

including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on this section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68342; File No. SR-CBOE-2012-114]

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

December 3, 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 November 21, 2012, 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 its 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.

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

###### 1. Purpose

The Exchange proposes to amend its Network Access Port fees. Currently, the Exchange only offers 1 Gigabit Ethernet ("1 Gbps") network access connectivity. However, as of December 1, 2012, the Exchange is moving its trading systems over to the Equinix NY4 facility ("NY4"). In addition to 1 Gbps network access, NY4 has capacity to accommodate 10 Gigabit Ethernet ("10 Gbps") network access. The Exchange would like to make such a connection available to CBOE market participants. However, the equipment and infrastructure necessary to provide the 10 Gbps connection is more expensive than that necessary to provide a 1 Gbps connection. As such, the Exchange proposes to adopt a \$3,000 per month fee for access to a 10 Gbps Network Access Port (\$6,000 for Sponsored Users). CBOE market participants will be able to elect to connect to CBOE's trading system via either a 1 Gbps or 10 Gbps Network Access port. Regardless of which is chosen, the Network Access Port fee will be assessed for each port that provides direct access to CBOE's trading system. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely

proposes to increase the rates in equal proportion.

Following the move to NY4, CBOE will be retaining some trading systems in Chicago (the "Disaster Recovery Systems") in case of the occurrence of some kind of disaster which prevents NY4 from operating. These Disaster Recovery Systems can be accessed via Network Access Ports in Chicago (the "Disaster Recovery Network Access Ports"). CBOE market participants may maintain Disaster Recovery Network Access Ports in order to be able to connect to the Disaster Recovery Systems in case of such disaster. The fee for a Disaster Recovery Network Access Port will be \$250 per month (\$500 for Sponsored Users; for connectivity fees, CBOE charges twice the rate for Sponsored Users as for regular access, and therefore merely proposes to apply the same concept to the new Disaster Recovery Network Access Port fees). This amount will allow CBOE to maintain the Disaster Recovery Network Access Ports in case they become necessary.

The Exchange also proposes to amend the reference in its Fees Schedule to its 1-Gbps Network Access Port. Currently, that port fee is listed as for "1 Gigabyte". However, "Gigabyte" is not the correct term ("Gigabit" is the correct term) to refer to that manner of access. The Exchange proposes to replace the word "Gigabyte" with "Gbps", which is the abbreviation of the term "Gigabit", in order to use the correct terminology.

The proposed change is to take effect on December 1, 2012.

###### 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 Section 6(b) of the Act.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>4</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest, and with Section 6(b)(4) of the Act<sup>5</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges

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

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

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

among its Trading Permit Holders and other persons using its facilities.

Assessing a higher fee for 10 Gbps connectivity than for 1 Gbps connectivity is reasonable because 10 Gbps connectivity is more robust than 1 Gbps connectivity, and is equitable and not unfairly discriminatory because 10 Gbps connectivity requires more costly equipment and maintenance, and the Exchange must recoup the costs related to providing 10 Gbps connectivity. Further, CBOE market participants may still elect for the less-expensive 1 Gbps connectivity. Finally, the amount of the fee for 10 Gbps connectivity is less than the amount of the fees for 10 Gbps connectivity assessed by other exchanges.<sup>6</sup>

The fee for Disaster Recovery Network Access Ports is reasonable because it will allow CBOE to maintain those ports in case of necessity. The fee for Disaster Recovery Network Access Ports is equitable and not unfairly discriminatory because it will be applied equally to all CBOE market participants wishing to maintain a connection to the Disaster Recovery Systems via a Disaster Recovery Network Access Port (except Sponsored Users).

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 possessing a trading permit. As such, CBOE Trading Permit Holders who have a trading permit will have a higher level of commitment to transacting business on CBOE and using Exchange facilities than Sponsored Users. Finally, these differences in the amounts for Sponsored Users and regular users maintain the same proportional difference as that for other connectivity fees.

Amending the references in the Fees Schedule to its 1-Gbps Network Access Port from "1 Gigabyte" to "1 Gbps" removes impediments to and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest by eliminating any confusion that could be caused due to the use of inaccurate terminology.

<sup>6</sup> See New York Stock Exchange Price List, page 13 [sic], which lists monthly prices of \$12,000–61,500 for different types of 10 Gbps connectivity (along with initial charges of \$10,000–50,000) and International Securities Exchange Schedule of Fees, page 9 [sic], which lists a low-latency Ethernet network access fee of \$7,000 per month.

### *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>7</sup> of the Act and paragraph (f) of Rule 19b-4<sup>8</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-2012-114 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-2012-114. 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/>

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

<sup>8</sup> 17 C.F.R. 240.19b-4(f).

[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 20549-1090, 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 CBOE's principal office and on its Internet Web site. 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-2012-114, and should be submitted on or before December 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 68336; File No. SR-NASDAQ-2012-129]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Establish the Retail Price Improvement Program on a Pilot Basis Until 12 Months From the Date of Implementation**

December 3, 2012

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 November 19, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") 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-

<sup>9</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.