

and regulations thereunder applicable to a national securities exchange.<sup>17</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>18</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act<sup>19</sup> in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that CBOE Rule 52.3A, in allowing CBSX to cancel or release orders affected by technical or systems issues, should provide a reasonably efficient means for CBSX to handle such orders, and appears reasonably designed to permit CBSX to maintain fair and orderly markets.<sup>20</sup>

The Commission also believes that allowing CBSX to resolve error positions through the use of error accounts maintained by its routing brokers or CBSX itself pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions to which the rule applies, and the procedures for the handling of such positions. In particular, the Commission

notes that CBOE Rule 52.10A only applies to error positions that result from the Exchanges routing service, and that such positions shall be liquidated by the routing broker or the Exchange, as applicable, as soon as practicable.<sup>21</sup> In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission notes that CBSX or a routing broker, as applicable, will establish and enforce policies and procedures reasonably designed to (1) adequately restrict the flow of confidential and proprietary information associated with the liquidation of the error positions, and (2) in the case of liquidations by a routing broker, prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of error positions.<sup>22</sup> Furthermore, to the extent CBSX uses a CBSX Error Account to liquidate error positions, the Exchange shall provide complete time and price discretion for the trading to liquidate error positions in a CBSX Error Account to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading.<sup>23</sup> The Commission believes that these requirements should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of CBSX, its routing brokers, or any third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that routing brokers would be required to make and keep records associated with the liquidation of routing broker error positions<sup>24</sup> and CBOE would be required to make and keep records to document all determinations to treat positions as error positions under this Rule (whether or not a CBSX Error Account is used to liquidate such error positions), as well

as records associated with the liquidation of CBSX Error Account error positions through a third-party broker-dealer.<sup>25</sup>

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.<sup>26</sup>

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-CBOE-2012-109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68579; File No. SR-NYSE-2012-78]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Eliminating Certain Credits Within the New York Stock Exchange LLC Price List

January 4, 2013.

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 December 21, 2012, New York Stock Exchange LLC (the "Exchange" or "NYSE") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>25</sup> See CBOE Rule 52.10A(e)(iii).

<sup>26</sup> See, e.g., Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR-NASDAQ-2012-057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR-NYSEArca-2012-22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR-EDGX-2012-08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR-EDGA-2012-09).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</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>17</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>20</sup> The Commission notes that CBSX states it believes that allowing it to cancel or release orders under such circumstances would allow CBSX to maintain fair and orderly markets, and that CBOE Rule 52.10A is designed to ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. See Notice, 77 FR at 70514. The Commission also notes that CBOE states that a decision to cancel or release orders due to a technical or systems issue is not equivalent to CBSX declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. See 17 CFR 242.611(b). See also Notice, 77 FR at 70512 n.9.

<sup>21</sup> See CBOE Rule 52.10A.

<sup>22</sup> See CBOE Rules 52.10A(d)(i); 52.10A(e)(ii).

<sup>23</sup> See CBOE Rule 52.10A(e)(i).

<sup>24</sup> See CBOE Rule 52.10A(d)(ii).

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to eliminate certain credits within its Price List, which the Exchange proposes to become operative on January 1, 2013. 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 proposes to eliminate certain credits within its Price List, which the Exchange proposes to become operative on January 1, 2013.

Currently, the Exchange provides a credit per share of \$0.0002 for member organizations, floor brokers, Designated Market Makers (“DMMs”), and Supplemental Liquidity Providers (“SLPs”) that provide displayed liquidity to the Exchange in the following ten active securities (“Active Securities”):<sup>3</sup>

Company name	Symbol
Bank of America Corp. ....	BAC
Citigroup Inc. ....	C
Ford Motor Company ....	F
General Electric ....	GE
JPMorgan Chase & Co. ....	JPM
Nokia Corporation ....	NOK
PFIZER Inc. ....	PFE
Sprint Nextel Corporation ....	S
AT&T Inc. ....	T
Wells Fargo & Co. ....	WFC

The credit applies to transactions in the Active Securities and is in addition

<sup>3</sup> See Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR-NYSE-2012-50).

to any other credit for floor and non-floor transactions.<sup>4</sup>

The Exchange proposes to eliminate this credit for member organizations, floor brokers, DMMs, and SLPs from the Fee Schedule because the incremental credit has not resulted in significant additional liquidity in the Active Securities.

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

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>6</sup> 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. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that eliminating the credit for transactions in Active Securities for member organizations, floor brokers, DMMs, and SLPs is reasonable because it did not encourage sufficient additional liquidity and competition in the Active Securities on the Exchange. As such, the Exchange believes it is reasonable not to provide an additional credit for transactions in the Active Securities. The Exchange believes that eliminating the credit for transactions in Active Securities is equitable and not unfairly discriminatory because all similarly

<sup>4</sup> The credit does not apply to transactions in the Active Securities in the Retail Liquidity Program.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

situated member organizations, floor brokers, DMMs, and SLPs would be subject to the same fee structure. In addition, the Exchange believes that eliminating the credit is equitable and not unfairly discriminatory because it did not generate enough additional volumes of liquidity in Active Securities to warrant the additional credit.

The Exchange believes that the proposed change is designed to provide appropriate incentives for all market participants, thereby removing impediments to and perfecting the mechanism of a free and open market system. In addition, for the reasons stated above, the proposed changes are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

*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 because the additional credit for executions in Active Securities did not contribute to a meaningful change in market share across NYSE-listed stocks, and therefore, the Exchange expects that eliminating the credit will similarly have little impact on the Exchange or in other securities markets. As stated above, the Exchange believes that the proposed change would impact all similarly situated market participants equally, and as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants. In addition, 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 must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment.

*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)<sup>8</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> thereunder, because it establishes a due, fee, or other charge imposed by 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2012-78 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-2012-78. 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 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-NYSE-2012-78 and should be submitted on or before January 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68585; File No. SR-CBOE-2012-108]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Address the Authority To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of Routing Service Error Accounts

January 4, 2013.

#### I. Introduction

On November 8, 2012, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 (i) address the authority of the Exchange to cancel orders (or release routing-related orders) when a technical or systems issue occurs; and (ii) describe the operation of an Exchange error account(s) and routing broker error account(s), which may be used to liquidate unmatched executions that may occur in the provision of the Exchange's routing service. The proposed rule change was published for comment in the **Federal Register** on November 26, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

<sup>10</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. 68262 (November 19, 2012), 77 FR 70517 (November 26, 2012) (SR-CBOE-2012-108) ("Notice").

## II. Description of the Proposal

In its proposal, the Exchange states that it operates a "hybrid" style system of trading that allows automatic executions to occur electronically and open outcry trades to occur on the floor of the Exchange.<sup>4</sup> As part of this infrastructure, the Exchange states that it automatically routes orders to other exchanges under certain circumstances. These routing services are provided in conjunction with one or more routing brokers that are not affiliated with the Exchange.<sup>5</sup> Mechanically, when the Exchange receives an order from a Trading Permit Holder that is held in the Exchange system and determines to route an order to another exchange, the Exchange provides the routing broker with a corresponding order and instructions to route the order to another exchange. The routing broker then sends the corresponding order to the other exchange.

In its proposal, CBOE states that the Exchange may encounter situations that make it necessary to cancel orders (or release routing-related orders),<sup>6</sup> and to resolve error positions that result from errors of the Exchange, routing brokers, or another exchange.<sup>7</sup>

#### *Proposed Rule 6.6A (Order Cancellation/Release)*

New CBOE Rule 6.6A provides CBOE with general authority to cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, a routing broker in connection with the routing service provided under CBOE Rule 6.14B, or another exchange to which an Exchange order has been routed. It also provides that a routing broker may only cancel orders being routed to another exchange based on the Exchange's standing or specific instructions or as otherwise provided in the Exchange Rules. CBOE will be required to provide notice of the cancellation to affected Trading Permit Holders as soon as practicable.<sup>8</sup>

Paragraph (b) of the rule provides that the Exchange may also determine to release orders being held on the

<sup>4</sup> See Notice, 77 FR at 70518.

<sup>5</sup> See Notice, 77 FR at 70518 n.4, n.8, and accompanying text.

<sup>6</sup> See Notice, 77 FR at 70518. For examples of some of the circumstances in which the Exchange may decide to cancel orders, see Notice, 77 FR at 70519.

<sup>7</sup> See Notice, 77 FR at 70518. Specifically, CBOE Rule 6.14C defines "error positions" as "unmatched trade positions that may occur in connection with the routing service provided under Rule 6.14B".

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 70520-21.

<sup>8</sup> See CBOE Rule 6.6A(a).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

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