

inadvertently deleted, while language describing the fee for routing to NYSE was moved but without language that had formerly limited its applicability to orders sent to NYSE. Accordingly, a reader of the amended rule may conclude that the fee of \$0.0020 or \$0.0019 per share executed is applicable to “other” orders routed to venues other than NYSE.<sup>7</sup>

As noted above, however, the filing that introduced this error in Rule 7018 stated that it was not modifying any fees or credits, and in fact, was filed as a “stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule” under SEC Rule 19b-4(f)(1)<sup>8</sup> rather than a fee change under SEC Rule 19b-4(f)(2).<sup>9</sup> Moreover, NASDAQ’s intent not to modify fees through SR-NASDAQ-2009-072 was reflected in the Commission’s notice of the filing on the SEC Web site<sup>10</sup> and in the **Federal Register**,<sup>11</sup> and the applicable fees have been accurately described in the pricing schedule that appears on NASDAQ’s Web site.<sup>12</sup> NASDAQ has been billing members in accordance with the correct fees since the effective date of SR-NASDAQ-2009-072 on July 24, 2009, and accordingly believes that all of its members are cognizant of the correct fee. NASDAQ submitted SR-NASDAQ-2010-014<sup>13</sup> on an immediately effective basis to correct the error and is now submitting this filing to seek Commission approval to apply the correction retroactively to the period from July 24, 2009 through January 25, 2010.

## 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>14</sup> in general, and with Section 6(b)(4) of the Act,<sup>15</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The proposed rule change will ensure that a

<sup>7</sup> The Commission expects all SROs to carefully review proposed rule changes before they are filed with the Commission.

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> See <http://www.sec.gov/rules/sro/nasdaq/2009/34-60430.pdf>.

<sup>11</sup> See Securities Exchange Act Release No. 60430 (August 4, 2009), 74 FR 40279 (August 11, 2009) (SR-NASDAQ-2009-072).

<sup>12</sup> See <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

<sup>13</sup> SR-NASDAQ-2010-014 (January 26, 2010).

<sup>14</sup> 15 U.S.C. 78f.

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

recently filed correction of a typographical error in NASDAQ Rule 7018 is applied retroactively throughout the entire period when the error was in the rule.

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

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-015 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-NASDAQ-2010-015. This file number should be included on the subject line if e-mail 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2010-015 and should be submitted on or before March 16, 2010.

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

**Florence E. Harmon,**  
Deputy Secretary.

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BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-61523; File No. SR-CBOE-2010-013]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the CBSX Market Data Infrastructure Fee

February 16, 2010.

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> notice is hereby given that on February 2, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule

<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.

change as described in Items I, II, and III below, which Items have been prepared by the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal 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 Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend the CBOE and CBSX Fees Schedules relating to the CBSX Market Data Infrastructure Fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), 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, CBOE 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. CBOE 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*

##### **(a) Purpose**

The Exchange charges CBSX market participants a monthly fee to recoup fees the Exchange pays a third party market data vendor and other parties to help establish facilities at the Exchange through which the vendor can provide CBSX participants with certain market data.<sup>5</sup> The fee has been amended three times.<sup>6</sup> The current amount of the fee is

\$10,800 divided by the number of CBSX participants receiving the data.

The Exchange proposes to amend the fee in a couple of respects. First, the Exchange proposes to amend the CBSX Fees Schedule to remove the current fee amount and replace it with a statement that the Exchange will pass-through to participants receiving the data the total costs incurred by the Exchange to provide the market data infrastructure. Each participant would continue to be assessed on a monthly basis an amount equal to the Exchange's total monthly cost divided by the number of participants receiving the data. The Exchange believes this change is reasonable and appropriate in that the Exchange pays several third party costs (such as for equipment upgrades and connectivity) and these costs can vary frequently. The Exchange represents that any fee passed through to participants pursuant to this filing will reflect only the actual costs incurred by the Exchange in providing the market data infrastructure. Due to certain fixed costs incurred by the Exchange, each participant receiving the data as of February 15, 2010 will be obligated to pay its share of the fee through June 30, 2010, even if such participant terminates its receipt of the data prior to June 30, 2010.

Second, the Exchange proposes to add the fee to the CBOE Fees Schedule (under "Miscellaneous Fees") so that the fee would also apply to any CBOE member receiving the data that is not also a CBSX participant. Thus, in addition to CBSX participants any CBOE member that is not also a CBSX participant receives the data, the fee would be divided by the number of CBOE members and CBSX participants receiving the data.

##### **(b) Statutory Basis**

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rule change would help the Exchange to continue providing its members with an infrastructure for receiving certain third party market data by allowing the Exchange to pass-through its infrastructure costs in a more efficient manner.

#### *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 [sic] 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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-013 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-2010-013. This file number should be included on the subject line if e-mail 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/>

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

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

<sup>5</sup> See Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007).

<sup>6</sup> See Exchange Act Release No. 56000 (July 2, 2007), 72 FR 37554 (July 10, 2007), Exchange Act Release No. 57472 (March 11, 2008), 73 FR 14515 (March 18, 2008), and Exchange Act Release No. 61121 (December 7, 2009), 74 FR 66178 (December 14, 2009).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

*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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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-2010-013 and should be submitted on or before March 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61520; File No. SR-NYSE-2010-06]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Waiver of all Transaction Fees for Shares Executed on the NYSE MatchPoint<sup>SM</sup> System

February 16, 2010.

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 January 29, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 extend the waiver of all transaction fees for shares executed on the NYSE MatchPoint<sup>SM</sup> ("NYSE MatchPoint" or "MatchPoint") system effective February 1, 2010 through March 31, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to extend the waiver of all transaction fees for shares executed on the MatchPoint system, which will be effective from February 1, 2010 through March 31, 2010. The NYSE 2010 Price List will reflect this extension of the fee waiver.

###### Background

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint system, effective until February 28, 2009.<sup>4</sup> The temporary equity transaction fee was extended numerous times since the original filing<sup>5</sup> and it was in effect until January

<sup>4</sup> See Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009) (SR-NYSE-2009-01).

<sup>5</sup> See Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR-NYSE-2009-20); see Securities Exchange Act Release No. 59864 (May 5, 2009) 74 FR 22194 (May 12, 2009) (SR-NYSE-2009-44); see Securities Exchange Act Release No. 60278 (July 10, 2009) 74

FR 34615 (July 16, 2009) (SR-NYSE-2009-67); see Securities Exchange Act Release No. 60439 (August 5, 2009) 74 FR 40270 (August 11, 2009) (SR-NYSE-2009-78) and see also Securities Exchange Act Release No. 60949 (November 6, 2009) 74 FR 58665 (November 13, 2009) (SR-NYSE-2009-110).

7, 2010. On January 7, 2010, the Exchange proposed a transaction fee holiday waiving all MatchPoint transaction fees under the temporary equity transaction fee schedule until January 29, 2010 ("transaction fee waiver").<sup>6</sup> Each such filing was effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4.<sup>8</sup> The Exchange believes that an extension of the transaction fee waiver will continue to induce users to enter more single-sided volume<sup>9</sup> into the MatchPoint system, which benefits all participants in MatchPoint, since it increases the likelihood of a match during the matching sessions (*i.e.*, intra-day and after hours matching sessions). The transaction fee waiver will apply to all Exchange members that access MatchPoint. Through this fee filing, the Exchange is seeking to extend the temporary transaction fee waiver from February 1, 2010 through March 31, 2010.

It is intended that new MatchPoint transaction fees will be in effect on or before April 1, 2010, after the transaction fee waiver terminates. The new transaction fees will also provide incentives for adding volume to the MatchPoint system.

###### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>10</sup> for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that an extension of the fee waiver for all MatchPoint executions is reasonable in that it provides a significant incentive for users to add volume into the MatchPoint system. Adding volume to the MatchPoint system will increase a user's likelihood of obtaining an execution. Increased volume and trading activity will improve the overall

<sup>6</sup> See Securities Exchange Act Release No. 61350 (January 14, 2010) 75 FR 3767 (January 22, 2010) (SR-NYSE-2010-01).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> Executions in the MatchPoint system occur when buy and sell interest in a security is entered on a matched basis (both buy and sell sides submitted together) or when interest submitted in the system by one user matches against contra side interest submitted by another user.

<sup>10</sup> 15 U.S.C. 78a.

<sup>11</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.