

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64454; File No. SR-CBOE-2011-043)

May 10, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to The Strategy Fee Cap and Clarifications to the CBOE Fees Schedule

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 April 28, 2011, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) 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 substantially 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its strategy fee cap program and clarify its Fees Schedule in certain respects. 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.

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

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

<sup>2</sup> 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

The Exchange currently caps market-maker and broker-dealer transaction fees at \$1,000 for all reversals<sup>3</sup>, conversions<sup>4</sup> and jelly roll<sup>5</sup> strategies executed on the same trading day in the same Flexible Exchange (FLEX) option class, excluding any option class on which the Exchange charges the surcharge fee under Footnote 14 of the CBOE Fees Schedule.<sup>6</sup> Such transaction fees are further capped at \$25,000 per month per initiating member or firm. To qualify transactions for the cap a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions.

The Exchange proposes to amend Footnote 13 of the Fees Schedule to expand the fee cap for reversals, conversions and jelly roll strategies to non-FLEX options classes. Thus, reversals, conversions and jelly roll strategy transactions in non-FLEX options classes would also be eligible for the fee cap, except that any option class on which the Exchange charges the Index

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<sup>3</sup> A reversal strategy is established by combining a short security position with a short put and a long call position that shares the same strike and expiration.

<sup>4</sup> A conversion strategy is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.

<sup>5</sup> A jelly roll strategy is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but a different expiration from the first position.

<sup>6</sup> See CBOE Fees Schedule, Footnote 13 and Securities Exchange Act Release No. 61915 (April 15, 2010), 75 FR 21076 (April 22, 2010). In addition to the fee cap for reversals, conversions and jelly rolls, Footnote 13 provides for a similar but separate fee cap for dividend, merger and short stock interest strategies.

License surcharge fee under Footnote 14 of the CBOE Fees Schedule would continue to be excluded from the cap.<sup>7</sup> Other exchanges also cap transaction fees resulting from reversals, conversions and jelly roll strategies in non-FLEX options classes.<sup>8</sup>

In addition, the Exchange proposes several clarifying changes to the Fees Schedule relating to the strategy fee cap program. First, the Exchange proposes to amend Footnote 13 of the Fees Schedule to change references to “surcharge fee” and “license fee” to Index License surcharge fee, and to clarify that Index License surcharge fees associated with dividend, merger and short stock interest strategies (and not reversal, conversion and jelly roll strategies) will be passed through to trading participants on these strategies on a pro-rata basis. This is because options classes subject to the Index License surcharge fee are not included under the fee cap for reversals, conversions and jelly rolls. Second, the Exchange proposes to further amend Footnote 13 by adding the definitions of reversal strategy, conversion strategy and jelly roll strategy.<sup>9</sup> Third, the Exchange proposes to amend Footnote 10 of the Fees Schedule relating to the Liquidity Provider Sliding Scale to clarify that contract volume resulting from any of the strategies defined in Footnote 13 (and not just dividend, merger and short stock interest strategies) will not apply towards reaching the sliding scale volume thresholds because such contracts have already received the benefit of the strategy fee cap.<sup>10</sup> Finally, for the same

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<sup>7</sup> The Exchange recently renamed the surcharge fee under Footnote 14 of the Fees Schedule the “Index License surcharge fee”. See Securities Exchange Act Release No. 64304 (April 15, 2011), 77 FR 22427 (April 21, 2011).

<sup>8</sup> See the options fee schedules of NYSE Amex, LLC and NYSE Arca, LLC.

<sup>9</sup> Supra footnotes 1, 2, 3 and 4.

<sup>10</sup> The Commission notes that CBOE’s practice has been to not apply contract volume resulting from any of the strategies defined or identified in Footnote 13 (dividend, merger, short stock interest, reversals, conversions and jelly roll strategies) towards reaching the Liquidity Provider Sliding Scale volume thresholds. See e-mail from Jaime

reason, the Exchange proposes to amend Footnote 11 of the Fees Schedule relating to the Multiply-Listed Option Fee Cap and CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders to clarify that transaction fees and contract volume resulting from any of the strategies defined in Footnote 13 will not apply towards reaching the fee cap and the sliding scale volume thresholds.<sup>11</sup>

The Exchange also proposes a clean-up change to the Fees Schedule. On December 10, 2010, the Exchange filed a proposed rule change to increase the Options Regulatory Fee from \$.004 per contract to \$.0045 per contract.<sup>12</sup> The new ORF was to take effect on January 3, 2011, therefore the old ORF rate of \$.004 per contract was not removed from Section 12(A) of the Fees Schedule at that time. The Exchange proposes to delete the reference to the old rate of \$.004 per contract from Section 12(A) of the Fees Schedule.

The proposed fee changes will take effect on May 2, 2011.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>13</sup>, in general, and furthers the objectives of Section

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Galvan, Assistant Secretary, CBOE, to Andrew Madar, Senior Special Counsel, Division of Trading and Markets ("Division"), Commission, dated May 9, 2011.

<sup>11</sup> The Commission notes that CBOE's practice has been to not apply transaction fees and contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 towards reaching the Multiply-Listed Options Fee Cap and CBOE Proprietary Products Sliding Scale. See e-mail from Jaime Galvan, Assistant Secretary, CBOE, to Andrew Madar, Senior Special Counsel, Division, Commission, dated May 9, 2011. In addition, the Multiply-Listed Options Fee Cap and CBOE Proprietary Products Sliding Scale applies only to "firm" orders, which are not eligible for the fee cap program for reversals, conversions and jelly rolls. Id.

<sup>12</sup> See Securities Exchange Act Release No. 63524 (December 10, 2010), 75 FR 78780 (December 16, 2010).

<sup>13</sup> 15 U.S.C. 78f(b).

6(b)(4)<sup>14</sup> of the Act 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 and other persons using its facilities. The Exchange believes the proposed rule change is equitable, reasonable and not unfairly discriminatory in that it would further lower fees for market participants that trade these strategies by expanding the fee cap for reversal, conversion and jelly roll strategies to apply to all options classes traded on the Exchange except those which are subject to the Index License surcharge fee. In addition, the proposed rule change would allow the Exchange to remain competitive with other exchanges that offer similar fee cap programs.<sup>15</sup> The proposed rule change would also clarify portions of the Fees Schedule relating to the strategy fee cap program and the Options Regulatory Fee.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and subparagraph (f)(2) of Rule 19b-4.<sup>17</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

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<sup>14</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> Supra footnote 6.

<sup>16</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>17</sup> 17 C.F.R. 240.19b-4(f)(2).

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-2011-043 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-2011-043. 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 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-2011-043 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.<sup>18</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).