

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70315; File No. SR-CBOE-2013-083)

September 4, 2013

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 August 22, 2013, 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 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 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. First, the Exchange proposes to waive the CMI and FIX Login ID fees for CMI and FIX Login IDs used to access the Exchange's FLEX Hybrid Trading System (the "CFLEX System") for FLEX Options<sup>3</sup> trading (the "Waiver"). CMI Client Application Servers and FIX Ports are used by Exchange Trading Permit Holders ("TPHs") to access CBOE Command, which is the platform provided by the Exchange to connect to Exchange systems. The Exchange assesses a fee of \$500 per month for each CMI or FIX Login ID that a TPH uses to access CBOE Command. The Exchange has enhanced the CFLEX System in order to further integrate it with the Exchange's existing CBOE Command technology platform.<sup>4</sup> As part of these enhancements, TPHs connect to the CFLEX System through CBOE Command, and need to get either a CMI or FIX Login ID to do so.<sup>5</sup> As

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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. 66769 (April 6, 2012), 77 FR 22012 (April 12, 2012) (SR-CBOE-2012-033).

<sup>5</sup> TPHs may also access the CFLEX System using an internet-based application. There is currently no login fee associated with the internet-based application.

such, the Exchange proposes the Waiver in order to encourage TPHs to trade on the CFLEX System. The Exchange has, in the past, waived the CMI and FIX Login ID fees.<sup>6</sup>

Next, the Exchange proposes to amend its Hybrid Agency Liaison (“HAL”) Step-Up Rebate (the “Rebate”). Currently, the Exchange rebates to a Market-Maker \$0.10 per contract against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 60% of the Market-Maker’s quotes in that class (excluding mini-options and quotes in LEAPS series) in the prior calendar month were on one side of the NBBO. The Exchange proposes to amend the Rebate to raise the threshold to 70%, effective September 1 (the Exchange initially submitted this proposed change one month prior to the effective date in order to notify Market-Makers about the change; since the Rebate is provided based on the prior calendar month’s trading, this action will have given Market-Makers notification that they must hit the 70% threshold in August in order to qualify for the Rebate in September). The Exchange proposes increasing this threshold for economic reasons; providing the Rebate is less economically viable, and the Exchange is willing to continue to provide it, but only if it will encourage even greater quoting on one side of the NBBO by Market-Makers. Indeed, the Exchange believes that the increased threshold will incentivize Market-Makers to provide more competitive quoting.

The Exchange proposes to amend its Fees Schedule to increase the Surcharge Fee for the Russell 2000 Index (“RUT”) from \$0.15 per contract to \$0.30 per contract. Surcharge Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase in the Surcharge Fee for RUT from \$0.15 to \$0.30 per contract is a reflection of the increased cost the Exchange has incurred in securing a

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<sup>6</sup> See Securities Exchange Act Release No. 66812 (April 16, 2012), 77 FR 23767 (April 20, 2012) (SR-CBOE-2012-037).

license agreement from the index provider. Absent the license agreement, the Exchange and its participants would be unable to trade RUT options and would lose the ability to hedge small cap securities with a large notional value, European-style cash-settled index option. Other exchanges have recently increased their RUT surcharge fees to an even greater extent than the Exchange.<sup>7</sup>

The Exchange proposes to amend its Fees Schedule with regards to strategy executions.<sup>8</sup> First, the Exchange proposes to include Clearing Trading Permit Holder and joint back-office (“JBO”) participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee. The purpose of this proposed change is to encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Further, other exchanges apply a similar cap to similar market participants.<sup>9</sup> The Exchange also proposes to lower from \$1000 to \$700 this cap. The Exchange proposes this change for similar reasons; in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants,

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<sup>7</sup> See SR-NYSEMKT-2013-65, which increased the NYSE MKT LLC (“AMEX”) Royalty Fee for RUT from \$0.15 per contract to \$0.40 per contract.

<sup>8</sup> For details about strategy executions, see CBOE Fees Schedule, Footnote 13.

<sup>9</sup> See NASDAQ OMX PHLX (“PHLX”) Pricing Schedule, “Strategy Caps” chart, which includes “firms” in their cap on such transactions (“firms” and “Clearing Trading Permit Holders” being similar market participants).

especially those on the other side of such transactions). Further, other exchanges apply similar caps in these amounts.<sup>10</sup>

The Exchange also proposes to exclude JBO participants from the \$25,000 per month cap on transaction fees for strategies. JBO participants trade only their own proprietary orders via a Clearing Trading Permit Holder; they do not do any agency trading (trading for customers or other market participants). They do not have some of the obligations, such as being a Trading Permit Holder, that other beneficiaries of the \$25,000 per month cap on transaction fees for strategies have.

The Exchange also proposes to exclude from the \$1,000 cap on all merger strategies and short-stock interest strategies executed in the same trading day in the same option class transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule because there is no such thing as an index merger or a short stock index situation. No such trades could be executed.

The Exchange also proposes to amend Footnote 11 of the Fees Schedule to state that transaction fees resulting from any of the strategies defined in Footnote 13 will apply towards reaching the Clearing Trading Permit Holder Proprietary Fee Cap (the “Fee Cap”) (contract volume resulting from such strategies will still not apply towards the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders). This will put the strategy executions on the same footing as other transactions that count towards the Fee Cap. Further, the Exchange believes this change will encourage the transaction of strategy executions, and the resulting increased volume should benefit all market participants.

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<sup>10</sup> See PHLX Pricing Schedule, “Strategy Caps” chart.

The Exchange also proposes to exclude Clearing Trading Permit Holders from the \$25,000 per month cap on transaction fees for strategies because the Exchange has determined to include strategy transaction fees in the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the \$25,000 per month strategy transaction fee cap). The Exchange also proposes to explicitly state this \$25,000 cap applies to TPH organizations as well as Trading Permit Holders (while TPH organizations are Trading Permit Holders and therefore already qualify for this cap, the Exchange proposes this clarification in order to clear up any possible confusion).<sup>11</sup>

Finally, the Exchange proposes to amend its Customer Large Trade Discount (the “Discount”) with regards to complex orders. The Discount is a cap on customer (“C” origin code) transaction fees for certain options classes. Footnote 27 to the Fees Schedule, which describes the Discount, states that “For complex orders, the total contracts of an order (all legs) are counted for purposes of calculating the fee cap. To qualify for the discount, the entire order quantity must be tied to a single order ID either within the CBOE Command system or in FBW or PULSe or in the front end system used to enter and/or transmit the order...” However, Exchange system limitations prevent the entry of a complex order with more than four legs (for

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<sup>11</sup> Following adoption of the proposed changes to strategies fees, the first three sentences of Footnote 13 of the Fees Schedule will read: Market-maker, Clearing Trading Permit Holder, broker-dealer and non-Trading Permit Holder market-maker transaction fees are capped at \$1,000 for all (i) merger strategies and (ii) short stock interest strategies and at \$700 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee under footnote 14 of this Fees Schedule. Such transaction fees for these strategies are further capped at \$25,000 per month per initiating Trading Permit Holder or TPH Organization (excluding Clearing Trading Permit Holders).

orders entered via PULSe, FBW, or for electronic processing) or twelve legs (for orders entered via a TPH's front-end system that has capability for such orders (PULSe and FBW will soon be capable of the entry of 12-leg complex orders)) into the Exchange system. As such, complex orders with more than the applicable leg limitations must be split up and entered in multiple orders (each order with a different order ID) that each have four legs (for orders entered via PULSe, FBW, or for electronic processing) or twelve legs (for orders entered via a TPH's front-end system that has capability for such orders) or less. Because such complex orders then cannot be tied to a single order ID, under the current language of Footnote 27, they would not qualify for the Discount. The Exchange does not intend to exclude such complex orders from qualification for the discount; they are only excluded due to the system limitations. As such, The Exchange proposes to amend Footnote 27 to state that to "qualify for the discount, the entire order quantity must be tied to a single order ID (unless the order is a complex order with a number of legs that exceeds system limitations)..." In order to verify that a complex order with a number of legs that exceeds system limitations that has been broken up into multiple orders (with multiple order IDs) is indeed a single complex order, the Exchange also proposes to amend the last sentence of Footnote 27 to state that for an order entered via FBW, PULSe or another front end system, or a complex order with multiple order IDs, a customer large trade discount request must be submitted to the Exchange within 3 business days of the transactions and must identify all necessary information, including the order ID and related trade details.

## 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>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>13</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. The Exchange believes that the Waiver is reasonable because it will allow all TPHs trading FLEX Options on the CFLEX System to avoid having to pay a fee that they would otherwise have to pay. The Exchange believes that the Waiver is equitable and not unfairly discriminatory because the Waiver applies to all types of market participants. Further, the Exchange believes that the Waiver will encourage TPHs to transact business in FLEX Options using the CFLEX System and encourage trading of customized options in an exchange environment.<sup>14</sup> The Exchange believes such increased business will provide greater FLEX Options trading opportunities for all market participants. Also, the transaction fees collected from this increased business will allow the Exchange to recoup costs expended in building and developing the CFLEX System.

The Exchange believes that raising the threshold for the Rebate is reasonable because Market-Makers will still be able to receive a rebate for trading activity that they would not otherwise receive (as opposed to levying a fee), and those that cannot reach the new higher threshold will merely be required to pay regular transaction fees. The Exchange believes that

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> The Exchange believes that FLEX Options provide TPHs and investors with an improved but comparable alternative to the over-the-counter (“OTC”) market in customized options, which can take on contract characteristics similar to FLEX Options. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (i) enhanced efficiency in initiating and closing out positions; (ii) increased market transparency; and (iii) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.



raising the threshold for the Rebate is equitable and not unfairly discriminatory because it will encourage more competitive quoting from Market-Makers, which will benefit all market participants. Further, Market-Makers have certain obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that the proposed increase in the Surcharge Fee from \$0.15 to \$0.30 per contract for options on RUT is reasonable because Surcharge Fees charged by the Exchange reflect the pass-through charges associated with the licensing of certain products, including RUT. The proposed increase is therefore a direct result of an increase in the licensing fee charged to the Exchange by the index provider and the owner of the intellectual property associated with the index. This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the RUT Surcharge Fee applies. Also, other exchanges have recently increased their RUT surcharge fees to an even greater extent than the Exchange.<sup>15</sup>

The Exchange believes that the proposal to include Clearing Trading Permit Holder and JBO participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee is reasonable because it will allow Clearing Trading Permit Holders and JBO participants executing such trades to have a cap on fees for such executions. The Exchange believes that this is equitable and not unfairly discriminatory because Clearing Trading Permit Holders take on a number of obligations, (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations,

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<sup>15</sup> See SR-NYSEMKT-2013-65, which increased the AMEX Royalty Fee for RUT from \$0.15 per contract to \$0.40 per contract.

that some other market participants do not take on. While this cap does not apply to Customer transactions, Customers pay significantly lower transaction fees (including for trades that may include such transactions) (and in many circumstances, no fee). Further, the Exchange believes that this will encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Further, other exchanges apply a similar cap to similar market participants.<sup>16</sup>

The Exchange believes that lowering the cap from \$1,000 to \$700 on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, is reasonable because it will allow qualifying market participants executing such trades to have a lower cap on fees for such executions (thereby saving money). The Exchange believes that this is equitable and not unfairly discriminatory because the proposed lowering of the cap does not affect which market participants qualify for the cap; this lowered cap applies to the same market participants as the \$1,000 cap (with the exception of Clearing Trading Permit Holders and JBO participants, who now qualify as described above). Further, the Exchange proposes this change in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). Also, other exchanges apply similar caps in these amounts.<sup>17</sup>

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<sup>16</sup> See PHLX Pricing Schedule, “Strategy Caps” chart, which includes “firms” in their cap on such transactions (“firms” and “Clearing Trading Permit Holders” being similar market participants).

<sup>17</sup> See PHLX Pricing Schedule, “Strategy Caps” chart.

The Exchange believes that excluding JBO participants from the \$25,000 per month cap on transaction fees for strategies (as described above) is reasonable because this change will merely require JBO participants to pay regular transaction fees on all such transactions. The Exchange believes that this change is equitable and not unfairly discriminatory because JBO participants do not have the obligations (such as becoming Trading Permit Holders, clearing trades, financial or regulatory burdens, quoting obligations, and books and records obligations) that other market participants who benefit from the \$25,000 per month cap on transaction fees for strategies have, and they only trade for own accounts.

The Exchange believes that excluding from the fee cap on merger strategies and short stock interest strategies transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule is reasonable, equitable and not unfairly discriminatory because there is no such thing as an index merger or a short stock index situation (because these strategies are only applicable to single stock options transactions). Therefore, since it would not be possible to do these strategies for index options, there could not be a discriminatory impact. Further, even if this were not the case, market participants trading merger strategies and short stock interest strategies in any of those classes would merely be required to pay the regular transaction fees for such trades.

The Exchange believes that excluding Clearing Trading Permit Holders from the \$25,000 per month strategies fees cap is reasonable, equitable and not unfairly discriminatory because the Exchange is proposing to apply strategy transaction fees towards the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the \$25,000

per month strategy transaction fee cap). Moreover, the Exchange believes that including strategy transaction fees in the Fee Cap will encourage Clearing Trading Permit Holders to execute more strategy trades (more than would applying Clearing Trading Permit Holder strategy transaction fees towards a strategies cap), with the resulting increased volume benefitting all market participants. Finally, without having transaction fees from strategy trades count towards a strategies cap, Clearing Trading Permit Holders will merely be required to pay regular transaction fees for such transactions.

The Exchange believes that explicitly stating that the \$25,000 per month strategies fees cap applies to TPH organizations as well as Trading Permit Holders is consistent with the Section 6(b)(5)<sup>18</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. By clearing up any possible confusion, this proposed change removes impediments to and perfects the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed change to include transaction fees resulting from such strategies to count towards the Fee Cap is reasonable because it will allow qualifying market participants who execute strategy transactions to benefit from the Fee Cap for doing so. The Exchange believes that this is equitable and not unfairly discriminatory because it will apply to all market participants who qualify for the Fee Cap. While the Fee Cap only applies to

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

Clearing Trading Permit Holders, those market participants take on obligations, such as membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. Finally, this will put the strategy executions on the same footing as other transactions that count towards the Fee Cap.

The Exchange believes that specifying that a complex order with a number of legs that exceeds system limitations to be tied to a single order ID qualifies for the Discount is reasonable because the Exchange does not intend to exclude such orders from qualification for the Discount; Exchange systems merely prevent such orders from being tied to a single order ID. Complex orders qualify for the Discount, this proposed change is merely intended to make up for an Exchange system limitation. This change is equitable and not unfairly discriminatory because it provides complex orders with more than the number of legs permitted for entry with a single order ID with the ability to qualify for the Discount, just as complex orders with a small enough number of legs as to permit such orders to be tied to a single order ID may qualify for the Discount.

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. CBOE does not believe that the proposed Waiver will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Waiver will apply to all market participants accessing the CFLEX System via CMI or FIX Login IDs. Further, the Exchange believes that the Waiver will encourage TPHs to transact business in

FLEX Options using the CFLEX System and encourage trading of customized options in an exchange environment. The Exchange believes such increased business will provide greater FLEX Options trading opportunities for all market participants, and the Exchange believes that the transaction fees collected from this increased business will allow the Exchange to recoup costs expended in building and developing the CFLEX System. CBOE does not believe that the proposed Waiver will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to accessing the CFLEX System, which is only available on CBOE. To the extent that waived fees for CMI or FIX Login IDs for accessing the CFLEX System makes CBOE a more attractive trading venue for market participants at other exchanges, such market participants may elect to become CBOE market participants.

CBOE does not believe that the proposed increase in the Rebate threshold will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increase does not change which market participants to whom the Rebate applies; it merely changes the threshold for qualification for the Rebate. Further, while the Rebate applies to Market-Makers, Market-Makers have certain obligations, such as quoting obligations, that other market participants do not have. CBOE does not believe that the proposed increase in the Rebate threshold will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to trading on CBOE, and only CBOE has a HAL Step-Up Rebate.

CBOE does not believe that the proposed increase in the RUT Surcharge Fee will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the increase does not change which market participants to whom the

RUT Surcharge Fee applies; it merely changes the fee's amount. CBOE does not believe that the proposed increase in the RUT Surcharge Fee will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change only applies to trading of RUT on CBOE. The Exchange further notes that the licensing agreement it has secured is not an exclusive agreement as at least two other options exchanges continue to trade RUT options and charge a fee related to such license (and indeed, the Exchange's proposed increased fee is still lower than that offered on other exchanges). As such, the Exchange believes that there is no unnecessary or inappropriate burden on competition among exchanges for the trading of RUT options.

The Exchange does not believe that the proposal to include Clearing Trading Permit Holder and JBO participant transaction fees towards qualifying for the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Clearing Trading Permit Holders take on a number of obligations, (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that some other market participants do not take on. While this cap does not apply to Customer transactions, Customers pay significantly lower transaction fees (including for trades that may include such transactions) (and in many circumstances, no fee). Further, the Exchange believes that this will encourage Clearing Trading Permit Holders and JBO participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of

such transactions). The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE. Further, other exchanges apply a similar cap to similar market participants,<sup>19</sup> so this change should make CBOE more competitive with other exchanges. To this extent, if this change makes CBOE more attractive to market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to lower from \$1,000 to \$700 the cap (described in Footnote 13 to the Fees Schedule) on transaction fees for all reversals, conversions and jelly roll strategies executed on the same trading day in the same option class, excluding any option class on which the Exchange charges the Index License surcharge fee, will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed lowering of the cap does not affect which market participants qualify for the cap; this lowered cap applies to the same market participants as the \$1,000 cap (with the exception of Clearing Trading Permit Holders and JBO participants, who now qualify as described above). Further, the Exchange proposes this change in order to encourage qualifying market participants to execute such strategy transactions (the execution of which will add volume and provide trading opportunities for all market participants, especially those on the other side of such transactions). The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE. Further, other

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<sup>19</sup> See PHLX Pricing Schedule, “Strategy Caps” chart, which includes “firms” in their cap on such transactions (“firms” and “Clearing Trading Permit Holders” being similar market participants).



exchanges apply similar caps in these amounts,<sup>20</sup> so this change should make CBOE more competitive with other exchanges. To this extent, if this change makes CBOE more attractive to market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to exclude JBO participants from the \$25,000 per month cap on transaction fees for strategies (as described above) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because JBO participants do not have the obligations (such as becoming Trading Permit Holders, clearing trades, financial or regulatory burdens, quoting obligations, and books and records obligations) that other market participants have, and they only trade for own accounts. The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE.

The Exchange does not believe that the proposed change to exclude from the fee cap on merger strategies and short stock interest strategies transactions in any option class on which the Exchange charges the Index License surcharge fee under Footnote 14 of the Fees Schedule will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because there is no such thing as an index merger or a short stock index situation.

The Exchange does not believe that the proposed changes to include transaction fees resulting from such strategies to count towards the Fee Cap will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the

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<sup>20</sup> See PHLX Pricing Schedule, “Strategy Caps” chart.

Act because they will apply to all market participants who qualify for the Fee Cap. While the Fee Cap only applies to Clearing Trading Permit Holders, those market participants take on obligations, such as membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, that some other market participants do not take on. Further, the Exchange believes that this will incentivize qualifying market participants to engage in such strategy executions, and the resulting increase in volume will benefit all market participants. The Exchange does not believe that this will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it only affects trading on CBOE. Further, to the extent that these changes may make CBOE a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBOE market participants.

The Exchange does not believe that the proposed change to exclude Clearing Trading Permit Holders from the \$25,000 per month strategies fees cap will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Exchange is proposing to apply transaction fees from strategies trades towards the Fee Cap, which includes many other types of Clearing Trading Permit Holder transaction fees and is more advantageous for Clearing Trading Permit Holders. Further, it would not make economic sense to include strategy transaction fees towards two different monthly fee caps (the Fee Cap and the \$25,000 per month strategy transaction fee cap). Further, the Exchange believes that including strategy transaction fees in the Fee Cap will encourage Clearing Trading Permit Holders to execute more strategy trades (more than would applying Clearing Trading Permit Holder strategy transaction fees towards a strategies cap), with the resulting increased volume benefitting all market participants. The Exchange does not believe that this will impose any

burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the change only applies to trading on CBOE.

The Exchange does not believe that the proposal to explicitly state that the \$25,000 per month strategies fees cap applies to TPH organizations as well as Trading Permit Holders will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because this is not a substantive change, but merely intended to clear up any potential confusion.

CBOE does not believe that the proposed amendment to Footnote 27 permitting complex orders that cannot be tied to a single order ID to qualify for the Discount will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this proposed change does not affect which types of market participants qualify for the Discount; it is merely intended to make up for an Exchange system limitation. This change provides complex orders that cannot be tied to a single order ID with the ability to qualify for the Discount, just as complex orders that can be tied to a single order ID may qualify for the Discount. CBOE does not believe that this proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act for much of the same reasons. The change is not made for competitive reasons, but instead to correct for an Exchange system limitation. Further, this proposed change applies only to trading on CBOE. To the extent that the proposed change may make CBOE a more attractive trading venue for market participants at other exchanges, such market participants may elect to become CBOE market participants.

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) of the Act<sup>21</sup> and paragraph (f) of Rule 19b-4<sup>22</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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### 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-2013-083 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-2013-083. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

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 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-2013-083, 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>23</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).