

members of the self-regulatory organization, non-members, or both.

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 must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed amendments to the MIAX Options Fee Schedule appropriately reflect this competitive environment.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by MIAX in establishing fees for services provided to its Members and others using its facilities will not have an impact on competition. As a new entrant in the already highly competitive environment for equity options trading, MIAX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. MIAX's proposed fees for Membership and Systems Connectivity, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited or received.

### **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)(ii) of the Act.<sup>17</sup> 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **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-MIAX-2012-05 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-MIAX-2012-05. 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 publicly available. All submissions should refer to File Number SR-MIAX-2012-05 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68657; File No. SR-CHX-2012-19]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter Fee Schedule Relating to Port Charges**

January 15, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on December 31, 2012, the Chicago Stock Exchange, Inc. ("CHX" or "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 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**

CHX proposes to amend Exchange Rules and its Schedule of Participant Fees and Assessments (the "Fee Schedule") to alter fees relating to port charges. The Exchange proposes to implement the fee change on January 1, 2013. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), 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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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 the Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

Through this filing, the Exchange proposes to amend its Schedule of Fees and Assessments (the "Fee Schedule") to amend its cap on port charges. Under the current Fee Schedule, the Exchange does not assess a port charge under two circumstances: (1) When a Participant Firm accesses the Exchange's Matching System through Brokerplex, or (2) when a Participant Firm executes an average daily volume of 5 million or more provide shares in the Matching System during the month. As under the current rules, the Exchange's proposed rule change will not assess a port charge to those Participant Firms who access the Exchange's Matching System through Brokerplex. The Exchange proposes only to alter the second scenario relating to the average daily volume cap.

Specifically, the Exchange proposes to lower the threshold average daily volume of provide shares in the Matching System from five (5) million to one (1) million and to cap the port charges to the greatest number of ports in either CHX data center.<sup>4</sup> Under the proposed rule, if a Participant Firm executes an average daily volume of one (1) million or more provide shares in the Matching System during the month, the Exchange proposes to cap the charges equal to the greatest number of ports in either CHX data center. The ports would continue to be counted per CHX clearing "give-up."<sup>5</sup> For example, a Participant Firm that qualified for the cap by achieving the one (1) million average daily provide share level and had four ports in CHX's Chicago data center and three ports in CHX's New Jersey data center would only be assessed a \$400/port for the four ports in Chicago.

The Exchange believes the proposed port fee changes are appropriate to attract liquidity and increase revenue to the Exchange while encouraging connections in both of CHX's data centers. The Exchange believes the rule change will promote disaster

preparedness among CHX Participant Firms as Participant Firms will have access to multiple ports at the Exchange. Under the current rules, Participant Firms that have multiple connections in both of CHX's data centers but do not achieve an average daily volume of five (5) million or more provide shares in the Matching System for the month could have significant port fees. The Exchange believes that by lowering the average daily volume requirement to a more modest one (1) million provide shares, a larger number of Participant Firms will be incentivized to supply liquidity and qualify for the port charge cap. The Exchange also believes that imposing a cap on port charges at this more modest level will encourage more Participant firms to establish connections in both data centers while also allowing the exchange to receive at least some port charges from all Participant Firms.

**2. Statutory Basis**

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>7</sup> in particular. The Exchange believes that the proposed amendments to the Fee Schedule are necessary to attract liquidity and increase revenue to the Exchange while encouraging Participant Firms to establish connections at both CHX data centers. Section 6(b)(4) states that exchange rules must "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities." The Exchange proposes to amend its fee schedule to impose a cap on port charges for those Participant Firms that average one (1) million or more daily provide share levels as an equitable solution to incentivize Participant Firms to provide liquidity on the Exchange. The Exchange believes that such change will allow for fees that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers since the rules will apply only to those Participant Firms that incur significant costs from having ports at multiple locations. Further, imposing a cap on port charges at a more modest level will encourage more Participant firms to establish connections in both data centers while also allowing the exchange to receive at least some port charges from all Participant Firms.

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 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 reflects this competitive environment.

*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. In fact, the Exchange believes that the proposed change will promote Participant Firms to provide liquidity on the Exchange regardless of their type or size, for example. Those Participant Firms who conduct more trading specifically on the Exchange will qualify for the port charge cap regardless of firm type or size. Even if the rule was construed to favor firms that may have the capacity to provide large amounts of liquidity, the Exchange believes that encouraging trading in a marketplace through fee caps is not an undue burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as the marketplace will benefit from the increased liquidity. Further, the Exchange believes that, aside from encouraging liquidity on the Exchange, the establishment of ports in both data centers by Participant Firms in order to qualify for the port charge caps will promote disaster preparedness among Participant Firms that provides a benefit to the industry. The Exchange believes by diversifying the number of access ports to the Exchange, Participant Firms will be better prepared in the event of potential disaster situations.

*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 CHX.

<sup>4</sup> The Exchange currently has two data centers; one in New Jersey and one in Chicago.

<sup>5</sup> A give-up is a clearing identifier associated with a Participant Firm. Participant Firms may have multiple clearing identifiers. Under the proposed rule, Participant Firms will be charged a port fee per give-up or clearing identifier per port.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

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

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-CHX-2012-19 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-CHX-2012-19. 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-CHX-2012-19 and should be submitted on or before February 8, 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68650; File No. SR-FINRA-2013-001]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Cross-References and Make Other Non-Substantive Changes Within FINRA Rules and By-Laws

January 14, 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 January 3, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, 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 Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within certain FINRA rules and By-Laws, primarily as the result of approval of new consolidated FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal

office of FINRA 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, FINRA 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. FINRA 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

FINRA is in the process of developing a consolidated rulebook ("Consolidated FINRA Rulebook").<sup>5</sup> That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make several such changes, as well as certain other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook. First, the proposed rule change would update rule cross-references and make other non-substantive changes to reflect the adoption of new consolidated FINRA communications with the public rules. On March 29, 2012, the SEC approved a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210-1 and 2210-3 through 2210-8 as FINRA Rules 2210 and 2212 through 2216, with several

<sup>5</sup> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice*, March 12, 2008 (Rulebook Consolidation Process).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).