

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65019; File No. SR-CBOE-2011-073)

August 3, 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 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 1, 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, II, and III 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”) to amend the fee assessed to Floor Broker Trading Permit Holders that conduct a certain level of activity in CBOE Volatility Index (“VIX”) options. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item IV 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 effective August 1, 2011 to amend the fee assessed to Floor Broker Trading Permit Holders that conduct a certain level of activity in VIX ("VIX Floor Broker Fee") to assess one \$1,000 fee monthly to each Trading Permit Holder and TPH organization that maintains one or more Floor Broker Trading Permits that collectively meet the criteria for the assessment of the VIX Floor Broker Fee rather than assessing the Fee to each Floor Broker Trading Permit Holder. CBOE is also proposing to eliminate one of the requirements used to calculate the minimum level of activity in VIX that subjects a Floor Broker Trading Permit Holder to this fee.

CBOE assesses a tier appointment fee to CBOE Market-Maker Trading Permit Holders for certain proprietary classes in recognition of the cost to develop those products and of the profit potential in those classes.³ Additionally, TPH organizations frequently staff more than one

³ 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 assesses a \$1,000 monthly VIX Tier Appointment fee. The VIX Tier Appointment fee is assessed to any Market-Maker Trading Permit Holder 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.

Market-Maker in the VIX trading crowd, as in doing so, each Market-Maker present in the trading crowd may participate on a trade.

In January 2011, CBOE amended its Fees Schedule to establish a fee (the VIX Floor Broker Fee) to be assessed 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.⁴ This fee was implemented to reflect the opportunity provided to agents servicing customers in such a high-volume, fast-growing product. In addition, CBOE implemented this fee for Floor Broker Trading Permit Holders in an effort to equalize this opportunity between Market-Makers and Floor Brokers in VIX options. Specifically, the VIX Floor Broker Fee is assessed to CBOE Floor Broker Trading Permit Holders in recognition of the type of business that is conducted in VIX options classes through solicitation of interest for contra parties on orders.

CBOE is proposing to simplify the manner in which this fee is assessed by (i) allocating one fee to each Trading Permit Holder or TPH organization that maintains more than one Floor Broker Trading Permit and that collectively through those Floor Broker Trading Permits meets the criteria to be assessed the VIX Floor Broker Fee rather than to assess the VIX Floor Broker Fee in that instance for each of the individual Floor Broker Trading Permits; and (ii) removing the criterion for the assessment of the fee that looks to aggregate VIX executed contracts during the month in relation to a Floor Broker Trading Permit Holder's exchange-wide total executed contracts. Instead, the only applicable requirement for assessment of the fee would be the current first criterion (i.e. whether more than 20,000 VIX contracts have been executed during

⁴ See Securities Exchange Act Release No. 63706 (January 12, 2011), 76 FR 3184 (January 19, 2011) (SR-CBOE-2011-004).

the month). For example, under the proposal, if Trading Permit Holder A has one Floor Broker Trading Permit that is utilized to execute VIX options transactions (acronym ABC), Trading Permit Holder A will be assessed a single \$1,000 monthly fee if ABC's executions exceed 20,000 contracts per month. If Trading Permit Holder B has two Floor Broker Trading Permits that are utilized to execute VIX options transactions (acronyms DEF and XYZ), the VIX executions of DEF and XYZ shall be aggregated for purposes of determining this additional monthly fee and Trading Permit Holder B shall be charged a single \$1,000 fee for the combined VIX executions through DEF and XYZ if the executions exceed 20,000 contracts per month. Thus, if DEF executes 15,000 VIX contracts and XYZ executes 10,000 contracts in August 2011, Trading Permit Holder B will be assessed a single \$1,000 VIX Floor Broker Fee for the month of August 2011.

CBOE believes the proposal to allocate one fee to each Trading Permit Holder or TPH organization, as applicable, is reasonable and appropriate in that each Market-Maker present in the VIX trading crowd has the ability to participate on a trade, regardless of whether those Market-Makers are associated with the same TPH organization. However, for Floor Broker Trading Permit Holders, each Trading Permit Holder or TPH organization, as a single agent, is limited in their ability to participate on behalf of any account in which the Trading Permit Holder has an interest or on behalf of a non-Market-Maker customer to a single Floor Broker Trading Permit Holder.⁵ The presence of multiple Floor Broker Trading Permit Holders that are associated with the same TPH organization does not provide additional participation rights. Only one Floor Broker Trading Permit Holder associated with a TPH organization representing such a proprietary or non-Market-Maker customer account may participate on each transaction.

⁵ See CBOE Rule 6.55.

Therefore, CBOE believes the assessment of one VIX Floor Broker fee to each Trading Permit Holder or TPH organization is appropriate and reasonable to ensure it is in congruence with that level of opportunity available to Floor Broker Trading Permit Holders in comparison to Market-Makers.

In addition, the proposal will level the playing field between Trading Permit Holders and TPH organizations that maintain multiple Floor Broker Trading Permits in VIX rather than one Floor Broker Trading Permit in VIX. Under the existing structure, Trading Permit Holders may have only one Floor Broker Trading Permit assigned to execute orders in VIX but may have others providing VIX orders to that particular Floor Broker for execution. This enables these Trading Permit Holders and TPH organizations to avoid being assessed more than one VIX Floor Broker Fee. Thus, this proposal will eliminate the disparity between the VIX Floor Broker Fees that are assessed to those Trading Permit Holders or TPH organizations that elect to maintain multiple Floor Broker Trading Permits to execute VIX orders and those that choose to only maintain one Floor Broker Trading Permit to execute VIX orders.

In addition, by removing the 30% aggregate calculation, affiliated Trading Permit Holders and TPH organizations will be able to better monitor whether the fee will be assessed throughout the month. Based on the numbers generated for May 2011, the removal of this criterion would not subject additional Trading Permit Holders to the fee.

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 application and other related fees. The Exchange proposes to revise this circular to incorporate the changes to Section 10 of the CBOE Fees Schedule that are described above. 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 all Trading Permit Holders in the same manner and is equitable and not discriminatory in that there is an objective test for the application of this fee. CBOE believes this proposal is reasonable in that, based on the data for May 2011, the removal of the criterion that aggregates VIX executed contracts during the month to determine if the aggregated amount comprises more than 30% of the Floor Broker Trading Permit Holder's exchange-wide total executed contracts does not appear to increase, in and of itself, the number of Trading Permit Holders that are subject to this fee. In addition, CBOE believes the assessment of one VIX Floor Broker fee to each Trading Permit Holder or TPH organizations is reasonable to ensure it is in congruence with that level of opportunity available to Floor Broker Trading Permit Holders as compared to the level of opportunity available to Market-Makers. Further, the assessment of one fee to each Trading Permit Holder or TPH organization "levels the playing field" for Trading Permit Holders and TPH organizations that maintain more than one Floor Broker Trading Permit to execute orders in VIX options. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ 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.

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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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 Act⁸ and subparagraph (f)(2) of Rule 19b-4⁹ 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

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-2011-073 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.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 C.F.R. 240.19b-4(f)(2).

All submissions should refer to File Number SR-CBOE-2011-073. 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 CBOE. 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-2011-073 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).