

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65471; File No. SR-C2-2011-026)

October 3, 2011

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the C2 Fees Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, C2 Options Exchange, Incorporated (the "Exchange" or "C2") 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 Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder.⁴ 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 is proposing to amend its Fees Schedule as it relates to the SPXPM. The text of the proposed rule change is available on the Exchange's website (<http://www.c2exchange.com>), 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

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

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index ("S&P 500") options with third-Friday-of-the-month ("Expiration Friday") expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities ("SPXPM").⁵ The Exchange now proposes to adopt fees associated with the anticipated trading of SPXPM.

The Exchange proposes adopting standard transaction fees for SPXPM that are comparable to, if not effectively lower than, similar products available in the marketplace. The specific transaction fees proposed are as follows: Public customer transactions would be charged \$0.44 per contract; voluntary professional, professional customer, and broker-dealer transactions would be charged \$0.40 per contract⁶; OCC Clearing Trading Permit Holder Firm ("Firm") proprietary transactions would be charged \$0.25 per contract; and C2 Market-Maker transactions would be charged \$0.17 per contract. These fee rates are comparable to rates in place on the

⁵ See Securities Exchange Act Release No. 34-65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008).

⁶ "Professional" and "Voluntary Professional" participant-types are defined in C2 Rule 1.1.

Chicago Board Options Exchange, Incorporated (“CBOE”) for executions in SPX (the a.m.-settled S&P 500 index options contract). Further, the Exchange notes that because the contract size of SPXPM is ten times larger than the contract size of SPY ETF options (options on exchange traded funds based on the S&P 500 index), transaction fees for SPXPM provide significant cost savings to investors when compared to SPY options where taker fees in the smaller SPY option contract can run as high as \$0.45 per contract for customers (*see* NYSE Arca options fee schedule).

Like with SPX traded on CBOE, a customer large trade discount would also apply to SPXPM traded on C2. Thus, transaction fees applicable to a customer order in SPXPM would be capped at 10,000 contracts per order (this cap only applies to public customer orders). For complex orders, the total contracts of an order (all legs) would be counted for purposes of calculating the fee cap. To qualify for the discount, the entire order quantity would need to be tied to a single order ID within the CBOEdirect⁷ system or in the front end system used to transmit the order, provided the Exchange is granted access to effectively audit such front end system. Thus, the order would need to be entered in its entirety into the Exchange’s system or into the applicable front end system so that the Exchange could clearly identify the total size of the order. For an order entered via a PULSe Workstation⁸ or another front end system, to take advantage of the cap, a customer large trade discount request would need to be submitted to the Exchange within three business days of the transaction and would need to identify all necessary information, including the order ID and related details. The Exchange is requiring supporting

⁷ CBOEdirect is the technology platform that drives the C2 trade engine.

⁸ The PULSe Workstation is the exchange-provided front-end order entry system.

information in order to ensure that the originating order was indeed for a size greater than 10,000 contracts.

An aim of the customer large trade discount is to help attract customer users from the over-the-counter (OTC) market. The Exchange believes OTC S&P 500 transactions are typically large in size. Establishing the proposed cap at 10,000 contracts is the Exchange's attempt at further creating an appealing alternative for OTC users as well as other public customer users who effect large trades in exchange-listed S&P 500 derivatives.

The Exchange also proposes to adopt a \$0.10 per contract index license surcharge fee for executions in SPXPM in order to offset costs incurred by the Exchange in connection with its license with Standard and Poors. It is not uncommon for exchanges to license indexes from third parties for use in connection with derivative products (including exchange traded funds). An index license surcharge fee in a product helps offset the costs associated with the license. This fee would apply to all non-public customer transactions (i.e., C2 and non- Permit Holder market-maker, Clearing Participant and broker-dealer), including voluntary professionals. The proposed fee is the same as the index license surcharge fee in place at CBOE with respect to executions in SPX. Not applying the fee to public customer executions helps lower costs associated with public customer transactions. This is appropriate because not assessing the licensing surcharge fee to public customers offsets the higher transaction rates applicable to public customer executions. Additionally, the Exchange believes that waiver of the license surcharge fee will also help attract customer users from the OTC market.

With regard to the proposed transaction fees, the Exchange notes that while it appears that public customer transactions are charged a higher rate than all other user types, because the index license surcharge fee would not be applied to public customer executions, public

customers would actually be charged a lower total amount per contract than all other origin codes except the C2 Market-Maker and OCC Clearing TPH Proprietary (Firm) categories. Further, as mentioned above, only public customers would be eligible for the large trade discount. A lower transaction fee for C2 Market-Makers rewards dedicated liquidity provision and is consistent with index fee structures in place on other exchanges (e.g. on CBOE). A lower execution fee for C2 Market-Makers is justified and not unfairly discriminatory because C2 Market-Makers have obligations to the market that other market participants do not, and those obligations act to the benefit of all participants and to overall market quality on C2. The Exchange believes it is not unfairly discriminatory to reward C2 Market-Makers with lower transaction fees in recognition of their obligations.

The proposed Firm rate generally corresponds to a comparable fee in place at CBOE. The Exchange believes the proposed Firm rate is appropriate because it provides an incentive for OCC Clearing Trading Permit Holders to contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity on C2 which benefits the C2 market and its participants.

The Exchange also proposes to adopt a new SPXPM Tier Appointment fee for Market-Maker Permit Holders that obtain an appointment in SPXPM. In addition to the current Market-Maker Permit access fee of \$5,000, a SPXPM Tier Appointment of \$4,000 would also be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month. The Exchange notes that, when combined, the \$5,000 permit fee and \$4,000 SPXPM Tier Appointment fees are comparable to the total Market Maker permit fee and SPX Tier Appointment costs on CBOE (generally \$6,000 and \$3,000). The SPXPM Tier Appointment fee would be waived through November 2011. Even though it will be waived

through November 2011, establishing the fee prior to the launch of SPXPM will provide an incentive for market making firms to seek an SPXPM market-making permit while also alerting prospective Market-Makers that a SPXPM Tier Appointment fee will be charged in the future.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),⁹ in general, and furthers the objectives of Section 6(b)(4)¹⁰ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Permit Holders and other persons using Exchange facilities.

The Exchange believes it is equitable to assess fees for transactions in P.M.-settled S&P 500 Index Options, just as the Exchange assesses fees for transactions in other option classes. The Exchange also believes it is reasonable to charge different fee amounts to different user types in the manner proposed because the proposed fees are consistent with the price differentiation that exists today at other options exchanges (for example, the proposed fees are comparable with fees for other index option products traded on CBOE -including index options on the S&P 500 index). Additionally, the Exchange believes that the establishment of a \$0.17 per contract execution fee for C2 Market-Makers (as previously noted, an additional \$0.10 per contract licensing surcharge fee would also be applied to each C2 Market-Maker execution) is equitable and not unfairly discriminatory because C2 Market-Makers have obligations to the market that other market participants do not, and those obligations act to the benefit of all

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

participants and to overall market quality on C2. Thus, the establishment of the proposed lower transaction fee for C2 Market-Makers rewards dedicated liquidity provision that is important to the C2 marketplace. Similarly, the establishment of a \$0.25 per contract execution fee for OCC Clearing TPH Proprietary users (as previously noted, an additional \$0.10 per contract licensing surcharge fee would also be applied to each OCC Clearing TPH Proprietary execution) is reasonable because it corresponds to a comparable fee in place at CBOE for executions in SPX. The Exchange further believes that the proposed OCC Clearing TPH Proprietary rate is equitable and not unfairly discriminatory because OCC Clearing Trading Permit Holders contribute significant capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity on C2 that benefits the C2 market and its participants. The Exchange also believes the proposed transaction fees are reasonable and equitable because the proposed transaction fees for SPXPM would provide significant cost savings to investors when compared to SPY options where taker fees in the smaller SPY contract can run as high as \$0.45 per contract for customers (*see* NYSE Arca options fee schedule). The customer large trade discount program is reasonable because it is substantially similar to a program in place on CBOE and the program will help attract business from the OTC market to the listed exchange marketplace, consistent with the objectives of the Dodd-Frank legislation. It is not unfairly discriminatory because it benefits the public customer participant type which already incurs the highest transaction fee rate.

The proposed index license surcharge fee is reasonable and equitable because it corresponds to an identical fee in place on CBOE for executions in SPX and because it helps the Exchange offset costs incurred by the Exchange in connection with its license with Standard and Poors. Further, the proposed index license surcharge fee is not unfairly discriminatory because it applies evenly to all market participants except public customers and not assessing the license

surcharge fee to public customers is appropriate because of the higher transaction rates applicable to public customer executions.

The proposed SPXPM Tier Appointment cost is reasonable, equitable and not unfairly discriminatory because it applies to all C2 SPXPM Market-Makers equally and because it, when combined with the C2 Market-Maker Permit fee, costs the same as the total cost of CBOE's Market-Maker Permit fee plus CBOE's Tier Appointment fee for SPX.

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 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 Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² 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

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-C2-2011-026 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-C2-2011-026. 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 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 offices 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-C2-2011-026, 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.¹³

Elizabeth M. Murphy
Secretary

¹³ 17 CFR 200.30-3(a)(12).