

legal and policy issues raised by the proposed rule change, as modified by Amendments No. 1 and 2. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendments No. 1 and 2.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>15</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, 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," and "to protect investors and the public interest."<sup>16</sup>

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>17</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by November 8, 2016. Any person who wishes to file a rebuttal to any other person's submission must file

that rebuttal by November 22, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>18</sup> in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendments No. 1 and 2.<sup>19</sup>

In particular, the Commission seeks comment on whether the proposed rules regarding ETPs, which would not expressly apply on a continuing basis, are consistent with the Act.<sup>20</sup> The Commission notes that, while the Exchange represents that it "does not intend to list ETPs on its Pillar platform,"<sup>21</sup> the proposed rule text contains no such limitation, and the Exchange's Form 19b-4 filing also describes the standards being proposed as governing the "listing and trading" of ETPs.<sup>22</sup>

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-2016-44 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-NYSE-2016-44. This file

<sup>18</sup> See Notice, *supra* note 3.

<sup>19</sup> See Amendments No. 1 and 2 to the proposed rule change, *supra* notes 4 and 7, respectively.

<sup>20</sup> The Commission's orders approving the generic listing and trading of actively managed ETFs relied upon the listing exchange's representation that the listing criteria would apply on a continuing basis. See, e.g., Securities Exchange Act Releases No. 78396 (July 22, 2016), 81 FR 49698, 49701 (July 28, 2016) (File No. SR-BATS-2015-100); No. 78397 (July 22, 2016), 81 FR 49320, 49324 (July 27, 2016) (File No. SR-NYSEArca-2015-110); and No. 78918 (Sept. 23, 2016), 81 FR 67033, 67035 (Sept. 29, 2016) (File No. SR-NASDAQ-2016-104). Recent Commission orders approving the listing and trading of individual ETPs have similarly relied upon representations by the listing exchange that all statements and representations made regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of exchange rules and surveillance procedures shall constitute continued listing requirements. See, e.g., Securities Exchange Act Release No. 77920 (May 25, 2016), 81 FR 35086, 35090 (June 1, 2016) (SR-NYSEArca-2016-46); approving listing and trading of shares of the AdvisorShares Cornerstone Small Cap ETF; No. 78847 (Sept. 15, 2016), 81 FR 64560, 64562 (Sept. 20, 2016) (File No. SR-BATS-2016-34); approving listing and trading of shares of the ProShares Crude Oil Strategy ETF).

<sup>21</sup> See Notice, *supra* note 3, at 45581.

<sup>22</sup> See, e.g., Notice, *supra* note 3, at 45580, 45583 (emphasis added).

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 these filings 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-2016-44 and should be submitted on or before November 8, 2016. Rebuttal comments should be submitted by November 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79086; File No. SR-CBOE-2016-072]

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

October 12, 2016.

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

<sup>23</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

September 30, 2016, 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 Substance of the Proposed Rule Change**

The Exchange proposes to amend the 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'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 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 proposes to amend its Fees Schedule, effective October 3, 2016. Specifically, the Exchange proposes to increase the transaction fee for Professional Customers and Voluntary Professionals ("W" origin code) ("Professionals") for all manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A<sup>3</sup>), ETF and ETN option classes from \$0.00 per contract to \$0.12 per contract. The Exchange recently reduced this fee from \$0.25 per contract to \$0.00 per contract, which amount was comparable to the amount assessed to similar transactions for Professionals at another exchange.<sup>4</sup> Upon further

review of manual transaction fees, the Exchange proposes to increase the fee to restore a more competitive balance among Professionals and broker-dealers (which pay manual transaction fees in varying amounts<sup>5</sup>) with respect to manual transactions on the Exchange's trading floor. The Exchange notes the proposed \$0.12 fee is lower than the \$0.25 fee assessed to Professionals for manual transactions prior to September 1, 2016. Additionally, the proposed change is consistent with the approximate average transaction fee amount assessed to market-makers for manual transactions.<sup>6</sup>

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

The Exchange believes the proposed rule change is consistent with 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an 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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes it is reasonable to increase the transaction fee for Professionals for manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN options classes to \$0.12 per contract because it is lower than the \$0.25 fee assessed to Professionals for manual transactions prior to September 1, 2016. Additionally, the proposed fee is consistent with the approximate average transaction fee amount assessed to market-makers for manual

transactions. The Exchange believes it is equitable and not unfairly discriminatory to propose to increase the manual transaction fee only for Professionals because it is designed to create a more competitive balance between Professionals (who have trading characteristics akin to broker-dealers) and broker-dealers for open outcry trades. With respect to manual transactions, Professionals often participate on trades in a similar manner as broker-dealers, and therefore the Exchange believes it is reasonable for Professionals to pay a transaction fee for those trades so they can compete on more equal footing for participation on those trades.<sup>10</sup> Additionally, because the proposed fee is lower than the \$0.25 fee Professionals were assessed for manual transactions prior to September 1, 2016, the Exchange believes the proposed fee change will continue to attract a greater number of Professional orders for those classes, which may create greater trading opportunities that benefit all market participants. The Exchange lastly notes assessing a different fee amount for manual executions than for electronic executions is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and recoups the costs of such expenditures through electronic transaction fees.

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

The Exchange does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition not necessary or appropriate in furtherance of the purposes of the Act because, while increasing the transaction rate to \$0.12 for manual executions in penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN option classes only applies to Professionals, broker-dealers currently pay transaction fees when trading as parties to those executions. The proposed change is designed to create a more competitive balance between Professionals and broker-dealers for open outcry trading. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or

<sup>5</sup> See CBOE Fees Schedule, Equity, ETF and ETN, and Index Options Rate Tables.

<sup>6</sup> See CBOE Fees Schedule, Liquidity Provider Sliding Scale for the transaction fees for market-makers based on volume thresholds.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> See CBOE Rule 1.1(ff) and (ggg) (including Interpretation and Policy .01 to paragraph (ggg)) for the definition of Professionals.

<sup>3</sup> See CBOE Fees Schedule, Footnote 34.

<sup>4</sup> See Securities Exchange Act Release No. 34-78786 (September 8, 2016), 81 FR 63242 (September 14, 2016) (SR-CBOE-2016-066).

appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

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

The Exchange neither solicited nor received comments on the proposed rule change.

**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) of the Act<sup>11</sup> and paragraph (f) 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change 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-CBOE-2016-072 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2016-072. 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-CBOE-2016-072 and should be submitted on or before November 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-79088; File No. SR-DTC-2016-009]**

**Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify Certain Rules Provisions Relating to Pledges**

October 12, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on October 3, 2016, The Depository Trust Company ("DTC") 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of modifications to the DTC Rules, By-laws and Organization Certificate ("Rules")<sup>5</sup> in order to clarify certain provisions relating to DTC's Pledge services, as described in greater detail below.<sup>6</sup>

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

**Delivery or Pledge of Securities at DTC**

DTC holds Eligible Securities on behalf of its Participants and reflects the transfer of interests in those securities by computerized book entry. There are two fundamental types of book-entry transfer under the Rules: Delivery and Pledge. A Delivery or a Pledge may be made (i) free of payment, where no funds are transferred through DTC, or (ii) versus payment through DTC net funds settlement in the ordinary course of business. The clarifying amendments in the proposed rule change relate to Pledges.

A Participant may instruct DTC to Deliver Securities from its Account to the Account of another Participant, in which case ownership of the Securities is transferred to the Receiver. Alternatively, a Participant (in this context, a Pledgor) that is granting a

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

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

<sup>5</sup> Available at [http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf).

<sup>6</sup> Capitalized terms not defined herein are defined in the Rules, *supra* note 5.

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

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

<sup>13</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.