

may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>32</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.<sup>33</sup> All of the equity investments to be held by the Fund, including the non-U.S.-listed equity securities, will trade in markets that are ISG members or markets that are parties to a comprehensive surveillance sharing agreement with the Exchange.<sup>34</sup> The Exchange represents that it may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>35</sup>

<sup>32</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

<sup>33</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>34</sup> See *supra* note 14.

<sup>35</sup> See *supra* note 6. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.<sup>36</sup>

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions, when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>37</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) While the Fund generally will invest more than 50% of its assets in investment-grade fixed-income instruments, the Fund may invest up to

Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>36</sup> See *supra* note 14.

<sup>37</sup> 17 CFR 240.10A-3.

35% of its total assets in high-yield debt securities.

(7) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities, master demand notes, and loan participation interests.<sup>38</sup>

(9) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>39</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> that the proposed rule change (SR-NYSEArca-2012-142), as modified by Amendment No. 1 thereto be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

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

[FR Doc. 2013-03276 Filed 2-12-13; 8:45 am]

**BILLING CODE 8011-01-P**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68861; File No. SR-NYSE-2013-12]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Cease Operating New York Block Exchange and Contemporaneously Delete the Text of Rule 1600, Which Governs NYBX Functionality

February 7, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

<sup>38</sup> See *supra* note 20.

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on February 5, 2013, 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 and II 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 contemporaneously delete the text of Rule 1600, which governs NYBX functionality. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://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 intends to cease operating New York Block Exchange (“NYBX”), effective February 28, 2013, and as such, proposes to contemporaneously delete the text of Rule 1600, which governs NYBX’s functionality.<sup>3</sup> NYBX is an electronic exchange facility that provides for the continuous matching and execution of all non-displayed NYBX orders with the aggregate of liquidity in the NYBX Facility, the NYSE Display Book® and considers the protected quotations of all

automated trading centers for securities listed on the NYSE. The Exchange is ceasing operations of NYBX Facility because after years of operations the facility has not garnered enough volume to achieve critical mass and does not have strong support customers [sic]. The Exchange will provide advance notice to its members and member organizations of the discontinuation of this functionality.

The Exchange also proposes to make conforming changes to remove references to Rule 1600 and NYBX from the following other Exchange rules: Rule 13, Rule 15, Supplementary Materials .15 and .20 to Rule 79A, Rule 80C, Supplementary Material .10 to Rule 104, Supplementary Material .10, .12, and .13 to Rule 104T, Supplementary Material .40 to Rule 116, Rule 123B, Supplementary Material .10 to Rule 123C, Supplementary Material .25 to Rule 123D, and Supplementary Material .11 to Rule 1000.

##### **2. Statutory Basis**

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. The proposed rule change, in conjunction with a related communication to members and member organizations, will provide advance notice to NYSE members and member organizations that the Exchange will cease operation 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. The proposed changes are being made to remove references for NYBX from the Exchange Rules to correspond with the Exchange ceasing operations of NYBX facility. The Exchange is ceasing operations of NYBX Facility because after years of operations the facility has not garnered enough volume to achieve critical mass and does not have strong support customers [sic]. The Exchange is ceasing operations of NYBX because

the facility was not competitive, therefore ceasing operations should not have any burden on competition.

#### **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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>6</sup> and Rule 19b–4(f)(6) thereunder.<sup>7</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.<sup>8</sup>

The Exchange has requested a waiver of the 30-day operative delay so that the Exchange can cease operations of the NYBX Facility by February 28, 2013. The Exchange notes that NYBX has not achieved significant volume during its operations and does not believe that ceasing its operation will significantly affect the protection of investors or the public interest. The Exchange further notes that discontinuing operations of NYBX at month end will coincide with the Exchange’s billing cycle and avoid the expense and inconvenience of extending operations into a partial month. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Exchange to cease operations of NYBX without incurring the expense of extending operations into a partial month. Therefore, the Commission

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>7</sup> 17 CFR 240.19b–4(f)(6).

<sup>8</sup> 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In 2011, the Exchange filed a similar filing to cease operations of NYSE Matchpoint and delete Rules related to the exchange facility. See Securities Exchange Act Release No. 63898 (February 11, 2011), 76 FR 9616 (February 18, 2011) (SR–NYSE–2011–03).

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

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

designates the proposed rule change as operative as of February 28, 2013.<sup>9</sup>

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-2013-12 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.

All submissions should refer to File Number SR-NYSE-2013-12. 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 available publicly. All submissions should refer to File Number SR-NYSE-2013-12 and should be submitted on or before March 6, 2013.

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013-03275 Filed 2-12-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68860; File No. SR-CBOE-2013-015]

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

February 7, 2013.

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 January 30, 2013, 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 the 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange is proposing to eliminate the customer transaction fee for XSP index options. Currently, the Exchange has a \$0.18 customer transaction fee per contract for all index products, with some exceptions.<sup>3</sup> The Exchange is proposing to eliminate those customer transaction fees for transactions in XSP index options. Eliminating the customer transaction fee for XSP index options will allow Trading Permit Holders who engage in XSP options trading the opportunity to pay lower fees for such transactions and provide greater incentives for customers to trade XSP index options. Thus, the proposed changes to the customer XSP options transaction fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants.

The propose changes are to take effect on February 1, 2013.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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>4</sup> Specifically, the Exchange believes the proposed rule change is consistent 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 among its

<sup>9</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<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> See Exchange Fee Schedule which outlines exceptions from this transaction fee. (<http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>).

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

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