

proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or emailing a request to "Consent Decree Copy" ([EEESCDCopy.ENRD@usdoj.gov](mailto:EEESCDCopy.ENRD@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$21.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, please forward a check in that amount to the Consent Decree Library at the address given above.

**Robert Brook,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011-33821 Filed 1-4-12; 8:45 am]

**BILLING CODE 4410-15-P**

**DEPARTMENT OF JUSTICE**

**Notice of Lodging of the Consent Decree Under the Resource Conservation and Recovery Act and the Clean Water Act**

Notice is hereby given that on December 22, 2011, a proposed Consent Decree in *United States v. County of Erie* ("Erie"), Civil Action No. 1:11-cv-01083 (WMS), was lodged with the United States Court for the Western District of New York.

The proposed Consent Decree resolves Erie's Resource Conservation and Recovery Act ("RCRA") violations stemming from its failure to meet cathodic protection requirements, release detection requirements, and other record-keeping requirements in to relation to its Underground Storage Tanks ("USTs") at sixteen facilities throughout the county. The Consent Decree also resolves Erie's Clean Water Act ("CWA") violations stemming from its failure to prepare and implement Spill Prevention Control and Countermeasure plans ("SPCC plans") at eleven facilities throughout the county that utilize applicable above ground storage tanks. Under the terms of the Consent Decree, Erie will pay a \$275,000 penalty, prepare and implement eleven SPCC plans, and undertake a full RCRA audit to certify to the United States that it is in complete compliance with all RCRA requirements at the thirty-six facilities it owns or operates that utilize USTs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to [pubcomment-ees.enrd@usdoj.gov](mailto:pubcomment-ees.enrd@usdoj.gov) or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to the matter as *United States v. County of Erie*, D.J. Ref. 90-7-1-09728.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or emailing a request to "Consent Decree Copy" ([EEESCDCopy.ENRD@usdoj.gov](mailto:EEESCDCopy.ENRD@usdoj.gov)), fax no. (202) 514-0097, phone confirmation number (202) 514-5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of \$8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Ronald G. Gluck,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.*

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**BILLING CODE 4410-15-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66067; File No. SR-CBOE-2011-127]

**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 29, 2011.

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 December 20, 2011, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 amend the CBOE Stock Exchange ("CBSX") Fees Schedule. 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'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.

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

**1. Purpose**

CBSX proposes to amend its CBOEdirect Connectivity Charges. Currently, the CBSX Fees Schedule applies CBOE's CBOEdirect Connectivity Charges to CBSX users.<sup>3</sup> However, CBOE recently filed a proposed rule change to increase its CBOEdirect Connectivity Charges.<sup>4</sup> Because CBSX does not desire to adopt all of the proposed changes to CBOE's CBOEdirect Connectivity Charges, CBSX hereby proposes to amend its Fees Schedule to adopt its own CBOEdirect Connectivity Charges.

Currently, CBSX assesses a monthly Network Access Port fee of \$250 for regular access and \$500 for Sponsored User access, as those are the amounts of the Network Access Port fees on CBOE. In SR-CBOE-2011-121, CBOE proposes to increase the fees charged for access to a Network Access Port to \$500 per month for regular access and \$1000 per month for Sponsored User access. CBSX desires to keep the Network Access Port fee rates at their current levels and not

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

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

<sup>3</sup> See CBSX Fees Schedule, Section 1.

<sup>4</sup> See SR-CBOE-2011-121.

increase them to the levels proposed by CBOE.

CBOE also proposes to increase their monthly CMI and FIX charges from \$80 to \$500 per month for regular access and \$160 to \$1000 per month for Sponsored User access.<sup>5</sup> CBSX does not desire to adopt these increases. Instead, CBSX proposes to adopt more moderate increases, from \$80 to \$100 for regular access and \$160 to \$200 for Sponsored User access. Sizable investment [sic] were recently made to upgrade the equipment involved in the CMI Client Application Servers and FIX Ports, and thereby increasing these fees will help recoup such costs and maintain such equipment in the future. Moreover, following these changes, CBSX connectivity costs will still be lower than those assessed for connectivity at other exchanges. Along with the proposed CBOE changes, ISE assesses a FIX fee of \$1200 for a minimum of two monthly login IDs (so, \$600 for one), or a fee of \$2,400 for a higher-volume user.<sup>6</sup> The NASDAQ Stock Market LLC's Options Market ("NOM") assesses a fee of \$500 per FIX port per month, as well.<sup>7</sup> Regarding the Sponsored User fees, the Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

The proposed changes are to take effect January 1, 2012.

## 2. Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>9</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 CBOE Trading Permit Holders and other persons using Exchange facilities. The proposed "change" to add the Network Access Port fees into the CBSX Fees Schedule is reasonable because the amounts of the fees are not changing. This proposed "change" is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all

market participants, and in the same amounts as previously assessed.

The proposed changes to increase the fees assessed for CMI Login IDs and FIX Login IDs are also reasonable because the amounts of such fees are significantly lower than those assessed on other exchanges,<sup>10</sup> and because such increases will assist in recouping expenditures recently made to upgrade the CBOE *direct* connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users.

### 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 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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</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.

<sup>10</sup> See ISE Schedule of Fees, page 8 and NOM Rule 7053 and also SR-CBOE-2011-121.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

## 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-2011-127 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-2011-127. 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 a.m. and 3 p.m. Copies of the 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-CBOE-2011-127 and should be submitted on or before January 26, 2012.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>5</sup> See SR-CBOE-2011-121.

<sup>6</sup> See ISE Schedule of Fees, page 8. The Commission notes that the ISE fees cited by the Exchange were modified as of December 1, 2011. As of December 23, 2011, ISE assesses a FIX fee of \$1000 for a minimum of two monthly login IDs and does not have a separate fee for a higher-volume user. See Securities Exchange Act Release No. 65916 (December 8, 2011), 76 FR 77881 (December 14, 2011) (SR-ISE-2011-80).

<sup>7</sup> See NOM Rule 7053.

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

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

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-33789 Filed 1-4-12; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66070; File No. SR-OCC-2011-13]

### Self-Regulatory Organizations; Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendments No. 1, No. 2, and No. 3, Relating to Relative Performance Indexes

December 29, 2011.

#### I. Introduction

On September 21, 2011, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2011-13 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> On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 11, 2011.<sup>3</sup> On November 17, 2011, OCC filed Amendment No. 2 and Amendment No. 3 to the proposed rule change. The proposed rule change, as modified by Amendments No. 1, No. 2 and No. 3 was published in the **Federal Register** on November 29, 2011.<sup>4</sup> The Commission received no comment letters on the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3. This order approves the proposed rule change as modified by Amendments No. 1, No. 2, and No. 3.

#### II. Description

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes ("Alpha Index Options") that measure the relative total returns of a stock or exchange-traded fund ("ETF")

against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.<sup>5</sup> Generally, OCC believes that a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which a reference security of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is adding an interpretation following Section 2 in Article XVII of its By-Laws,<sup>6</sup> clarifying that OCC will clear and treat as securities any relative performance index. The Commission and Commodity Futures Trading Commission ("CFTC") have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.<sup>7</sup>

In its capacity as a "derivatives clearing organization" registered as such with the CFTC, OCC filed the proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the "CEA") in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA. OCC amended the rule filing at the request of the CFTC to clarify that OCC will clear and treat as options on securities any options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of gold or silver.<sup>8</sup>

<sup>5</sup> The staff notes that on August 17, 2011, the Commission issued an Order granting approval to this proposed rule change. See Securities Exchange Act Release No. 34-65149, 76 FR 52729 (August 23, 2011).

<sup>6</sup> The staff notes that OCC is also adding a definition of "relative performance index" to Section 1, which will be defined as an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.

<sup>7</sup> See Securities Exchange Act Release No. 34-62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

<sup>8</sup> The staff notes that Amendment Nos. 2 and 3 provide that the interpretation will not include options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of a commodity other than gold or silver.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and derivative transactions.<sup>9</sup> The proposed rule change is similar to a proposed rule change the Commission approved previously with respect to the jurisdictional status CBOE Gold ETF Volatility Index and clarifies that OCC will clear and treat as securities any relative performance index, including in situations in which one of the reference securities of a relative performance index is an ETF designed to measure the return of gold or silver. Any uncertainty regarding the jurisdictional status of a product could presumably interfere with OCC's ability to provide clearance and settlement services with respect to the product. The proposed rule change, by allowing OCC to clarify in its rules the treatment of a relative performance index, should facilitate the clearance and settlement of such products and, thus, should help promote the prompt and accurate clearance and settlement of securities transactions and of derivative transactions.

#### IV. 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>10</sup> and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, (File No. SR-OCC-2011-13) be, and hereby is, approved.<sup>12</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011-33795 Filed 1-4-12; 8:45 am]

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<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78q-1.

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

<sup>12</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact of efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</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.

<sup>3</sup> Securities Exchange Act Release No. 65483 (October 4, 2011), 76 FR 62981 (October 11, 2011).

<sup>4</sup> Securities Exchange Act Release No. 65807 (September 21, 2011), 76 FR 73752 (November 29, 2011).