> CHX submitted two amendments to the filing. This Notice reflects those amendments.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

<sup>6</sup> The Exchange notes that Participants who are FINRA members are already subject to the same fees per FINRA rules.

<sup>7</sup> See Securities Exchange Act Release No. 66465 (February 24, 2012), 77 FR 12635 (March 1, 2012) (SR-FINRA-2012-09) [sic]; see also Securities Exchange Act Release No. 60963 (November 6, 2009), 74 FR 59334 (November 17, 2009) (SR-FINRA-2009-071).

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Participant. Accordingly, the Exchange is proposing to amend Section J.5 of the Fee Schedule to mirror the fees assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.<sup>16</sup> The proposed changes are as follows:<sup>17</sup>

- \$100 for each initial Form U4 filed for the registration of a representative or principal;<sup>18</sup>
- \$110 for additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings;<sup>19</sup>
- \$15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;<sup>20</sup>

<sup>16</sup> The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Participants when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to non-FINRA Participants.

<sup>17</sup> Non-FINRA Participants have been charged CRD system fees since 2008. See Securities Exchange Act Release No. 57587 (March 31, 2008), 73 FR 18598 (April 4, 2008) (SR-CHX-2007-21).

<sup>18</sup> See Section 4(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA Participant submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current corresponding CHX fee is \$85.

<sup>19</sup> See Section 4(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current corresponding CHX fee is \$95 related to Form U4 and Form U5. The fee related to Form BD is a new fee charged by FINRA. Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)). FINRA adopted a \$110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA Participants.

<sup>20</sup> See Section 4(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. After subtracting the U.S. Department of Justice fingerprint processing fee, which was \$17.25 at the time the Fee Schedule was last amended, the current corresponding CHX fee is \$13. See Revised User Fee Schedule, 76 FR 78950 (December 20, 2011) (prior to March 19, 2012, the U.S. Department of Justice fingerprint processing fee was \$17.25 and

• \$30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;<sup>21</sup>

• \$45 annually for system processing for each registered representative and principal.<sup>22</sup>

The Exchange again notes that the proposed changes are not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that Participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>23</sup> in general, and, in particular, furthers the objectives of Section 6(b)(4) of the Act,<sup>24</sup> in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members, issuers and other persons using its facilities and Section 6(b)(5) of the Act,<sup>25</sup> in that it does not unfairly discriminate between customers, issuers, brokers or dealers. In sum, the Exchange believes that the fee changes are reasonable because the proposed fees are identical to those adopted by FINRA for its members and that the proposed fees are equitably allocated because they apply to all similarly situated Non-FINRA Participants.

As FINRA noted in amending its Continuing Education Regulatory Element fee, the fee increase is reasonable because it is consistent with the overall costs associated with the program and that the increase is necessary to "cover the full costs associated with the [Continuing

since March 19, 2012, the fee was decreased to \$14.50 per card).

<sup>21</sup> See Section 4(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. After subtracting the U.S. Department of Justice fingerprint processing fee, which was \$17.25 at the time the Fee Schedule was last amended, the current corresponding CHX fee is \$13. See Revised User Fee Schedule, 76 FR 78950 (December 20, 2011) (prior to March 19, 2012, the U.S. Department of Justice fingerprint processing fee was \$17.25 and since March 19, 2012, the fee was decreased to \$14.50 per card).

<sup>22</sup> See Section 4(b)(7) of Schedule A to the FINRA By-Laws effective on January 2, 2013. The current corresponding CHX fee is \$30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed \$45 system processing fee will be made available in the fourth quarter of 2012.

<sup>23</sup> 15 U.S.C. 78f(b).

<sup>24</sup> 15 U.S.C. 78f(b)(4).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

Education] program, including costs associated with the redesign of the Regulatory Element and to maintain an adequate reserve for the program."<sup>26</sup> In addition, as FINRA noted in amending its fees for the Series 7 and 27 examinations, the fees increase is necessary "to better align the examination fee structure with the costs associated with the programs."<sup>27</sup>

Moreover, as FINRA noted in amending its CRD system fees, the fees increase is reasonable based on the increased costs associated with operating and maintaining the CRD system and due to enhancements made by FINRA since the last fees increase, including (1) incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system.<sup>28</sup> These increased costs are similarly borne by FINRA when a Non-FINRA Participant uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Securities and Exchange Commission ("Commission"), FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA Participants. All similarly situated Participants are subject to the same fee structure and every Participant must use the CRD system for registration and disclosure.<sup>29</sup> Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all Participants required to report information to the CRD system and for services performed by FINRA,

<sup>26</sup> See Securities Exchange Act Release No. 60963 (November 6, 2009), 74 FR 59334 (November 17, 2009) (SR-FINRA-2009-071).

<sup>27</sup> See Securities Exchange Act Release No. 66465 (February 24, 2012), 77 FR 12635 (March 1, 2012) (SR-FINRA-2012-09) [sic].

<sup>28</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030).

<sup>29</sup> Participation in the Regulatory Element is mandatory for CHX Participants pursuant to CHX Article 6, Rule 11(a).

regardless of whether or not such Participants are FINRA members.

#### *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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all Participants who are required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such Participants are FINRA members.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

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

The proposed rule change is to effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>30</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>31</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange.

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### 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-CHX-2013-01 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-CHX-2013-01. 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-CHX-2013-01, and should be submitted on or before February 12, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68638; File No. SR-NYSEArca-2012-105]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval for Proposed Rule Change, as Modified by Amendment No. 2, To Amend the Listing Rules for Compensation Comply With Securities Exchange Act Rule 10C-1 and Make Other Related Changes**

January 11, 2013.

#### **I. Introduction**

On September 25, 2012, NYSE Arca, Inc. ("NYSE Arca" or "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 modify the Exchange's rules for compensation committees of listed issuers to comply with Rule 10C-1 under the Act and make other related changes. The proposed rule change was published for comment in the **Federal Register** on October 15, 2012.<sup>3</sup> The Commission subsequently extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 13, 2013.<sup>4</sup> The Commission received one comment letter on the proposed rule change,<sup>5</sup> as well as a

<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. 68006 (October 9, 2012), 77 FR 62587 (October 15, 2012) ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 68313 (November 28, 2012), 77 FR 71853 (December 4, 2012).

<sup>5</sup> See Letter from Jeff Mahoney, General Counsel, Council of Institutional Investors to Elizabeth M. Murphy, Secretary, Commission, dated November 1, 2012 ("CII Letter").

In addition, the Commission received seven comments on a substantially similar proposal by New York Stock Exchange LLC ("NYSE") by parties that did not specifically comment on the NYSE Arca filing. See Securities Exchange Act Release No. 68011 (October 9, 2012), 77 FR 62541 (October 15, 2012) (SR-NYSE-2012-49). The comment letters received on the NYSE filing were letters to Elizabeth M. Murphy, Secretary, Commission, from: Thomas R. Moore, Vice President, Corporate Secretary and Chief Governance Officer, Ameriprise Financial, Inc., dated October 18, 2012 ("Ameriprise Letter"); J. Robert Brown, Jr., Director, Corporate & Commercial Law Program, University of Denver Sturm College of Law, dated October 30, 2012 ("Brown Letter"); Dorothy Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute, dated November 1, 2012 ("ICI Letter"); Brandon J. Rees, Acting Director, Office of

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>31</sup> 17 CFR 240.19b-4(f)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).