

Gigabit Network Access Port to act as a backup is reasonable because such market participants will receive a backup redundant 10 Gigabit Network Access Port free of charge.

Providing CBSX market participants who access the CBSX System via a 10 Gigabit Network Access Port on NY4 the opportunity to request a redundant 10 Gigabit Network Access Port to act as a backup while not providing the same opportunity to CBSX market participants who access the CBSX System via a 1 Gigabit Network Access Port is equitable and not unfairly discriminatory because providing such opportunity would cause an increase in the price of accessing the CBSX System via a 1 Gigabit Network Access Port. Moreover, as faster access continues to grow in importance to trading and CBSX continues to develop technologies that provide faster access to CBSX, CBSX wants to encourage the election to connect to CBSX via a higher-speed Network Access Port in order to provide better trading opportunities on CBSX. Further, while a 10 Gigabit Network Access Port connection is more costly than a 1 Gigabit Network Access Port connection, considering the fact that a 10 Gigabit Network Access Port provides a connection that is ten times faster than a 1 Gigabit Network Access Port, a 10 Gigabit Network Access Port actually provides a less expensive connection on a per-Gigabit basis.<sup>5</sup> Finally, any CBSX market participant may elect to connect to CBSX via a 10 Gigabit Network Access Port (and therefore be eligible to request a redundant 10 Gigabit Network Access Port).

#### *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.

#### *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)<sup>6</sup> of the Act 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.

### **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-2012-078 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-2012-078. 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 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-2012-078 and should be submitted on or before September 12, 2012.

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

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012-20571 Filed 8-21-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-67669; File No. SR-NYSEArca-2012-62]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Provide for Additional Co-location Services and Establish Related Fees**

August 15, 2012.

#### **I. Introduction**

On June 13, 2012, NYSE Arca, Inc. ("NYSE Arca" or the "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 amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to provide for additional co-location services and establish related fees. The proposed rule change was published for comment in the **Federal Register** on July 2, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The Exchange provides co-location services to Users from a data center in Mahwah, New Jersey.<sup>4</sup> The Exchange's co-location services allow Users to rent space in the data center so that they may locate their electronic servers in close physical proximity to the Exchange's

<sup>8</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> See Securities Exchange Act Release No. 67263 (June 26, 2012), 77 FR 39305 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR-NYSE-2010-56).

<sup>5</sup> See CBSX Fees Schedule, Section 8.

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

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

trading and execution system.<sup>5</sup> The Exchange proposes to make multiple changes to provide for additional co-location services and establish related fees.

#### *Cabinet Cross Connects*

Currently the Exchange allows Users with more than one cabinet within the data center to purchase one or more fiber cross connects between its cabinets. The Exchange proposes that each User be permitted to purchase cross connects between its own cabinets, as is currently permitted, as well as between its cabinet(s) and the cabinets of separate Users within the data center.<sup>6</sup> A cross connect between Users could be requested in order to receive technical support, order routing and/or market data delivery services from another User. In addition, the Exchange proposes to bundle cross connects such that a single sheath can hold either one cross connect or several cross connects in multiples of six (e.g., six, twelve, eighteen or twenty-four cross connects). The Exchange proposes to charge a \$500 initial fee for either single or bundled cross connects and a monthly charge contingent upon the number of cross connects established.<sup>7</sup>

#### *10 Gb LCN Connections*

Users are currently able to purchase access to the Exchange's Liquidity Center Network ("LCN"), a local area network available in the data center, in either one or ten gigabit ("Gb") capacities, for which Users incur an initial and monthly fee per connection. The Exchange proposes that a User that purchases five 10 Gb LCN connections would only be charged the initial fee for a sixth 10 Gb LCN connection and would not be charged the monthly fee that would otherwise be applicable.

<sup>5</sup> For purposes of its co-location services, the term "User" currently includes (i) member organizations, as that term is defined in NYSE Rule 2(b), (ii) Sponsored Participants, as that term is defined in NYSE Rule 123B.30(a)(ii)(B), and (iii) non-member organization broker-dealers and vendors that request to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 65970 (December 15, 2011), 76 FR 79242 (December 21, 2011) (SR-NYSEArca-2011-74).

<sup>6</sup> The Exchange notes that only the User requesting the cross connect would be charged the related initial and monthly fees; the counterparty User would simply be required to give permission for the cross connection.

<sup>7</sup> The Exchange proposes to charge \$500 monthly to furnish and install one cross connect between cabinets. For a bundle of six cross connects, the monthly charge would be \$1,500; 12 cross connects would be \$2,500 per month; 18 cross connects would be \$3,200 per month; and 24 cross connects would be \$3,900 per month.

#### *LCN CSP Connections*

A User may act as a content service provider (a "CSP User") and deliver services to another User in the data center (a "Subscribing User"), such as order routing or market data delivery services. The services can be provided either via direct cross connect between the CSP User and Subscribing Users; or in addition, CSP Users can send data to, and communicate with, all their properly authorized Subscribing Users at once, via a dedicated LCN Connection (an "LCN CSP" connection). The Exchange proposes an initial connection fee for CSP Users establishing a LCN CSP connection as well as a monthly charge depending on whether the connection is a 1 or 10 Gb circuit. The Subscribing User receives the services via its standard LCN connection and is charged an initial and monthly fee that reflects the benefit of receiving services in this manner.<sup>8</sup>

#### *Cages*

A User may purchase a cage to house its cabinets within the data center. The Exchange charges fees for cages based on the size of the cage, which corresponds to the number of cabinets housed therein. The Exchange is proposing the following fees for cages:

- For 1–14 cabinets, a \$5,000 initial charge plus \$2,700 monthly charge;
- For 15–28 cabinets, a \$10,000 initial charge plus \$4,100 month charge; and
- For 29 cabinets or more, a \$15,000 initial charge plus \$5,500 monthly charge.

#### *Change Fee*

A User may arrange for the Exchange to reconfigure, modify, or otherwise change a co-location service that the Exchange has already established for the User. The Exchange proposes to charge a User a fee of \$950 per order if the User requests a change to one or more existing co-location services.<sup>9</sup>

#### *Expedite Fee*

A User may request that the Exchange expedite the completion of co-location services purchased or ordered by the User. The Exchange proposes to charge Users \$4,000 for expedited completion of co-location services.

<sup>8</sup> For a CSP User, a 1Gb Circuit for a LCN CSP connection has a \$6,000 connection charge plus a \$500 monthly fee. A 10Gb Circuit for a LCN CSP connection has a \$10,000 initial connection charge plus a \$5,000 monthly fee. A CSP Subscriber has an initial charge of \$950 plus a \$300 monthly fee per LCN CSP.

<sup>9</sup> If a User orders two or more services at one time, the User would be charged a one-time Change Fee of \$950, which would cover the multiple services.

#### *Power Not Utilized Cabinet*

A User may obtain unused cabinet space that the User intends to employ in the future in proximity to the User's existing cabinet space. The Exchange proposes to charge a fee for this cabinet space, in which the power is not utilized, of \$360 per month.

### **III. Discussion and Commission's Findings**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In offering co-location services, the Exchange incurs certain costs, including costs related to the data center facility, hardware and equipment costs, and costs related to personnel required for installation and ongoing support. The Exchange has represented that the fees charged are designed to defray expenses incurred or resources expended by the Exchange.<sup>13</sup> For example, the Exchange proposes to charge the same \$500 connection fee for installing either a single cross connect or a bundled cross connect because the cost to the Exchange is generally equivalent. With regard to the cages offered by the Exchange, the initial and monthly cost increases in correlation to the size of the cage and how many cabinets it needs to contain because its size represents the opportunity cost of not using that space to sell additional cabinets, or for other Exchange purposes. In a similar vein,

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Notice *supra* note 3.

the expedite fee proposed corresponds to the additional Exchange resources needed to expedite customer requests, including the potential need for overtime compensation for data center staff. Respecting LCN CSP connections, the Exchange charges the same initial fee as for a standard LCN connection since the connection is physically the same, but the monthly fee is lower because LCN CSP connections are functionally limited in comparison to the standard LCN connection.<sup>14</sup> Additionally, the Exchange represents that there is no differentiation among Users regarding the fees charged for a particular product, service or piece of equipment. In light of the Exchange's representations, the Commission believes that the co-location fees proposed are consistent with Section 6(b)(4) and 6(b)(5) of the Exchange Act.

The Exchange is offering additional co-location services as a convenience to Users. For instance, the cross connects and LCN CSP connections provide Users within the data center with another alternative to transmit data or provide services, such as order routing or market data delivery services. The cages offered to Users can help prevent the discovery of the hardware employed by Users for co-location. As noted by the Exchange, these additional co-location services are available to all Users on an equal basis. The Commission believes that these additional services are also consistent with Section 6(b)(5) of the Exchange Act, as they are designed to remove impediments to and perfect the mechanism of a free and open market and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-NYSEArca-2012-62) be, and it hereby is, approved.

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

**Elizabeth M. Murphy,**

*Secretary.*

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<sup>14</sup> A LCN CSP connection may only be used for providing services to Subscribing Users and may not be used for other purposes, such as accessing the Exchange.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67670; File No. SR-CBOE-2012-076]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Automatic Order Handling Process

August 15, 2012.

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 August 2, 2012, the 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 and II 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 its rules regarding its automatic order handling process. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, at the principal office of the Exchange, 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 rules regarding its automatic order handling process. The proposed rule change adds subparagraph (vi) to Rule 6.13(b) to codify how the CBOE Hybrid System<sup>3</sup> handles market orders to sell in option series for which the national best bid in the series is zero ("no-bid series").<sup>4</sup> If the CBOE Hybrid System receives during the trading day or has resting in the electronic book after the opening of trading a market order to sell in a no-bid series, it handles the order as follows:

- If the Exchange best offer in that series is less than or equal to \$0.30, then the CBOE Hybrid System will consider, for the remainder of the trading day, the market order as a limit order to sell with a limit price equal to the minimum trading increment applicable to the series and enter the order into the electronic book behind limit orders to sell at the minimum increment that are already resting in the book.

- If the Exchange best offer in that series is greater than \$0.30, then the CBOE Hybrid System will route the market order to sell to PAR or, at the order entry firm's discretion, to the order entry firm's booth. If the market order is not eligible to route to PAR, then it will be cancelled.

The Exchange's Rules are currently silent on how the CBOE Hybrid System handles market orders to sell in no-bid series. The Exchange believes that proposed Rule 6.13(b)(vi) will clarify for investors how the CBOE Hybrid System handles these orders.<sup>5</sup> The Exchange

<sup>3</sup> The CBOE Hybrid System is a trading platform that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange. To operate in this "hybrid" environment, the Exchange has a dynamic order handling system that has the capability to route orders to the trade engine for automatic execution and book entry, to Trading Permit Holder and PAR Official workstations located in the trading crowds for manual handling, and/or to other order management terminals generally located in booths on the trading floor for manual handling. Where an order is routed for processing by the Exchange order handling system depends on various parameters configured by the Exchange and the order entry firm itself.

<sup>4</sup> The Exchange notes that, for singly listed series, the national best bid is equivalent to the Exchange's best bid and the national best offer is equivalent to the Exchange's best offer.

<sup>5</sup> The Exchange notes for informational purposes that other options exchanges have rules that address how their systems handle market orders to sell no-bid series. See, e.g., NASDAQ OMX PHLX ("Phlx") Rule 1080(i) (which provides that the Phlx system will convert market orders to sell a no-bid series to limit orders to sell with a limit price of the

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

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