

market are present.<sup>19</sup> Lastly, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders<sup>20</sup> acting as registered Market Makers<sup>21</sup> in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented 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 Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

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

(3) The Exchange's surveillance procedures 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.

(4) With respect to the Funds' futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) Prior to the commencement of trading, the Exchange will inform its 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 risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated ITV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) 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; (d) how information regarding the ITV is disseminated; (e) that a static ITV will be disseminated, between the close of trading on the applicable futures exchange and the close of the NYSE Arca Core Trading Session; (f) 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 (g) trading information.

(6) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.

(7) With respect to the application of Rule 10A-3 under the Act, the Trust will rely on the exception contained in Rule 10A-3(c)(7).<sup>22</sup>

This approval order is based on all of the Exchange's representations.<sup>23</sup> The Commission notes that the Funds are substantially similar to another fund, the shares of which have been approved for the listing and trading on the Exchange by the Commission.<sup>24</sup>

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>25</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>26</sup> that the proposed rule change (SR-NYSEArca-2011-48) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Elizabeth M. Murphy,**  
Secretary.

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**BILLING CODE 8011-01-P**

<sup>22</sup> See *supra* notes 11 and 12 and accompanying text.

<sup>23</sup> The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

<sup>24</sup> See Securities Exchange Act Release No. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR-NYSEArca-2010-22) (approving the listing and trading on the Exchange of the Teucrium Corn Fund).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65342; File No. SR-CHX-2011-28]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Retroactively Waive Its Order Cancellation Fee for the Period of September 1 to September 9, 2011 (Inclusive)

September 14, 2011.

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 September 12, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. CHX has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> which is effective upon filing with 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

CHX proposes to amend its Fee Schedule to retroactively waive its order cancellation fee for a limited duration. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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> 17 CFR 240.19b-4(f)(6).

<sup>19</sup> 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 Funds. Trading in the Shares of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. 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>20</sup> See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

<sup>21</sup> See NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

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

1. Purpose

Through this proposal, the Exchange seeks to retroactively waive the order cancellation fees as provided in Section E.8. of its Schedule of Fees and Assessments ("Fee Schedule") for the period of September 1 to September 9, 2011, inclusive. On August 25, 2011, the Exchange filed a proposal to amend its Fee Schedule to replace the prior order cancellation fee with a new version, effective September 1, 2011.<sup>4</sup>

The Exchange submitted a filing to the Commission on August 25, 2011 to make these changes with a proposed effective date of September 1, 2011. The Exchange posted a Legal Notice dated August 26, 2011 detailing the proposed changes to the cancellation fee and posted it to its public Web site.<sup>5</sup> The Exchange also included the Legal Notice in its Weekly Bulletin to Participants dated September 2, 2011 which is also posted to its Web site.<sup>6</sup> Finally, the Exchange posted the rule filing requesting the change to its Web site.

The Commission published the Notice of Filing and Immediate Effectiveness of the proposed cancellation fee change on its public Web site on September 6, 2011. Pursuant to Commission rules, the Exchange updated the Fee Schedule to reflect the changes in the calculation of the order cancellation fee on its Web site on September 8, 2011. Since the Fee Schedule was not updated until after the September 1st effective date, however, the Exchange believes that certain Participants may not have received actual notice of the changes.<sup>7</sup> Such Participants may have incurred cancellation fee charges which they otherwise may have avoided by, for example, limiting the number of cancellation requests. Given the potential that Participants might have incurred charges which they did not anticipate, the Exchange seeks to waive the cancellation fees as to all Participants through the close of business on Friday, September 9, 2011. Beginning on Monday, September 12, 2011, order and cancellation activity would give rise to cancellation fees if

the criteria defined in the Fee Schedule are met. The Exchange believes that this proposal recognizes that certain Participants may not have received actual notice of the cancellation fee changes or fully understood and appreciated the potential impact and magnitude of those changes to their firms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>8</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by retroactively waiving the Exchange's order cancellation fee for a limited period of time to ensure that all Participants effectively received actual notice of the recent changes to those fees. Depending on the nature of the order and cancellation request activity of a Participant, the proposed changes could significantly increase the cancellation fees imposed upon Participants such that a limited waiver is appropriate under these particular circumstances.

The Exchange also believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>11</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The proposed waiver is fair and non-discriminatory since it would apply equally to all Participants and negates the imposition of fees (as opposed to imposing a fee) for prior activity where some Participants may not have fully appreciated the substantial nature of the changes to the order cancellation fees.

*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.

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

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing 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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</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.

**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-2011-28 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-2011-28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>4</sup> Securities Exchange Act Rel. No. 34-65268 (Aug. 25, 2011), 76 FR 56246 (SR-CHX-2011-25).

<sup>5</sup> Legal Notice L-2011-26 (Aug. 26, 2011).

<sup>6</sup> CHX Weekly Bulletin, Issue 2011-35 (Sept. 2, 2011).

<sup>7</sup> The Exchange also believes that disruptions to Participants and their personnel as a result of the recent Hurricane Irene may have contributed to the failure to effectively communicate the impact of the cancellation fee changes to some Participants.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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 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-2011-28 and should be submitted on or before October 12, 2011.

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

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65341; File No. SR-NYSEAmex-2011-68]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Relating to the Messages to Contracts Traded Ratio Fee in the Options Fee Schedule

September 14, 2011.

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 September 1, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 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

The Exchange proposes to amend its Options Fee Schedule (the "Schedule") by adjusting the message ratio used to calculate the Messages to Contracts Traded Ratio Fee ("Messages Fee"). Changes to the Schedule are shown in Exhibit 5. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.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 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 proposes to amend the Schedule by adjusting the message ratio used to calculate the Messages Fee.

The Exchange recently adopted the Messages Fee to help encourage efficient usage of systems capacity by all ATP firms.<sup>3</sup> The Exchange believes that it is in the best interests of all ATP firms and investors who access our markets to encourage efficient usage of capacity.

The Messages Fee takes into consideration quotes as well as orders entered and looks at the number of contracts traded as a result. ATP firms that enter excessive amounts of orders and quotes that produce little or no volume are assessed the Messages Fee based on the ratio of quotes and orders to contracts traded. The Messages Fee is only assessed against ATP firms who exceed one billion quotes and/or orders (collectively, "messages") in a given month in determining whether

inefficient utilization of systems capacity has occurred. For those ATP firms exceeding one billion messages in a month, the Exchange currently assesses a fee for those ATP firms that do not execute at least one contract for every 1,500 messages entered. An ATP firm failing to meet that execution ratio is charged \$.01 for every 1,000 messages in excess of one billion messages.

The Exchange proposes to amend the message ratio in the Schedule to reflect a range, namely one contract for every 1,500 to 3,000 messages entered. Under the proposal, the Exchange would be permitted to select the precise number of messages within that range that would be used to calculate the Messages Fees. Any change to the number of messages to be used in setting the Messages Fee would be announced in an Information Memo at least one business day in advance of its implementation and would be applicable in the next calendar month and thereafter until changed. The fee would not be changed mid-month. Thus, for example, if the Exchange determined to change the message ratio as of September 1, 2011, the Exchange would announce the newly selected ratio in an Information Memo not later than August 31, 2011 and that ratio would apply in September 2011 and each succeeding month until changed in accordance with the notice described above. Under the proposed rule change, the Exchange also would be authorized to exclude one or more days of data for purposes of calculating the Messages Fee for an ATP firm if the Exchange determined, in its sole discretion, that one or more ATP Firms or the Exchange was experiencing a bona fide systems problem.<sup>4</sup> Any ATP Firm seeking relief as a result of a systems problem will be required to notify the Exchange via e-mail with a description of the systems problem. The Exchange shall keep a record of all such requests and whether the request was deemed by the Exchange to be a bona fide systems problem resulting in waiving that day's activity from the calculation of the Messages Fee.

<sup>4</sup> Examples of bona fide systems problems include, but are not limited to, an erroneous input (such as an error related to volatility or underlying price) that cause the generation of quotes that are substantially away from the quoted national best bid and offer; or an Exchange systems problem that causes an ATP firm to continually attempt to update or withdraw its quotes, generating a large volume of message traffic. In those cases, where the bona fide systems problem is at the Exchange, the Exchange will exclude that day's activity from the calculation of the Messages Fee for all ATP firms that were impacted by such bona fide systems problem.

<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> See Securities Exchange Act Release No. 64655 (June 13, 2011), 76 FR 35495 (June 17, 2011) (SR-NYSEAmex-2011-37).