

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64806; File No. SR-CBOE-2011-058)

July 5, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Changes to its Fees Schedule Related to Qualified Contingent Cross Orders

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 June 29, 2011, the 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt changes to its Fees Schedule related to qualified contingent cross ("QCC") orders. 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, 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

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

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

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

On June 13, 2011, the Commission approved a proposed rule change to allow the Exchange to establish the QCC order type.<sup>3</sup> The Exchange now proposes to adopt changes to its Fees Schedule related to this new order type. Specifically, the Exchange proposes to apply its applicable standard transaction fees to QCC transactions, with three exceptions. First, QCC trades will not be subject to the marketing fee, therefore the Exchange is proposing to amend the description of the marketing fee program contained in Footnote 6 of the Fees Schedule to indicate that the fee will not apply to transactions executed as a QCC under CBOE Rule 6.53(u). The Exchange does not believe it is necessary to assess a marketing fee to QCC transactions. This is consistent with other exchanges, such as the International Securities Exchange, LLC ("ISE"), which does not collect Payment for Order Flow fees on transactions, including QCC transactions, in a large number of select symbols.<sup>4</sup>

Second, the Exchange intends to waive the transaction fee for public customer ("C" origin code) orders in options on Standard & Poor's Depository Receipts ("SPY options") that are executed as part of a QCC transaction, therefore the Exchange is proposing to amend the description of the fee waiver in Footnote 8 of the Fees Schedule to indicate that this waiver will apply to QCC transactions. The proposed fee waiver for QCC transactions is consistent with the existing waiver which currently applies to public customer trades in SPY options executed in open

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<sup>3</sup> See Securities Exchange Act Release No. 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR-CBOE-2011-041) and CBOE Rule 6.53(u).

<sup>4</sup> See the ISE Fees Schedule, pages 16-17.

outcry or through the Automated Improvement Mechanism. The Exchange notes that this fee waiver is due to expire on June 30, 2011 (though the Exchange intends to file to extend this waiver through a separate rule change filing).

Third, with respect to broker-dealer QCC transactions, the transaction fee will be \$0.20 per contract. This fee level is within the range of fees currently assessed by the Exchange for equity options, QQQQ and SPY options, and index options. For example, the Exchange assesses a transaction fee of \$0.20 per contract for many transactions in those products executed by voluntary professionals, professionals, CBOE market-makers, DPMs, E-DPMs and Clearing Trader Permit Holders making proprietary trades. The \$0.20 per contract transaction fee for broker-dealer QCC transaction is also near, though actually slightly below, the range of fees charged for execution of other broker-dealer orders (\$0.25-\$0.45).<sup>5</sup> Further, this fee level is within the range of fees assessed by other exchanges for QCC transactions by broker-dealers, including ISE and NASDAQ OMX PHLX LLC (“Phlx”), both of which also assess a \$0.20 per contract fee for such transactions.<sup>6</sup>

The proposed rule change will take effect on July 1, 2011.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</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 Trading Permit

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<sup>5</sup> See the Exchange Fees Schedule, Section 1.

<sup>6</sup> See Securities Act Release Nos. 64112 (March 23, 2011), 76 FR 17462 (March 29, 2011) (SR-ISE-2011-14) and 64520 (May 19, 2011), 76 FR 30223 (May 24, 2011) (SR-Phlx-2011-66) and the ISE Schedule of Fees (page 16) and the Phlx Fee Schedule (page 8).

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

Holders (“TPHs”) and other persons using Exchange facilities, and the objectives of Section 6(b)(5)<sup>9</sup> of the Act in particular in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that applying its applicable standard transaction fees to QCC transactions (apart from the three exceptions discussed above) is equitable and not unfairly discriminatory because these same fees are already being paid by market participants for other transactions on the CBOE.

The Exchange believes that excepting QCC transactions from the marketing fee for reasons of consistency and competitiveness is equitable and reasonable because this exception will apply uniformly for all QCC transactions. The Exchange believes waiving the transaction fee for public customer orders in SPY options that are executed as part of a QCC transaction is equitable and reasonable because the fee waiver would apply uniformly to all public customers trading SPY options executed as part of a QCC transaction. The Exchange also believes the proposed waiver of the transaction fee for public customer orders in SPY options that are executed as part of a QCC transaction is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY options. The Commission has a history of permitting differential treatment of customers and non-customer investors generally<sup>10</sup> and has permitted at least one other exchange to offer different pricing for customer and non-customer QCC orders specifically.<sup>11</sup>

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

<sup>10</sup> See the Exchange Fees Schedule, which provides for differential treatment of customer and non-customer orders in at least 14 places, and has been permitted by the Commission.

<sup>11</sup> See Securities Act Release No. 64520 (May 19, 2011), 76 FR 30223 (May 24, 2011) (SR-Phlx-2011-66), in which the Commission permits Phlx to offer different pricing for customer and non-customer QCC orders.

The Exchange believes that, with respect to broker-dealer QCC transactions, the transaction fee of \$0.20 is equitable because it is within the range of fees currently assessed by the Exchange for other transactions, as well as the range of fees assessed by other exchanges for QCC transactions by broker-dealers, including ISE and Phlx.<sup>12</sup>

The Exchange operates in a highly competitive market comprised of nine U.S. options exchanges in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed QCC fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth 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 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 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) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder. At any time within

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<sup>12</sup> See supra note 6.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 C.F.R. 240.19b-4(f)(2).

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-CBOE-2011-058 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-2011-058. 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 Number SR-CBOE-2011-058, 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>15</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).