

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68657; File No. SR-CHX-2012-19)

January 15, 2013

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

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 website 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

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<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.

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 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

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

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

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<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).

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.

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.

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

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

#### 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 e-mail 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 e-mail 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 website (<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 website 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 [insert date 21 days from publication in the Federal Register].

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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<sup>10</sup> 17 CFR 200.30-3(a)(12).