

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66784; File No. SR-CBOE-2012-035)

April 11, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

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 April 2, 2012, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site

(<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 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.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to increase voluntary professional and professional transaction fees for equity options and index, ETF, ETN and HOLDERS options (aside from OEX, XEO, SPXW and Volatility Indexes) from \$0.20 per contract to \$0.25 per contract (with the exception of transactions executed as Qualified Contingent Cross (“QCC”) trades or transactions executed through the Exchange’s Automated Improvement Mechanism (“AIM”) when the professional or voluntary professional is on the Agency/Primary side). The fees for QCC and AIM Agency/Primary transactions will remain \$0.20 per contract, (the same amount assessed to broker-dealers for such transactions). This change is proposed due to competitive reasons and to better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time. Moreover, professional and voluntary professional trading volume has increased heavily over the past three years,<sup>3</sup> and the Exchange has therefore had to continually invest in software, hardware and personnel. Also, this \$0.25 per contract fee is in line with similar fees offered on other exchanges,<sup>4</sup> and the Exchange believes professional and voluntary professional customers can bear this increased fee.

Because the regular voluntary professional and professional transaction fees discussed herein will be different from those for AIM Agency/Primary transactions, the Exchange also

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<sup>3</sup> Exchange professional and voluntary professional trading volume has increased from 49,313 contract sides in February 2009 to 3,420,160 contract sides in February 2012.

<sup>4</sup> See NYSE Amex LLC (“Amex”) Fee Schedule, which assesses professional customers a \$0.25 per contract fee for manual executions and a \$0.23 per contract fee for electronic executions.

proposes to amend footnote (19) of the Fees Schedule to reflect the fact that the AIM Agency/Primary fee applies to voluntary professional and professional transactions.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>6</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed increases in voluntary professional and professional fees are reasonable because of the growth in professional and voluntary professional trading volume.<sup>7</sup> This growth requires the Exchange to continually invest in software, hardware and personnel, the cost of which can reasonably be expected to be borne by these professional and voluntary professional market participants that cause these investments.

The Exchange believes the proposed increases in voluntary professional and professional fees are equitable and not unfairly discriminatory because the fees as noted are generally tied to an overall increase in activity on the Exchange. This heightened activity results in greater costs to the Exchange, which in turn is being passed back through to those participants who utilize the resources of the Exchange. Further, these increased fees will be applied equally to all market participants to whom they apply, and are in line with similar fees offered on other exchanges.<sup>8</sup>

Maintaining \$0.20 per contract voluntary professional and professional fees for contracts executed

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See Note 3.

<sup>8</sup> See Note 4.

through QCC transactions or AIM is equitable and not unfairly discriminatory because this is the same amount as is being assessed to broker-dealers for QCC or AIM transactions (broker-dealers being similarly-situated as voluntary professionals and professionals for these purposes).

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

The Exchange neither solicited nor received comments on 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)<sup>9</sup> of the Act and paragraph (f) of Rule 19b-4<sup>10</sup> 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](mailto:rule-comments@sec.gov). Please include File Number

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 C.F.R. 240.19b-4(f).

SR-CBOE-2012-035 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-2012-035. 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-2012-035 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>11</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).