

*Participants* to reference DTC rules requirements of foreign entities which are treated as non-U.S. entities for tax purposes.

## II. Discussion

Section 19(b)(2)(C) of the Act<sup>12</sup> directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act<sup>13</sup> requires the rules of a clearing agency to be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and protect investors and the public interest. The Commission finds that DTC's proposed rule change is consistent with these requirements because it is designed to comply with FATCA while eliminating uncertainty in funds settlement. Specifically, based on DTC's representations, the Commission understands that the proposed rule change is designed codify DTC's rules in a way that will allow DTC to comply with FACTA without developing and maintaining a complex Gross Proceeds Withholding system under FATCA and, as a result, it will eliminate uncertainty in funds settlement that DTC believes will arise if DTC is subject to FATCA Withholding.<sup>14</sup>

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>15</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-2013-03) be, and it hereby is, approved.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69747; File No. SR-CBOE-2013-059]

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

June 12, 2013.

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 May 31, 2013, 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. 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its Fees Schedule. Currently, the Exchange assesses an SPX Arbitrage Phone Positions fee of \$550 per month for each clerk who is placed by a Market-Maker on the perimeter of the SPX trading crowd and provides futures trading information to the Market-Maker in the crowd and takes futures orders from the Market-Maker in order to hedge the Market-Maker's SPX options positions (for the purposes of this proposed rule change, such activity (regardless of the relevant options class) shall be referred to as "Arbitrage"). However, Market-Makers can have a clerk placed on the perimeter of other trading crowds engaging in Arbitrage. The Exchange desires to assess this Arbitrage Phone Positions fee regardless of the trading crowd, and cease the Fees Schedule's limitation of it to the SPX trading crowd. As such, the Exchange proposes deleting "SPX" and merely stating that the Arbitrage Phone Positions fee will be \$550 per month (thereby applying such fee to all trading crowds).

TickerXpress ("TX") is an optional Exchange service that supplies market data to Exchange Market-Makers trading on the Hybrid Trading System. Currently, the Exchange assesses two TickerXpress (TX) User Fees. The \$350-per-month Enhanced TX User Fee is assessed to CBOE Market-Makers desiring access to enhanced TX market data. The \$100-per-month TX Software Fee is assessed to TX users for the software used for the use and display of market data. However, due to decreased demand, the Exchange has determined that it is no longer economically viable to provide access to TickerXpress, and therefore, effective June 1, 2013, will cease doing so (Market-Makers will still have other methods available to access market data). As such, the Exchange proposes to remove the TX User Fees from the Fees Schedule.

The proposed changes are to take effect June 1, 2013.

##### 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

<sup>12</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>13</sup> 12 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> In approving this proposed rule change, the Commission is mindful of the IRS's jurisdiction respecting FATCA. This Order does not interpret FATCA. The Commission's approval of the proposed rule change in no way constitutes a determination or finding by the Commission that the proposed rule change complies with FATCA, which is under the purview of the IRS.

<sup>15</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>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.

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 requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes it is reasonable to assess the Arbitrage Phone Positions fee of \$550 for all clerks engaged in Arbitrage because the amount is the same as is being assessed to SPX Market-Makers who are engaged in that activity. The Exchange believes this proposed change is equitable and not unfairly discriminatory because it will put the placement of all clerks for Arbitrage on equal fee footing with those who engage in Arbitrage for SPX.

The Exchange believes the proposed rule change to delete from the Fees Schedule the TX fees is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange 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 regulating, clearing, settling, processing information with respect to, and facilitation 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. Deleting from the Fees Schedule fees for a service that is no longer offered by the Exchange will prevent any possible confusion that perhaps the service is still available (and the fees still applicable), and preventing confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

#### *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. CBOE does not believe that the proposed rule change to apply the Arbitrage Phone Positions fee to all trading crowds (as opposed to just SPX) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it will put the placement of all clerks for Arbitrage on equal fee footing

with those who engage in such activity for SPX. CBOE does not believe that the proposed rule change to delete the TX fees from the Fees Schedule will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this deletion applies to all CBOE market participants. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to CBOE and do not impact trading on other exchanges.

#### *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) of the Act<sup>6</sup> 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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-CBOE-2013-059 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-2013-059. 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 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-CBOE-2013-059, and should be submitted on or before July 9, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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

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

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

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

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

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