

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63706; File No. SR-CBOE-2011-004)

January 12, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fees Schedule and Circular Regarding Trading Permit Holder Application and Other Related Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 3, 2011, 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 and II below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule and circular regarding Trading Permit Holder application and other related fees (“Trading Permit Fee Circular”). The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.org/legal/>), 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, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

below. CBOE 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

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. CBOE is proposing to amend its Fees Schedule and Trading Permit Fee Circular to (i) amend the monthly fee for Market-Maker Trading Permits and establish a sliding scale for discounted Market-Maker Trading Permit Fees (subject to certain conditions); (ii) establish a VIX Tier Appointment; (iii) amend the monthly fee for Floor Broker Trading Permits and add an additional fee for Floor Brokers that conduct a certain level of activity in VIX; (iv) amend the monthly fee for Electronic Access Permits; (v) amend the monthly fees for bandwidth packets; (vi) increase the Inactive Nominee Status fee; (vii) increase the Fingerprint Processing Fee; and (viii) update the Fees Schedule to remove outdated language.

CBOE Rule 3.1 provides, among other things, that the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits. Specifically, under Rule 3.1(a)(iv), the Exchange may issue different types of Trading Permits that allow holders to trade one or more products authorized for trading on the Exchange and to act in one or more trading functions authorized by CBOE Rules. The Exchange currently has four types of Trading Permits: (i) Market-Maker Trading Permit; (ii) Floor Broker Trading Permit; (iii) Electronic Access Permit; and (iv) CBSX Trading Permit. Rule 3.1(a)(v) provides, in relevant part, that Trading Permits will be subject to such fees and charges as are established by the Exchange from time to time pursuant to CBOE Rule 2.20 and the Exchange Fees Schedule.

In June 2010, and immediately following demutualization, CBOE amended its Fees Schedule to establish Trading Permit, tier appointment and bandwidth packet fees.³ The Fees Schedule established a monthly fee of \$7,500 for a Market-Maker Trading Permit. At the time the Market-Maker Trading Permits were established, CBOE determined to discount the fees by 20% for the remainder of 2010. Thus, between July 2010 and December 2010, CBOE assessed a fee of \$6,000 per month for a Market-Maker Trading Permit. CBOE is proposing to decrease the standard \$7,500 monthly fee for a Market-Maker Trading Permit to \$6,000, which is the same as the current level of this fee.

CBOE is also proposing to establish the following sliding scale for Market-Maker Trading Permits subject to the certain conditions:

	From	To	Amount per Month per Permit
	1 permit	10 permits	\$6,000
Tier 1	11 permit	20 permits	\$4,800
Tier 2	21 or more permits		\$3,000

The sliding scale will be available for all Market-Maker Trading Permits, held by affiliated Trading Permit Holders and TPH organizations, that are used for appointments in any options classes other than SPX, VIX, OEX and XEO. Any Market-Maker Trading Permits used for these four classes, whether in whole or in part, are excluded from this sliding scale and will be priced at \$6,000 per month. To qualify for the rates set forth in Tiers 1 and 2 in the sliding scale, the applicable Trading Permit Holder(s) and/or TPH organization(s) must commit to a specific tier that includes a minimum number of eligible Market-Maker Trading Permits for each calendar year. To participate in the program, a Market-Maker Trading Permit Holder must

³ See Securities Exchange Act Release No. 62386 (June 25, 2010), 75 FR 38566 (July 2, 2010) (SR-CBOE-2010-073) [sic].

notify the Registration Services Department by January 25th of each year (or the preceding business day if the 25th is not a business day) of the tier of eligible Market-Maker Trading Permits committed to by the Market-Maker Trading Permit Holder for that calendar year. Market-Makers are not obligated to commit to either tier. However, the discounts will apply only to those that do commit to Tier 1 or Tier 2 for the calendar year (or remainder of the calendar year as described below). Trading Permit Holders that are not eligible for and/or that do not commit to Tier 1 or Tier 2 will continue to pay the standard rate for each Market-Maker Trading Permit, regardless of the total number of Market-Maker Trading Permits used.

If a Trading Permit Holder chooses to commit to either Tier 1 or Tier 2, that Trading Permit Holder will be assessed fees for at least the minimum number of permits in the commitment tier for the remainder of the calendar year.⁴ Even if a Trading Permit Holder no longer maintains the minimum number of eligible Trading Permits in the committed tier, that Trading Permit Holder is still responsible for the minimum payment for that commitment tier for the remainder of the calendar year. For example, a Trading Permit Holder that commits to eleven eligible permits per month will be subject to a minimum monthly access fee of \$64,800 ($10 \times \$6,000$ plus $\$4,800 = \$64,800$) for that calendar year. Any additional Permits will increase the fee by the applicable amount (i.e., if the subject Trading Permit Holder also maintains an additional Trading Permit that is associated with an appointment in OEX, the monthly access fee will be \$70,800).

Trading Permit Holders may also choose to commit to a higher tier of the sliding scale for the remainder of a calendar year, during a commitment year, if the Trading Permit Holder obtains enough eligible Market-Maker Trading Permits and provides written notification to the

⁴ A Trading Permit Holder may pay more than the tier minimum for monthly access fees if the Trading Permit Holder has additional Trading Permits that are not eligible for the sliding scale.

Registration Services Department by the 25th day of the month preceding the month in which the higher tier will be effective (or the preceding business day if the 25th is not a business day). For example, a Trading Permit Holder may provide written notice to commit to Tier 1 effective July 1 for the remainder of the calendar year as long as the Trading Permit Holder obtains enough eligible Trading Permits and provides written notice by June 25th that the Trading Permit Holder would like to participate in the sliding scale starting in July for the remainder of the calendar year. Even if that Trading Permit Holder subsequently falls below the minimum number of eligible Market-Maker Trading Permits (in the committed calendar year), for the committed tier, the Trading Permit Holder will remain responsible for paying at least the tier minimum for the remainder of the calendar year.

Trading Permit Holders will be responsible to pay for the minimum amount of eligible Market-Maker Trading Permits (based on the commitment tier) for the calendar year on a monthly basis unless the Trading Permit Holder entirely terminates as a Trading Permit Holder during the year. If a Trading Permit Holder combines, merges, or is acquired during the course of the calendar year, the surviving Trading Permit Holder will maintain responsibility for the committed number of eligible Market-Maker Trading Permits.

Section 6(b)(4) of the Securities Exchange Act of 1934⁵ (the “Act”) requires that: “the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.” The proposed sliding scale is available to all Trading Permit Holders that maintain eligible Market-Maker Trading Permits. In essence, CBOE is offering a discounted fee in return for a commitment for a designated period of time. Trading Permit Holders are not precluded from providing notice that they wish to participate in the sliding scale program throughout a calendar year as long as such

⁵ 15 U.S.C. 78f(b)(4).

notice is provided by the 25th day of the preceding month of effectiveness. CBOE is proposing to offer this sliding scale as a benefit to those Trading Permit Holders that commit in advance. There is no obligation to commit to either Tier 1 or Tier 2 of the sliding scale. Since Tier 2 requires a commitment of twenty-one or greater permits, CBOE believes that Market-Makers quoting all multiply listed classes may consider committing in advance to Tier 2. It requires approximately thirty Trading Permits for a Trading Permit Holder to obtain Market-Maker appointments in all multiply-listed classes at the Exchange.

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that appointment. CBOE currently maintains a tier appointment for Market-Maker Trading Permit Holders trading in SPX. The current Fees Schedule provides that the SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX at any time during a calendar month. CBOE is proposing to delete this language from the section entitled Assessment of Trading Permit and Bandwidth Packet Fees and move this language to Section 10(A)(ii) that describes the SPX Tier Appointment. In addition, in conjunction with a recent rule filing enabling the trading of certain series of options on the Hybrid trading platform even though that class generally trades on Hybrid 3.0,⁶ CBOE is proposing to clarify the description of the SPX Tier Appointment in Section 10(A)(2) [sic] to clarify that the SPX Tier Appointment fee will also be assessed to a Market-Maker Trading Permit Holder that submits open outcry

⁶ See Securities Exchange Act Release No. 63186 (October 27, 2010), 75 FR 67417 (November 2, 2010) (SR-CBOE-2010-095).

transactions in SPX or electronic or open outcry transactions in SPX Weeklys. SPX options trade on Hybrid 3.0 but CBOE has recently listed series of SPX Weeklys that are currently trading on Hybrid.

CBOE is now proposing to also establish a VIX Tier Appointment. Effective January 3, 2010, a Market-Maker Trading Permit Holder must obtain a VIX Tier Appointment to act as a Market-Maker in VIX. Further, consistent with the provisions of Rule 8.3(e), each VIX Tier Appointment may only be used with one designated Market-Maker Trading Permit. The Exchange is proposing that the initial fee for a VIX Tier Appointment be set at \$1,000 per month.

VIX Tier Appointment fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. The VIX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder, registered with the Exchange to conduct business on the Exchange as a Market-Maker, that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) conducts any transactions in VIX at any time during a calendar month. VIX Tier Appointments will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification to cancel the VIX Tier Appointment effective at or prior to the end of the applicable month.

The Fees Schedule previously established a monthly fee of \$7,500 for a Floor Broker Trading Permit. At the time the Floor Broker Trading Permits were established, CBOE determined to discount the fees by 20% for the remainder of 2010. Thus, between July 2010 and December 2010, CBOE assessed a fee of \$6,000 per month for a Floor Broker Trading Permit. CBOE is proposing to decrease the \$7,500 monthly fee for a Floor Broker Trading Permit to

\$6,000, which is the same as the current level of this fee. CBOE is also proposing to add a \$1,000 fee to any Floor Broker Trading Permit Holder (a) that executes more than 20,000 VIX contracts during the month and (b) whose aggregate VIX executed contracts during the month comprise more than 30% of the Floor Broker Trading Permit Holder's exchange-wide total executed contracts. For example, if a Floor Broker executes 20,000 VIX contracts during the month and the Floor Broker executed 50,000 total contracts (exchange-wide) during the same month, the Floor Broker Trading Permit Holder would be subject to the additional fee. However, if a Floor Broker executes 5,000 VIX contracts during the month and the Floor Broker executed 50,000 contracts (exchange-wide) during the same month, the Floor Broker Trading Permit Holder would not be subject to the additional fee. This additional fee is being proposed to reflect the opportunity provided to agents servicing customers in such a high-volume, fast-growing product.

The Fees Schedule previously established a monthly fee of \$2,000 for an Electronic Access Permit. At the time the Electronic Access Permits were implemented, CBOE determined to discount the fees by 20% for the remainder of 2010. Thus, between July 2010 and December 2010, CBOE assessed a fee of \$1,600 per month for an Electronic Access Permit. CBOE is proposing to decrease the \$2,000 monthly fee for an Electronic Access Permit to \$1,600, which is the same as the current level of this fee.

The Fees Schedule previously established a monthly fee of \$3,750 for a Quoting and Order Entry Bandwidth Packet. At the time the Quoting and Order Entry Bandwidth Packets were implemented, CBOE determined to discount the fees by 20% for the remainder of 2010. Thus, between July 2010 and December 2010, CBOE assessed a fee of \$3,000 per month for a Quoting and Order Entry Bandwidth Packet. CBOE is proposing to decrease the \$3,750 monthly

fee for a Quoting and Order Entry Bandwidth Packet to \$3,000, which is the same as the current level of this fee.

In August 2010, CBOE amended its Fees Schedule and Trading Permit Fee Circular to establish a fee scale for the purchase of Order Entry Bandwidth Packets under which the cost of an Order Entry Bandwidth Packet would decline at certain break points as additional Order Entry Bandwidth Packets are purchased.⁷ Specifically, the first through fifth Order Entry Bandwidth Packets obtained by a Trading Permit Holder cost \$2,000 per packet per month, the sixth through eighth Order Entry Bandwidth Packets obtained by that Trading Permit Holder would cost \$1,000 per packet per month, the ninth through thirteenth Order Entry Bandwidth Packets obtained by that Trading Permit Holder would cost \$500 per packet per month, and the fourteenth and each additional Order Entry Bandwidth Packet obtained by that Trading Permit Holder would cost \$250 per packet per month. CBOE also discounted these fees by 20% for the remainder of 2010. CBOE is now proposing to decrease the monthly fee scale for Order Entry Bandwidth Packets such that the first through fifth Order Entry Bandwidth Packets obtained by a Trading Permit Holder would cost \$1,600 per packet per month, the sixth through eighth Order Entry Bandwidth Packets obtained by that Trading Permit Holder would cost \$800 per packet per month, the ninth through thirteenth Order Entry Bandwidth Packets obtained by that Trading Permit Holder would cost \$400 per packet per month, and the fourteenth and each additional Order Entry Bandwidth Packet obtained by that Trading Permit Holder would cost \$200 per packet per month (which is the same as the current level of these fees).

CBOE also amended its Fees Schedule in August 2010 to allow Trading Permit Holders to obtain and assign to a particular Sponsored User of the Trading Permit Holder one or more

⁷ See Securities Exchange Act Release No. 62704 (August 12, 2010), 75 FR 51132 (August 18, 2010) (SR-CBOE-2010-073).

Order Entry Bandwidth Packets.⁸ In that event, the fees for the assigned bandwidth packet(s) would be assessed to the Trading Permit Holder and the bandwidth packet(s) could be utilized solely by the Sponsored User (and not by the Trading Permit Holder or any other Sponsored User).

Fees for Order Entry Bandwidth Packets assigned to a particular Sponsored User are also subject to a fee scale, similar to the fee scale in place for the Order Entry Bandwidth Packet assigned to a particular Trading Permit Holder. Specifically, the full fee scale for Order Entry Bandwidth Packets assigned by a Trading Permit Holder to a Sponsored User provides that the first through sixth Order Entry Bandwidth Packets assigned to the Sponsored User would cost \$2,000 per packet per month, the seventh through ninth Order Entry Bandwidth Packets assigned to that Sponsored User would cost \$1,000 per packet per month, the tenth through fourteenth Order Entry Bandwidth Packets assigned to that Sponsored User would cost \$500 per packet per month, and the fifteenth and each additional Order Entry Bandwidth Packet assigned to that Sponsored User would cost \$250 per packet per month. CBOE also discounted these fees by 20% for the remainder of 2010. CBOE is now proposing to decrease the monthly fee scale for Order Entry Bandwidth Packets assigned by a Trading Permit Holder to a particular Sponsored User such that the first through sixth Order Entry Bandwidth Packets assigned to the Sponsored User would cost \$1,600 per packet per month, the seventh through ninth Order Entry Bandwidth Packets assigned to that Sponsored User would cost \$800 per packet per month, the tenth through fourteenth Order Entry Bandwidth Packets assigned to that Sponsored User would cost \$400 per packet per month, and the fifteenth and each additional Order Entry Bandwidth Packet assigned to that Sponsored User would cost \$200 per packet per month (which is the same as the current level of these fees).

⁸ Id.

CBOE is also proposing to make two technical changes to Section 10 of the CBOE Fees Schedule. First, CBOE is proposing to modify the numbering of the section setting forth the Trading Permit and tier appointment fees and the accompanying descriptions to reflect the addition of the VIX Tier Appointment. In addition, CBOE is proposing to remove references throughout Section 10 of the Fees Schedule to Trading Permit, tier appointment and bandwidth packet fees regarding the assessment of these fees in 2010 as this language is outdated and no longer necessary.

CBOE is also proposing to make two changes to Section 11 of the CBOE Fees Schedule. First, CBOE is proposing to increase the Inactive Nominee Status fee from \$750 to \$900. This fee is payable quarterly by a TPH organization for each inactive nominee status that the TPH organization wishes to maintain. (e.g., a TPH organization firm desiring the ability to have three parking spaces within which to designate inactive nominees would pay this fee at the beginning of each quarter for each of the three parking spaces). In addition, CBOE is proposing to increase the Fingerprint Processing Fee from \$50 to \$60. This fee is assessed for employees of Trading Permit Holders and any other individual requesting the Exchange to process a fingerprint, electronically or otherwise, excluding fingerprint requirements for Individual Applicants, individuals applying for Renewal/Change of Status, and Associated Persons. CBOE is proposing to increase these fees to account for an increase in resources required to process inactive nominee information, fingerprints, and related requests. The Inactive Nominee Status Fee and the Fingerprint Processing Fee have not been increased in three years.⁹

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder

⁹ See Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008) (SR-CBOE-2007-150).

application and other related fees. The Exchange proposes to revise this circular to incorporate the changes to Sections 10 and 11 of the CBOE Fees Schedule that are described above, as well as to clarify the description of the Fingerprint Processing Fee to provide that only those associated persons that are subject to the Associated Person Application [sic] Fee are not subject to the Fingerprint Processing Fee. The proposed changes to the circular are included as Exhibit 2 to the Form 19b-4.

2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner. Specifically, CBOE shall assess the same base Trading Permit, tier appointment and bandwidth packet fees to all Trading Permit Holders based on the type of tier appointment requested and type and number of Trading Permit(s) and bandwidth packet(s) requested. All Trading Permit Holders may elect to receive a discounted price if the Trading Permit Holder commits in advance to a minimum number of eligible Market-Maker Trading Permits for a calendar year. Trading Permit Holders that do not wish to commit in advance to a minimum number of eligible Trading Permits for a calendar year will be subject to the standard rate for each Market-Maker Trading Permit. Further, CBOE shall assess the Fingerprint Processing Fee and Inactive Nominee Status Fee in the same manner to all Trading Permit Holders. For the reasons stated in the purpose section, CBOE is also proposing to add a VIX Tier Appointment and assess a \$1,000 monthly fee to any Floor Broker Trading Permit Holder (a) that executes more than 20,000 VIX contracts during the month and (b) whose aggregate VIX executed contracts during the month comprise more than 30% of the Floor Broker Trading Permit Holder's exchange-wide total executed contracts. Accordingly, the Exchange believes that the proposed

rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.

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 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 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(2) of Rule 19b-4¹³ 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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-CBOE-2011-004 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-2011-004. 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, 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 No. SR-CBOE-2011-004 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

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

Elizabeth M. Murphy
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).