

of the benefits to members of direct market access. In addition, the Exchange believes that its fees are equitably allocated among its constituents based upon the number of access ports that they require to submit orders to the Exchange. Furthermore, the fees associated with logical and physical ports will be equitably allocated to all constituents as the fees will be uniform in application to all Members and non-members. Finally, the Exchange believes that the fees obtained will enable it to cover its infrastructure costs associated with allowing Members and non-members to establish logical and physical ports to connect to the Exchange's systems and continue to maintain and improve its infrastructure, market technology, and services.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **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) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-EDGA-2010-22 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-EDGA-2010-22. 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 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 a.m. and 3 p.m. Copies of such filing will also 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 No. SR-EDGA-2010-22 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-31626 Filed 12-15-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63525; File No. SR-CBOE-2010-104]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional and Voluntary Professional Fees**

December 10, 2010.

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 December 2, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> 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 is proposing to amend its Fees Schedule as it relates to fees for certain orders. The text of the proposed rule change is available on the Exchange's Web site <http://www.cboe.org/legal>, 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, CBOE 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. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

<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)(ii).

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

<sup>9</sup> 15 U.S.C. 78s(b)(3).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to adopt fees for Professional and Voluntary Professional transactions in S&P 500 Index option series ("SPX") that trade on the Hybrid Trading System. The fees, which are described in more detail below, will be effective December 2, 2010.

By way of background, the Exchange currently operates the Hybrid Trading System and the Hybrid 3.0 Platform.<sup>5</sup> For the Hybrid Trading System, the Exchange has Professional and Voluntary Professional designations for non-broker-dealer customer orders.<sup>6</sup> However, these two designations are not available for non-broker-dealer customer orders in option classes trading on the Hybrid 3.0 Platform (which currently is only SPX).<sup>7</sup> Also by way of background, the particular trading platform on which index options trade is designated by the Exchange on a class-by-class basis pursuant to Rule 8.14, *Index Hybrid Trading System Classes: Market-Maker Participants*. However, CBOE recently amended Rule 8.14 to provide that, for each Hybrid 3.0 class, the Exchange may determine to authorize a group of series of the class for trading on the Hybrid Trading System.<sup>8</sup>

Currently, all series of the SPX option class trade on the Hybrid 3.0 Platform. Therefore, at this time there are no Professional or Voluntary Professional designations for SPX. Pursuant to Rule 8.14, as amended, however, the Exchange may determine to designate a group of series in the SPX index option

class for trading on the Hybrid Trading System. As a result, the Professional and Voluntary Professional designations would be applicable to any such SPX series trading on the Hybrid Trading System.

In anticipation of the Exchange designating a group of SPX series for trading on the Hybrid Trading System, the Exchange is proposing to adopt fees for Professional and Voluntary Professional transactions in SPX that trade on the Hybrid Trading System. The Exchange proposes to charge such Professional and Voluntary Professional orders in the same manner that it charges broker-dealer orders. Specifically, the Exchange is proposing to amend the text of its Fees Schedule to assess a fee of \$0.40 per contract for Professional and Voluntary Professional transactions in SPX option series that trade on the Hybrid Trading System. The Exchange notes that, in accordance with footnote 14 of its Fees Schedule, the index option surcharge fee would also apply to Professional and Voluntary Professional transactions in such SPX series. The Exchange also notes that the Options Regulatory Fee ("ORF") contained in section 12 of the Fees Schedule will apply to Professional and Voluntary Professional transactions in such SPX series. In addition, the Exchange notes that Professional and Voluntary Professional orders in such SPX series will not be subject to the order handling system order cancellation fee contained in section 14 of the Fees Schedule. No changes to the text are needed to reflect the applicability of these surcharge, ORF and cancellation fee provisions.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders. The proposed fee changes would provide clarity on how the Exchange intends to implement the Professional and Voluntary Professional designation for SPX series trading the Hybrid Trading System.

*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 purposes of the Act.

*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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-104 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-2010-104. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the

<sup>5</sup> The "Hybrid Trading System" refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. The "Hybrid 3.0 Platform" is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes, which represent the aggregate Market-Maker quoting interest in the series for the trading crowd. See Rule 1.1(aaa).

<sup>6</sup> The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account. A Professional will be treated in the same manner as a broker or dealer in securities for purposes of various CBOE Rules. The term "Voluntary Professional" means any person or entity that is not a broker or dealer in securities that elects, in writing, to be treated in the same manner as a broker or dealer in securities for purposes of various CBOE Rules. The Professional and Voluntary Professional designations are not available in Hybrid 3.0 classes. See CBOE Rules 1.1(ff) and (ggg).

<sup>7</sup> *Id.*

<sup>8</sup> See Securities Exchange Act Release No. 63186 (October 27, 2010), 75 FR 67417 (November 2, 2010) (SR-CBOE-2010-095).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

submission,<sup>13</sup> 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. 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-2010-104 and should be submitted on or before January 6, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-31634 Filed 12-15-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63520; File No. SR-EDGX-2010-21]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

December 10, 2010.

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 3, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule applicable to Members<sup>3</sup> and non-members of the Exchange pursuant to EDGX Rule 15.1(a) and (c). Pursuant to the proposed rule change, the Exchange will commence charging fees for Members and non-members for certain logical ports used to enter orders into the Exchange's systems. The Exchange also proposes to amend its fees for physical ports. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>.

#### 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 purpose of the proposed rule change is to begin charging a monthly fee for logical ports used to enter orders in the Exchange's trading system. The Exchange recently began charging for "physical" ports, which are ports that are used by a Member or non-member to literally plug into the Exchange at the data centers where the Exchange's servers are located (*i.e.*, either a cross-connection or an external telecommunication circuit). By contrast, a "logical" port (also commonly referred to as a TCP/IP port) represents a port established by the Exchange within the Exchange's system for trading and billing purposes. Each logical port established is specific to a Member or

non-member and grants that Member or non-member the ability to operate a specific application, such as FIX or High Performance API for order entry, or to receive market data. Multiple logical ports can be created and exist over a single physical port. The Exchange proposes to charge \$500 per month for any logical ports other than ports used to receive or request retransmission of market data. Thus, this proposed charge will apply to all Exchange FIX, High Performance API, and DROP ports for both accessing the Exchange directly (Direct)<sup>4</sup> or through the ECN Translator.<sup>5</sup> Members and non-members will receive the first ten (10) sessions free of charge for Direct Sessions only and thereafter be charged the \$500 fee per month. Free sessions will not apply to ECN Translator sessions to incent members and non-members to use Direct Sessions.

Based on the proposal, the change applies to Members that obtain ports for direct access to the Exchange and non-member service bureaus that act as conduit for orders entered by Exchange Members that are their customers. The Exchange believes that the imposition of logical port fees will help the Exchange to continue to maintain and improve its infrastructure, while also encouraging Exchange customers to request and enable only the ports that are necessary for their operations related to the Exchange.

The Exchange notes that other market centers provide similar services to their Members and non-members.<sup>6</sup>

###### Physical Ports

The Exchange currently charges Members and non-members the following annual fees for physical ports based on the connectivity service type:

<sup>4</sup> Direct Sessions will consist on one port at the Exchange's primary data center and one port at the Exchange's secondary data center.

<sup>5</sup> The ECN translator allows a Member or non-member who previously connected to Direct Edge's ECN to be re-directed automatically to EDGX Exchange, Inc. It can only be accessed through a FIX port.

<sup>6</sup> See, e.g., Rule 7015 of The NASDAQ Stock Market LLC ("NASDAQ") (setting forth, among other fees for access services, port fees charged to members and non-members used to enter orders into NASDAQ trading systems). See also Securities Exchange Act Release Nos. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR-NASDAQ-2009-058) (increasing the monthly fee for each port used to enter orders in NASDAQ trading systems from \$400 per month to \$500 per month); 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR-BX-2009-004) (establishing fees for ports used by members to enter orders). See Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR-BATS-2009-026) (establishing fees for ports used by members and non-members to enter orders).

<sup>13</sup> The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org/Legal>, on the Commission's Web site at <http://www.sec.gov>, at CBOE, and at the Commission's Public Reference Room.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.