

SECURITIES AND EXCHANGE COMMISSION  
(Release No.34-66888; File No. SR-CBOE-2012-038)

May 1, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the 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 20, 2012, 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 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 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 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

On November 23, 2011, the Exchange amended its Fees Schedule to provide that FLEX Options<sup>3</sup> transactions for the account of non-Trading Permit Holder broker-dealers (which use the “C” order origin code) would be subject to the same transaction fee rates that are applicable to public customers (which also use the “C” order origin code).<sup>4</sup> The rationale behind that change was that FLEX Options transactions for the account of non-Trading Permit Holder broker-dealers were being identified using the same “C” origin code as such transactions for public customers, so the Exchange wanted to avoid any potential billing discrepancies.<sup>5</sup>

Beginning as soon as April 24, 2012, the Exchange will begin rolling out its newly-enhanced FLEX Hybrid Trading System (the “CFLEX System”) for FLEX Options trading. The Exchange intends to transition a few classes at a time and anticipates full implementation within approximately one to three weeks of the initial transition. This enhanced CFLEX System will allow for the entry of non-Trading Permit Holder broker-dealer transactions using a different

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<sup>3</sup> Flexible Exchange Options (“FLEX Options”) provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (“RFQ”) System platform (which is limited to open outcry trading only) are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic trading) are contained in Chapter XXIVB. The Exchange notes that, currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

<sup>4</sup> See Securities Exchange Act Release No. 65875 (December 2, 2011), 76 FR 76783 (December 8, 2011) (SR-CBOE-2011-112).

<sup>5</sup> Id.

order origin code than the “C” origin code used for public customers (and currently, for non-Trading Permit Holder broker-dealers). As such, the Exchange proposes deleting from the Fees Schedule the language that states that for FLEX Options only, customer transaction fees apply to non-Trading Permit Holder broker-dealer orders (orders with “C” origin code), as those fees are only applicable for non-Trading Permit Holder broker-dealer executions on the old CFLEX System. Going forward as FLEX Options are rolled out to the newly-enhanced CFLEX System, broker-dealer fees would apply to non-Trading Permit Holder broker-dealer FLEX Options transactions, as they do for all other non-Trading Permit Holder broker-dealer transactions, and as they did prior to the above-referenced rule change.

The proposed change is to take effect on April 24, 2012.

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>7</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 change is reasonable because non-Trading Permit Holder broker-dealers will be assessed the same FLEX Options transaction fees as Trading Permit Holder broker-dealers, as they were prior to November 23, 2012 [sic]. The proposed change is equitable and not unfairly discriminatory because it will place non-Trading Permit Holder broker-dealers trading FLEX Options on the same footing, transaction fees-wise, as Trading Permit Holder broker-dealers.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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>8</sup> of the Act and paragraph (f)(2) of Rule 19b-4<sup>9</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 SR-CBOE-2012-038 on the subject line.

Paper comments:

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 C.F.R. 240.19b-4(f)(2).

- 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-2012-038. 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-2012-038 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>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).