SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66953; File No. SR-CBOE-2012-041)

May 9, 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"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 30, 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 the 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.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 the 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.

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend its Fees Schedule's Volume Incentive Program (the "Program"), which was implemented on January 1, 2012.[3] The Program credits Trading Permit Holders ("TPHs") certain per contract amounts resulting from each public customer order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the TPH meets certain volume thresholds in a month. The volume thresholds are calculated based on the customer contracts per day ("CPD") entered and executed over the course of the month.[4]

Under the current top tier of the Program, a TPH trading more than 375,000 CPD gets a \$0.20 per contract rebate for all CPD traded above 375,000. While the Program is intended to attract greater customer volume, which benefits all market participants, the potential for an industry-wide volume surge could mean CBOE's average daily volume (ADV) also increases, commensurate with the industry, to a level unexpected during the design of the Program. As such, the Program's ADV thresholds would no longer reflect actual conditions. The lack of a CPD ceiling means that the Exchange could potentially be giving back a \$0.20 per contract rebate on an extremely high, unlimited amount of contracts. The Program is intended to attract greater customer volume, which benefits all market participants, but it is not economically feasible to be providing an unlimited number of \$0.20 rebates (the Exchange needs to retain much of the fees collected to maintain its

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3 See Securities Exchange Act Release No. 66054 (December 23, 2011), 76 FR 82332 (December 30, 2011) (SR-CBOE-2011-120).

4 See Exchange Fees Schedule, Section 21.

administrative and regulatory operations). As such, the Exchange proposes to cap the $0.20 per contract rebate tier at 650,000 CPD. For all CPD traded above 650,000, the Exchange will continue offering a rebate, but that rebate will be reduced to $0.05 per contract. The addition of this new tier would ensure that the economic balances in the program would remain in place in the event of an unexpected volume surge.

This change is to take effect May 1, 2012.

2. <u>Statutory Basis</u>

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6], 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. Capping the Program's $0.20 per contract rebate at 650,000 CPD and providing a $0.05 per contract rebate for all CPD traded above 650,000 CPD is reasonable because those [sic] any TPH trading above 650,000 CPD will still be receiving a rebate for such trading activity (a rebate that they did not receive prior to the adoption of the Program). This change is equitable and not unfairly discriminatory because it only affects the contracts above 650,001 CPD; any TPH trading above 650,000 CPD will still receive the $0.20 per contract rebate for contracts 375,001 – 650,000 CPD. Further, this change is equitable and not unfairly discriminatory because it is necessary to ensure the economic viability of the Program. Without the change, in the event of an unexpected volume surge, the Program itself may cease to be economically rational for the Exchange, and might have to be eliminated. Such

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4).

elimination would prevent any TPH trading above 650,000 CPD from receiving any rebates, as well as all other TPHs benefiting from the Program (and eliminate the spillover benefits of increased liquidity and tighter spreads that are experienced by all other market participants).

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)[7] of the Act and paragraph (f) of Rule 19b-4[8] 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

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7 15 U.S.C. 78s(b)(3)(A).

8 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2012-041 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-2012-041. 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 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 offices 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-2012-041, 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.[9]

Kevin M. O'Neill
Deputy Secretary

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9 17 CFR 200.30-3(a)(12).