

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

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Deputy Secretary.

[FR Doc. 2012-27265 Filed 11-7-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68146; File No. SR-NYSE-2012-59]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Transaction Fees on the New York Block Exchange

November 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on November 1, 2012, the 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 Exchange. NYSE has designated the proposed rule change as "establishing or changing a due, fee or other charge" under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon receipt of this filing by 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

The Exchange proposes certain changes to the transaction fees within its Price List for its facility, the New York Block ExchangeSM ("NYBX"). The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, 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 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 is proposing to reduce certain transaction fees within its Price List for NYBX transactions and that such reductions become operative on November 1, 2012.

NYBX is the electronic facility of the Exchange that provides for the continuous matching and execution of all non-displayed NYBX orders with the aggregate of liquidity in the NYBX facility, the Exchange's Display Book[®] ("DBK") as provided in NYSE Rule 1600, and considers the protected quotations of all automated trading centers for securities listed on the Exchange.⁵

The Exchange currently offers a per share charge of \$0.0030 for the execution of all orders entered into NYBX regardless of whether the order executes in NYBX, DBK, or in another market center, such as NYSE Arca,⁶ NASDAQ, and BATS BZX. The Exchange proposes to reduce the transaction fee for orders entered into NYBX as follows:

1. The Exchange proposes to reduce the per share charge from \$0.0030 to \$0.0005 for all orders executing in NYBX.
2. The Exchange proposes to reduce the per share charge from \$0.0030 to \$0.0005 for all executions of Midpoint Pegging Orders⁷ entered into NYBX,

⁵ See NYSE Rule 1600. NYBX is a joint venture between the Exchange and BIDS Holdings L.P. ("BIDS"). Under the governance structure approved by the Commission, the Exchange and BIDS each own a 50% economic interest in New York Block Exchange LLC, the entity that owns and operates NYBX. In addition, the Exchange, through its wholly-owned subsidiary NYSE Market, Inc., owns less than 10% of the aggregate limited partnership interest in BIDS. See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120); see also Securities Exchange Act Release No. 61257 (December 30, 2009), 75 FR 500 (January 5, 2010) (SR-NYSE-2009-116).

⁶ Other NYSE affiliated market centers operate independently of NYBX and offer distinct pricing.

⁷ An NYBX "Midpoint Pegging Order" is a limit order with an instruction to execute it at the midpoint of the National Best Bid and Best Offer ("NBBO"). The Midpoint Pegging Order will not

whether such orders execute occur in NYBX, in DBK, or on another market center.

3. The Exchange proposes to reduce the per share charge from \$0.0030 to \$0.0025 for all orders executing in DBK other than Midpoint Pegging Orders entered into NYBX.

All other executions of orders entered into NYBX will maintain a per share charge of \$0.0030.

The Exchange believes that the proposed reduction of charges for NYBX orders executing in NYBX and DBK and executions of Midpoint Pegging Orders entered into NYBX, as specified, will reduce transaction costs for and potentially offer additional block trading liquidity to NYBX participants. In addition, the scope of the reduction generally aligns with costs associated with NYBX's routing orders to other market centers to access more favorable prices. When an NYBX order executes outside of NYBX, the market center on which the order executes charges NYBX, with the per share charge being as high as \$0.0030.⁸ As a result, to cover NYBX's cost, NYBX orders executed outside of NYBX are currently charged, and will continue to be charged, a per share charge of \$0.0030. When two orders are matched in NYBX, NYBX does not incur a fee from another market, and therefore, the Exchange believes it is appropriate to reduce the per share charge from \$0.0030 to \$0.0005.

The Exchange believes that the lower per share charge of \$0.0005 should also be applied to an NYBX execution of a Midpoint Pegging Order, regardless of whether the order is executed in NYBX, in DBK, or in another market center. While Midpoint Pegging Orders could potentially execute outside of NYBX, such an execution outside of NYBX is uncommon. Reducing the transaction fee for all NYBX executions of Midpoint Pegging Orders affords pricing certainty for such orders. Midpoint Pegging Orders provide price improvement for both sides of the transaction between the quoted spread, and therefore, the lower charges will facilitate price improvement.

Finally, the Exchange proposes to reduce the charges for all executions in

permit an instruction to peg to the midpoint of the NBBO plus or minus the Exchange's minimum price variation. See NYSE Rule 1600(c)(2)(A)(i).

⁸ As examples, NASDAQ currently charges \$0.0030 per share, and BATS BZX charges \$.0029 per share. See NASDAQ Price List—Trading & Connectivity, available at <http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2>; and BATS BZX Exchange Fee Schedule, available at http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

DBK of orders entered into NYBX, excepting Midpoint Pegging Orders. The proposed reduction in the per share charge, from \$0.0030 to \$0.0025, will result in the fee for such executions being equal to the fee charged if a non-Floor broker member enters an order removing liquidity into DBK directly, with the exception of orders in stocks with a per share stock price lower than \$1.00.⁹

The proposed change is not otherwise intended to address any other matter, and the Exchange is not aware of any significant problem that the affected market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,¹⁰ in general, and Section 6(b)(4) of the Act,¹¹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that reducing transaction charges for NYBX executions is reasonable because it will lower participants' trading costs and the Exchange expects that it will enhance trading liquidity available to NYBX participants. The Exchange believes that the limitation of the reduction to those orders occurring inside NYBX is equitable and not unfairly discriminatory because it is aligned with the costs experienced by NYBX, in that when two orders are matched in NYBX, NYBX does not incur a fee from another market, while when an order is routed to other market centers the other market center on which the order executes charges NYBX.

The Exchange believes that reducing the per share charge for all executions of Midpoint Pegging Orders entered into NYBX is reasonable because it will incentivize Midpoint Pegging Orders by lowering participants' trading costs and

providing pricing certainty for such orders. The Exchange believes that limiting the proposed change to Midpoint Pegging Orders is equitable and not unfairly discriminatory because, unlike other types of orders, Midpoint Pegging Orders execute at the midpoint of the NBBO, and therefore encouraging Midpoint Pegging Orders will further the Exchange's goal to facilitate price improvement on both sides of a trade.

The Exchange believes that reducing the charges for all executions in DBK of orders entered into NYBX, excepting Midpoint Pegging Orders, is reasonable because as a result of the change members will be charged the same fee for an NYBX order executed in DBK as the fee charged to non-Floor broker members entering orders into DBK directly, with the exception of orders in stocks with a per share stock price lower than \$1.00,¹² which the Exchange believes will ensure that the rate structure does not disincentivize the use of NYBX. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because as a result of the change all similarly situated members would be subject to the same fee.

Additionally, the proposed changes to the fee schedule allows NYBX to compete with other market centers for block liquidity and to deliver the benefits of competition in the form of reduced transaction costs to investors utilizing block trading venues.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange continually reviews, and considers adjusting its fees to remain competitive with other market centers. For the reasons described above, the Exchange believes that the proposed rule change both meets the needs of NYBX and benefits the users of NYBX.

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.

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 is effective upon filing pursuant to Section 19(b)(3)(A)¹³ of the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such 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. Please include File Number SR-NYSE-2012-59 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-NYSE-2012-59. 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

⁹ The equity per share charge for Designated Market Makers when taking liquidity from the Exchange is \$0.0025 per transaction, which is also the charge for all other non-Floor broker transactions when taking liquidity from the Exchange, with the exception of transactions in stocks with a per share stock price below \$1.00, which charge is 0.3% of the total dollar value of the transaction. The equity per share fee for Floor broker transactions when taking liquidity from the NYSE is \$0.0024. NYBX is charged \$0.0015 by the Exchange for the execution of an NYBX order in DBK.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See note 8, *supra*.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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 NYSE. 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-NYSE-2012-59, and should be submitted on or before November 29, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-27291 Filed 11-7-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68148; File No. SR-OCC-2012-17]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis

November 2, 2012.

I. Introduction

On September 14, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change SR-OCC-2012-17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder.² The proposed rule change was published in the **Federal Register** on September 26, 2012.³ On October 11, 2012, OCC filed Amendment No. 1 to the proposed rule change.⁴ The

Commission did not receive any comments on this proposal. This order approves the proposed rule change.⁵

II. Description of the Proposed Rule Change

The purpose of this proposed rule change is to provide for the calculation of initial margin for OCC segregated futures customer accounts on a gross basis, as required by CFTC Rule 39.13(g)(8)(i).⁶

The CFTC's Customer Gross Margin Rule

On October 18, 2011, the CFTC issued final regulations implementing many of the new statutory core principles for CFTC-registered derivatives clearing organizations ("DCOs") enacted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). As a registered DCO (as well as a registered securities clearing agency), OCC has previously implemented rule changes designed to bring OCC into compliance with CFTC rules applicable to DCOs that went into effect on January 9, 2012⁷ and May 7, 2012.⁸ OCC believes it is necessary to amend its Rules in order to ensure compliance with the gross margin rule, which requires a DCO to "collect initial margin on a gross basis for each clearing member's customer account(s) equal to the sum of the initial margin amounts that would be required by the derivatives clearing organization for each individual customer within that account if each individual customer were a clearing member"⁹ as required by CFTC Rule 39.13(g)(8)(i). The gross margin rule goes into effect on November 8, 2012; however, OCC proposed to begin complying with the gross margin rule on November 5, 2012 as described herein.

OCC's System for Calculating Margin

OCC currently calculates margin requirements for each clearing member's

include CFTC's definition of "initial margin" and second, to clarify which components of OCC's margin calculations meets the definition of "initial margin" as the term is defined under CFTC Rules. Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

⁵ OCC also filed an advanced notice relating to these proposed changes. The advance notice was published on October 1, 2012. "Advance Notice Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis," Release No. 34-67921 (September 25, 2012), 77 FR 59998 (October 1, 2012). The Commission did not receive any comments on this publication.

⁶ 17 CFR 39.13(g)(8)(i).

⁷ See SR-OCC-2011-18.

⁸ See SR-OCC-2012-06.

⁹ Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334, 69439 (November 8, 2011).

segregated futures customer account held at OCC on a net basis by applying OCC's System for Theoretical Analysis and Numerical Simulations ("STANS"). STANS calculates initial margin with respect to each account of a clearing member, including each clearing member's futures customer account(s), on a net basis. STANS includes both a net asset value ("NAV") component and a risk component, with the risk component being the equivalent of "initial margin" as that term is defined under CFTC Rules. The NAV component marks all positions to market and nets long and short positions to determine the NAV of each clearing member's portfolio of customer positions. The NAV component represents the cost to liquidate the portfolio at current prices by selling the net long positions and buying in the net short positions. The risk component is estimated by means of an expected shortfall risk measure obtained from "Monte Carlo" simulations designed to measure the additional asset value required in any portfolio to eliminate an unacceptable level of risk that the portfolio would liquidate to a deficit.

OCC presently lacks sufficient information about individual customer positions to calculate initial margin at the level of each individual customer. However, OCC has been coordinating with other DCOs to establish an industry-wide mechanism for complying with the customer gross margin rule. Pursuant to this new system, each DCO's clearing members will submit data files to the DCO identifying positions by numerical customer identifiers.¹⁰ OCC will use this information to calculate initial margins, using STANS, for each customer identifier of a clearing member and to aggregate those initial margin calculations to determine the total futures customer margin requirement for the clearing member's segregated futures customer account(s) held at OCC.¹¹ OCC

¹⁰ The position data provided to OCC by clearing members will not include (a) information with respect to the allocation of margin assets to particular customers, nor (b) information with respect to settlement obligations arising from the exercise, assignment or maturity of cleared contracts. For this reason, OCC will treat all margin assets and settlement obligations for each account to which the gross margin rule applies as being in sub-accounts of the Clearing Member. OCC will calculate margin, using STANS, separately for each sub-account and will aggregate the calculated margin requirements at the level of the clearing member's segregated futures customer account to which the sub-accounts relate.

¹¹ OCC currently carries the following account types that are segregated pursuant to Section 4d of the Commodity Exchange Act: Segregated Futures Accounts, Segregated Futures Professional Accounts, non-Proprietary X-M accounts, and

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ "Notice of Filing of Proposed Rule Change Relating to the Margining of Segregated Futures Customer Accounts on a Gross Basis," Release No. 34-67896 (September 20, 2012), 77 FR 59231 (September 26, 2012).

⁴ In Amendment No. 1, OCC proposed wording changes and responded to a CFTC interpretation concerning what constitutes initial margin. Specifically, it amended the text of Rule 601 by inserting the word "initial" before the word "margin," to more closely parallel CFTC Rule 39.13(g)(8)(i)⁴ which references "initial margin." It also amended Item 3 of Form 19b-4 to, first,