

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71295; File No. SR-CBOE-2013-129)

January 14, 2014

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 December 31, 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 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 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

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

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

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.

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

1. Purpose

The Exchange proposes to make a number of changes to its Fees Schedule, all to be effective January 1, 2014. First, the Exchange proposes to increase the fee for electronic Clearing Trading Permit Holder Proprietary executions in equity, ETF, ETN, and index options classes (except SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES (the "Special Classes")) from \$0.25 per contract to \$0.35 per contract.<sup>3</sup> The reason for the proposed increase is to cover the increasing costs associated with electronic executions (including the upkeep and institution of new systems) as well as to better align with market rates for Clearing Permit Holder Proprietary executions (CBOE fees will still be lower than comparable fees offered by some other exchanges).<sup>4</sup>

Next, the Exchange proposes to amend the statement in Footnote 11 of its Fees Schedule that reads "For facilitation orders (other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO) ("facilitation orders" for this purpose to be defined as any paired order in which a Clearing Trading Permit Holder (F) origin code is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order) executed electronically (including in AIM), open outcry, or as a QCC or FLEX transaction, CBOE will

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<sup>3</sup> Corresponding to this change, the Exchange proposes to amend the listing of the Electronic (non-AIM) fee from \$0.25 per contract to \$0.35 per contract on its "Clearing Trading Permit Holder Fee Cap" table.

<sup>4</sup> For example, NASDAQ OMX PHLX LLC ("PHLX") assesses firm electronic fees of \$0.45 or \$0.60 per contract for multiply-listed options (see PHLX Pricing, Section II).

assess no Clearing Trading Permit Holder Proprietary transaction fees” to add orders of a Non-Trading Permit Holder Affiliate (“L” origin code) into this definition of “facilitation orders”.<sup>5</sup> This would mean that such “L” orders would be assessed no fees for facilitation orders (except as otherwise stated). The purpose for this proposed change is to attract and encourage the Non-Trading Permit Holder Affiliates of Clearing Trading Permit Holders. Permitting them free facilitations encourages them to concentrate more business on CBOE while putting the Exchange on a similar competitive position as other exchanges, including those that offer free Broker-Dealer facilitations that are contra to a Customer.<sup>6</sup>

The Exchange also proposes to assess no fee on Clearing Trading Permit Holder Proprietary facilitation transactions in Mini options. As Mini options are merely 1/10 the size of regular options contracts, and such transactions in regular options contracts are assessed no fee, it makes sense to also assess no fee for these transactions in Mini options.

The Exchange proposes to make some reorganization of its Specified Proprietary Index Options Rate Table – SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES (the “Proprietary Options Rate Table”). First, the Exchange proposes to re-order alphabetically the Customer fees for the different products listed in the table. This means that OEX and XEO fees will be at the top, followed by OEX Weeklys and XEO Weeklys, then SPX

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<sup>5</sup> As proposed, the statement would read: “For facilitation orders (other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO) (“facilitation orders” for this purpose to be defined as any paired order in which a Clearing Trading Permit Holder (F) origin code or Non-Trading Permit Holder Affiliate (“L” origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order) executed electronically (including in AIM), open outcry, or as a QCC or FLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees.” The Exchange would also add the origin code “L” into the “Facilitation” line on the Equity Options, ETF and ETN Options, and Index Options Products Excluding the Special Classes Rate Tables.

<sup>6</sup> See PHLX Pricing, Section II, bullet point discussing facilitation orders executions.

(incl SPXW), then SPXpm, then VIX (and VOLATILITY INDEXES, as the Exchange will also propose herein to assess the same Customer fees for VOLATILITY INDEXES as are assessed to VIX options transactions). The amounts of these fees will not change (unless otherwise described herein). The second step in the re-organization of this table is to separate fees based on the option's premium price. The amounts of such fees will not change (unless otherwise described herein). The purpose of these proposed changes is to make the Proprietary Options Rate Table easier for market participants to read and ascertain which fees apply.

The Exchange also proposes to amend Customer fees for VIX options transactions. Currently, when the premium is greater than or equal to \$1, the fee is \$0.45 per contract, and when the premium is less than \$1, the fee is \$0.25 per contract. The Exchange proposes to amend VIX options Customer fees such that when the premium is a) \$1.00 or greater, the fee will be \$0.48 per contract, b) \$0.11-\$0.99, the fee will be \$0.27, and c) \$0.00-\$0.10, the fee will be \$0.10. The purpose of these proposed changes is to provide greater incentives for Customers to trade VIX options. By providing for more granular fee tiers based on the premium, the Exchange can more closely assess fees commensurate with the premiums for such options. The Exchange is attempting to reduce costs on low-priced VIX options to encourage Customers to close and roll over positions close to expiration at low premium levels. Currently, such Customers are less likely to do this because the transaction fee is closer to the premium level. The Exchange believes that the lowered fees for VIX options trading with a premium of \$0.00-\$0.10 will encourage the trading of such options. The slight increases of the fees for Customer transactions in VIX options whose premium is greater than or equal to \$1.00 as well as those whose premium is \$0.11-\$0.99 are being utilized in order to achieve some level of revenue balance in connection with the lowered fee for customer transactions in VIX options whose premium is \$0.00-\$0.10.

The Exchange proposes to amend the Customer fees for all other VOLATILITY INDEXES so that such fees are the same as VIX options fees. VIX is itself a Volatility Index, so it makes sense to assess the same Customer fees to all other VOLATILITY INDEXES as are assessed to the Exchange's most heavily-traded Volatility Index (VIX). The VIX and VOLATILITY INDEXES fees that apply to each other market participant are already the same. CBOE seeks to have a unified strategy for its volatility complex, and since most CBOE volatility products have an underlying value that is generally in the same range, the fees structure that has been designed for VIX options also makes sense for applicability for all other VOLATILITY INDEXES.

The Exchange also proposes to separate out the fees for VIX and VOLATILITY INDEXES for CBOE Market-Makers/DPMs/E-DPMs/LMMs ("Market-Makers") from those assessed to SPX, SPXW, SPXpm, OEX and XEO. Currently, Market-Maker transactions in all those products are assessed a fee of \$0.20 per contract. The Exchange proposes to assess a fee for Market-Maker transactions in VIX and VOLATILITY INDEXES of \$0.05 per contract when the premium is \$0.00-\$0.10 and \$0.23 per contract when the premium is \$0.11 or greater. The Exchange believes that the lowered fees for VIX and VOLATILITY INDEXES options trading with a premium of \$0.00-\$0.10 will encourage the trading of such options. The slight increases of the fees for Market-Maker transactions in VIX options and VOLATILITY INDEXES whose premium is greater than or equal to \$0.11 is being utilized in order to achieve some level of revenue balance in connection with the lowered fee for Market-Maker transactions in VIX options and VOLATILITY INDEXES whose premium is \$0.00-\$0.10. The Exchange institutes these new fees in order to encourage Market-Makers to provide liquidity to Customer orders in VIX options and VOLATILITY INDEXES.

The Exchange assesses a Hybrid 3.0 Execution Fee of \$0.18 per contract for all electronic executions in Hybrid 3.0 classes (with some exceptions).<sup>7</sup> The Exchange hereby proposes to increase this fee to \$0.20 per contract. The purpose of this change is because at the time that the Hybrid 3.0 Execution Fee was adopted, most orders executed via Hybrid 3.0 were simple orders. Now, with the growing prevalence of complex orders, the Exchange desires to increase the Hybrid 3.0 Execution Fee to cover the increased system complexity (and use of resources necessary) due to the trading of complex orders. The Exchange also proposes to amend the listing of the origin codes on the Proprietary Options Rate Chart. When the Proprietary Options Rate Chart was created, the Exchange erroneously listed only the “C” and “W” origin codes as applicable to the Hybrid 3.0 Execution Fee, which contradicts Footnote 21 (which describes the Hybrid 3.0 Execution Fee, and does not except out other origin codes). As such, the Exchange proposes to add the “F”, “J”, “L”, “B”, and “N” origin codes to the table. The Exchange also proposes to amend Footnote 21 to remove the listing of the Hybrid 3.0 Execution Fee as being \$0.18 per contract, and simply state that the Hybrid 3.0 Execution Fee will be assessed to relevant executions in Hybrid 3.0 classes.

The Exchange proposes to adopt two Customer Priority Surcharges, which are assessed on customer (C) contracts. The first is the SPXW (electronic only) Customer Priority Surcharge of \$0.05 per contract. The SPXW Customer Priority Surcharge applies to all SPXW customer contracts executed electronically, except those contracts traded on a PAR terminal. The second Customer Priority Surcharge is to be assessed on Customer VIX contracts executed electronically that are Maker and not Market Turner. This \$0.05 per contract fee will only be assessed on such contracts that have a premium of \$0.11 or greater.

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<sup>7</sup> See CBOE Fees Schedule, Footnote 21 for such exceptions.

The purpose of the Customer Priority Surcharges is to ensure that there is reasonable cost equivalence between the primary execution channels for the products involved. Manual executions are achieved using floor brokers (the only market participants who can trade contracts using a PAR terminal), who assess a commission for Customer executions. Electronic executions are not assessed a commission, but more heavily rely on the Exchange's systems. The proposed Customer Priority Surcharges will minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as they serve an important function in achieving price discovery and Customer executions. Floor brokers ensure that the difficult-to-execute orders (such as large and complex orders) are able to be executed manually by accessing the CBOE's in-person market maker crowds, while also helping to achieve price improvement. SPX, SPXW and VIX are the only products that execute a significant share of their total volume on the trading floor, and the Hybrid 3.0 Execution Fee (which essentially acts as a customer priority surcharge) already applies to SPX. SPXW often has a lower premium (as it is a weekly option with a lower timeframe, as the options have less time value than the regular SPX options), so it makes sense to assess a lower SPXW Customer Priority Surcharge than the Hybrid 3.0 Execution Fee. VIX options trade at a lower underlying value than SPX and so also have a lower premium value, so it also makes sense for the VIX Customer Priority Surcharge to be lower than the Hybrid 3.0 Execution Fee. As described above, the Exchange wants to encourage the execution of VIX options Customer orders for options with a premium of \$0.00-\$0.10, and therefore is not proposing to assess the Customer Priority Surcharge on such options.

The Exchange proposes to change the different tier thresholds in its Liquidity Provider Sliding Scale (which provides for reduced fees for a CBOE Market-Maker based on the Market-Maker executing a certain number of contracts per month) from nominal contracts per month thresholds (i.e. contracts 100,001 – 2,000,000) to a relative contracts per month threshold (i.e. above 0.05% - 0.70%). These volume thresholds are based on the Market-Maker’s percentage of total national Market-Maker multiply-listed options volume (where previously they had merely been based on the total number of multiply-list contracts executed by the Market-Maker). Below is a table demonstrating the proposed changes.

<b>Tier</b>	<b>Old Volume Threshold</b>	<b>New Volume Thresholds</b>	<b>Fee (per contract)</b>
<b>1</b>	1 – 100,000	0.00% - 0.05%	\$0.23 <sup>8</sup>
<b>2</b>	100,001 – 2,000,000	Above 0.05% - 0.70%	\$0.17
<b>3</b>	2,000,001 – 4,000,000	Above 0.70% - 1.40%	\$0.10
<b>4</b>	4,000,001 – 6,000,000	Above 1.40% - 2.00%	\$0.05
<b>5</b>	6,000,000 +	Above 2.00%	\$0.03

The purpose of this change is to control and account for changes in national industry-wide multiply-listed options volume. The new percentage thresholds generally correspond to the old nominal thresholds (based on current total national Market-Maker multiply-listed options volume). The Exchange also proposes to amend the “Notes” section of this table to capitalize the term “VOLATILITY INDEXES” as this term is capitalized elsewhere in the Fees Schedule, and the Exchange desires consistency.

Due to the proposed change to a relative percentage-based tier system for the Liquidity Provider Sliding Scale, the Exchange also must propose amendments to Footnote 10 of the Fees Schedule, which discusses the prepayment necessary in order to be eligible for the fees applicable to tiers 3-5 of the Liquidity Provider Sliding Scale. Currently, a Liquidity Provider is

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<sup>8</sup> Currently, the fee at this tier is \$0.25 per contract. However, the Exchange proposes to lower this fee to \$0.23 per contract, as described below.



required to pre-pay the fees for the first two tiers of the Liquidity Provider Sliding Scale in order to be eligible for the lower fees applicable to tiers 3-5. This works out to \$348,000 per month (based on the current nominal volume thresholds in the Liquidity Provider Sliding Scale).

However, with the proposed change to make the tiers in the Liquidity Provider Sliding Scale based on relative percentage-based volume thresholds, it will be impossible to know beforehand what amount per month will be required to pay for the first two tiers. As such, the Exchange simply proposes to require a pre-payment of \$200,000 per month, or \$2,400,000 for the year (significantly lower than the current prepay amounts). Along with that change, the Exchange proposes to make some other amendments to Footnote 10, which describes the prepayment, to 1) give those desiring to prepay for the full year until January 10 of the applicable year to prepay, 2) add an example regarding prepayment, 3) make clear that prepay arrangements for less than the full year must be paid before the calendar month in which they are to begin, and 4) make the Footnote easier to read and understand.<sup>9</sup>

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<sup>9</sup> As proposed, Footnote 10 will read: “The Liquidity Provider Sliding Scale applies to Liquidity Provider (CBOE Market-Maker, DPM, e-DPM and LMM) transaction fees in all products except mini-options, SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO. A Liquidity Provider's standard per contract transaction fee shall be reduced to the fees shown on the sliding scale as the Liquidity Provider reaches the volume thresholds shown on the sliding scale in a month. The Exchange will aggregate the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. A Liquidity Provider shall be required to prepay, by January 10th, \$2,400,000 in order to be eligible for the fees applicable to tiers 3 - 5 of the sliding scale for the entire year. A Liquidity Provider can elect to prepay \$200,000 per month to be eligible for the fees applicable to tiers 3 - 5 of the sliding scale for the remainder of the year at any time during the year, but such prepayment (and eligibility) will only be applied prospectively for the remainder of the year. A TPH that chooses, for example, in June 2014 to prepay for the remainder of the year would pay \$1,200,000 for the months of July-December. All prepay arrangements must be paid before the first calendar month in which they are to begin. Contract volume resulting from any of the strategies defined in Footnote 13 will apply towards reaching the sliding scale volume thresholds.”

The Exchange also proposes to lower from \$0.25 per contract to \$0.23 per contract the transaction fee in Tier 1 of the Liquidity Provider Sliding Scale. The purpose of this change is to incentivize Market-Makers at this first tier to quote more and execute more orders on the Exchange, as well as to more effectively compete with pricing on other exchanges.<sup>10</sup>

The Exchange proposes to amend its CBOE Proprietary Products Sliding Scale, under which Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Clearing Trading Permit Holder Affiliates in OEX, XEO, SPX, SPXpm and volatility indexes are reduced provided a Clearing Trading Permit Holder reaches certain volume thresholds in multiply-listed options on the Exchange in a month. The Exchange does not propose substantive changes to the fee or structure of the CBOE Proprietary Products Sliding Scale. Instead, as with the Liquidity Provider Sliding Scale, the Exchange proposes to change the different tier thresholds from nominal contracts per month thresholds to relative contracts per month thresholds (for the same reasons as the Liquidity Provider Sliding Scale). The new thresholds will be based on a Clearing Trading Permit Holder (Proprietary) executing different percentages of total CBOE Clearing Trading Permit Holder Proprietary volume in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES.<sup>11</sup> The new percentage thresholds generally correspond to the old nominal thresholds (based on current total CBOE Clearing Trading Permit Holder Proprietary volume in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES). Similarly (and correspondingly), the Exchange proposes to amend the different multiply-listed options tiers from being based on total monthly volume to an Average Daily Volume (“ADV”) threshold

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<sup>10</sup> See PHLX Pricing, Section II.

<sup>11</sup> To make this clear, the Exchange also proposes adding to the “Notes” section of the table the following statement: “Transaction fees in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES will be reduced based on reaching the percentage thresholds in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES listed in the table.”

system (calculated monthly). The new thresholds ADV thresholds generally correspond with the old monthly thresholds (depending on how many trading days are in a given month). The purpose of these changes is to control and account for changes in national industry-wide multiply-listed options volume as well as the number of trading days in a month. The Exchange also proposes a number of cosmetic changes to the CBOE Proprietary Products Sliding Scale, including 1) to renumber the tiers in the CBOE Proprietary Products Sliding Scale, 2) to fix an error that listed “SPXpm” as “SPXPm” in the Notes, 3) clarify that VIX is included in the CBOE Proprietary Products Sliding Scale (previously, it had just said “volatility indexes”, and while VIX is a volatility index, it can’t hurt to be more clear), 4) capitalize the term “volatility indexes” in the “Notes” in order to achieve consistency, 5) delete the term “volume” and replace it with “ADV” in the “Notes” due to the change described above, and 6) change the title of a column from “Proprietary Products Contracts Per Month” to “Proprietary Products Volume Thresholds” due to the changes described above. Once again, no fees are being changed in the CBOE Proprietary Products Sliding Scale. The proposed changes are detailed below.

<b>Current</b>		<b>Proposed</b>	
<b>Tier</b>	<b>Proprietary Product Contracts Per Month</b>	<b>Tier</b>	<b>Proprietary Product Volume Thresholds</b>
≥ 375,000 < 1,500,000 contracts in multi list products		≥ 18,000 ADV ≤ 71,999 ADV in multi list products	
<b>1</b>	First 750,000	<b>B3</b>	0.00% - 6.50%
<b>2</b>	Next 250,000	<b>B2</b>	6.51% - 8.50%
<b>3</b>	Above 1,000,000	<b>B1</b>	Above 8.50%
≥ 1,500,000 contracts in multi list products		≥ 72,000 ADV in multi list products	
<b>1</b>	First 750,000	<b>A2</b>	0.00% - 6.50%
<b>2</b>	Above 750,000	<b>A1</b>	Above 6.50%

The Exchange proposes to delete its Clearing Trading Permit Holder VIX Options Sliding Scale (the “VIX Options Sliding Scale”) and any references in the Fees Schedule to the VIX Options Sliding Scale, as well as language that [sic] regarding the calculation of a Clearing

Trading Permit Holder's total proprietary transaction fees that will be made irrelevant by the deletion of the VIX Options Sliding Scale.<sup>12</sup> The Exchange instituted the VIX Options Sliding

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<sup>12</sup> Specifically, the Exchange proposes to delete language in Footnote 11 that states: "For calculating a Clearing Trading Permit Holder's total proprietary product transaction fees, CBOE will use the following methodology: If using the VIX Options Sliding Scale plus the Sliding Scale (minus VIX volume) results in lower total Clearing Trading Permit Holder proprietary transaction fees than just using the Sliding Scale, CBOE will apply the new VIX Options Sliding Scale plus the Sliding Scale, and deduct the VIX options volume from the Sliding Scale. If using the VIX Options Sliding Scale plus the Sliding Scale (minus VIX options volume) results in higher total Clearing Trading Permit Holder proprietary transaction fees than just using the Sliding Scale, CBOE will apply only the Sliding Scale."

As amended, Footnote 11, in its entirety, will read: The Clearing Trading Permit Holder Fee Cap in all products except SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO (the "Fee Cap") and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Sliding Scale apply [sic] to (i) Clearing Trading Permit Holder proprietary orders ("F" origin code), and (ii) orders of Non-Trading Permit Holder Affiliates of a Clearing Trading Permit Holder. A "Non-Trading Permit Holder Affiliate" for this purpose is a 100% wholly-owned affiliate or subsidiary of a Clearing Trading Permit Holder that is registered as a United States or foreign broker-dealer and that is not a CBOE Trading Permit Holder. Only proprietary orders of the Non-Trading Permit Holder Affiliate ("L" origin code) effected for purposes of hedging the proprietary over-the-counter trading of the Clearing Trading Permit Holder or its affiliates will be included in calculating the Fee Cap and Sliding Scale. Such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the Fee Cap and Sliding Scale. Each Clearing Trading Permit Holder is responsible for notifying the TPH Department of all of its affiliations so that fees and contracts of the Clearing Trading Permit Holder and its affiliates may be aggregated for purposes of the Fee Cap and Sliding Scale. A Clearing Trading Permit Holder is required to certify the affiliate status of any Non-Trading Permit Holder Affiliate whose trading activity it seeks to aggregate. In addition, each Clearing Trading Permit Holder is required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. The Exchange will aggregate the fees and trading activity of separate Clearing Trading Permit Holders for the purposes of the Fee Cap and Sliding Scale if there is at least 75% common ownership between the Clearing Trading Permit Holders as reflected on each Clearing Trading Permit Holder's Form BD, Schedule A. A Clearing Trading Permit Holder's fees and contracts executed pursuant to a CMTA agreement (i.e., executed by another clearing firm and then transferred to the Clearing Trading Permit Holder's account at the OCC) are aggregated with the Clearing Trading Permit Holder's non-CMTA fees and contracts for purposes of the Fee Cap and Sliding Scale. Transaction fees resulting from any of the strategies defined in Footnote 13 will apply towards reaching the Fee Cap. For facilitation orders (other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO) ("facilitation orders" for this purpose to be defined as

Scale in an attempt to encourage greater Clearing Trading Permit Holder proprietary trading of VIX options.<sup>13</sup> The Exchange now proposes to delete the VIX Options Sliding Scale because it is no longer competitively necessary. The vast majority of CTPHs who qualify do not avail themselves of it and therefore it adds unnecessary complexity to the Exchange's already-complex fees structure.

The Exchange proposes to amend its Fees Schedule with regard to PULSe Workstation routing (specifically, with regard to routing from one PULSe Workstation to another). By way of background, the PULSe workstation is a front-end order entry system designed for use with respect to orders that may be sent to the trading systems of CBOE. In addition, the PULSe workstation provides a user with the capability to send options orders to other U.S. options exchanges and/or stock orders to other U.S. stock exchanges and trading centers<sup>14</sup> ("away-market routing").<sup>15</sup> PULSe Workstation users also have the capability to send orders between

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any paired order in which a Clearing Trading Permit Holder (F) origin code or Non-Trading Permit Holder Affiliate ("L" origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order) executed electronically (including in AIM), open outcry, or as a QCC or FLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees.

<sup>13</sup> For more description regarding the VIX Options Sliding Scale, see Securities Exchange Act Release No. 68699 (January 18, 2013), 78 FR 5538 (January 18, 2013) (SR-CBOE-2013-003).

<sup>14</sup> A "trading center," as provided under Rule 600(b)(78) of Regulation NMS, 17 CFR 242.600(b)(78), means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

<sup>15</sup> For a more detailed description of the PULSe workstation and its other functionalities, see, e.g., Securities Exchange Act Release Nos. 62286 (June 11, 2010), 75 FR 34799 (June 18, 2010) (SR-CBOE-2010-051), 63244 (November 4, 2010), 75 FR 69148 (November 10, 2010) (SR-CBOE-2010-100), 63721 (January 14, 2011), 76 FR 3929 (January 21, 2011) (SR-CBOE-2011-001), 65280 (September 7, 2011), 76 FR 56838

PULSe workstations. For example, a user is able to send an order from a PULSe workstation located in New York to a PULSe workstation located in Chicago. The ability to send orders “PULSe-to-PULSe” is available for use within a TPH (and any Non-TPHs to whom the TPH makes the PULSe workstation available) and between TPHs that use the PULSe workstation. A TPH may establish a PULSe-to-PULSe connection with another TPH by contacting CBOE, who will permission [sic] the connection. Before setting up the connection, both TPHs need to acknowledge in writing (e.g., including via e-mail) their agreement to establish the mutual connection.

The Exchange hereby proposes to impose a monthly PULSe-to-PULSe Routing fee of \$50 for each receiving TPH. This means that each TPH with a PULSe Workstation that elects to receive orders from another PULSe Workstation will be assessed this fee. The Exchange proposes to assess the fee to cover costs associated with the development of PULSe-to-PULSe routing, as well as the upkeep of such systems. The Exchange proposes to assess the fee to the receiving TPH because, by electing to receive PULSe-to-PULSe orders, the receiving TPH then gets the ability to execute those orders on the Exchange. The Exchange also proposes a non-substantive change to the Fees Schedule regarding PULSe Workstation fees. Currently, there is a line under the “Trading Floor Terminal Rentals” section of the “Facility Fees” table that lists PULSe On-Floor Workstation fees as being \$350 per login ID, and the note for that fee is that “this fee is waived for the first month of a new user of a TPH”. However, there are more PULSe Workstation fees (including that fee) listed in the “PULSe Workstation” fees section of the “Facility Fees” table. To avoid any potential confusion, the Exchange proposes to delete the

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(September 14, 2011) (SR-CBOE-2011-083), 65491 (October 6, 2011), 76 FR 63680 (October 13, 2011) (SR-CBOE-2011-092), and 69990 (July 16, 2013), 78 FR 43953 (July 22, 2013) (SR-CBOE-2013-062).

listing of the \$350 per login ID fee amount, as well as the note, from the PULSe On-Floor Workstation line of the “Trading Floor Terminal Rentals” section of the “Facility Fees” table and replace it with the statement “See PULSe Workstation fees below”.

The Exchange proposes to lower its Hybrid Agency Liaison (“HAL”) Step-Up Rebate from \$0.10 per contract to \$0.05 per contract, and also to delete obsolete language in the “Notes” description of the HAL Step-Up Rebate.<sup>16</sup> The purpose of this proposed change is because, as routing practices have changed over the years, CBOE’s competitive strategy is no longer based on processing a notable amount of Linkage traffic passing through the Exchange. Therefore it no longer makes economic sense to offer as strong an incentive for Market-Makers to “step up” and attract orders coming through the Linkage.

The Exchange proposes to amend its Linkage fees for Customers. Currently, a different fees structure applies to customer orders of 100 or more contracts that is routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (the “Linkage”) than applies to customer orders of 99 contracts or less that are routed to one or more exchange via Linkage. Those customer orders of 100 or more contracts are assessed the actual transaction fee assessed by the exchange(s) to which the order was routed, while customer orders of 99 contracts or less are assessed the actual transaction fee assessed by the exchange(s) to which the order was routed, minus \$0.05 per contract. The Exchange hereby proposes to eliminate this distinction, and assess to all customer orders sent through Linkage the actual transaction fee assessed by the exchange(s) to which the order was

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<sup>16</sup> Following the proposed changes, the “Notes” section would read: The Exchange shall rebate to a market-maker against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 70% 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.

routed. It has ceased to be economically viable for the Exchange to “eat” \$0.05 per contract on every customer order of 99 contracts or less that are routed away via Linkage.<sup>17</sup>

The Exchange also proposes to increase by \$0.05, to \$0.55, the per-contract routing fee assessed to non-customer orders routed through the Linkage. The purpose of this proposed change is to cover costs associated with routing orders through Linkage and paying the transaction fees for such executions at other exchanges. The amount of this fee is lower than corresponding non-customer Linkage fees assessed by other exchanges.<sup>18</sup>

The Exchange also proposes to amend its Footnote 25. Currently, any Floor Broker Trading Permit Holder that executes an average of 15,000 customer open-outcry contracts per day over the course of a calendar month in multiply-listed options classes receives a rebate of \$7,500 on that Floor Broker Trading Permit Holder’s Floor Broker Trading Permit fees (the “Floor Broker Access Rebate”). The Exchange proposes to add a second tier to this rebate, and add that “Any Floor Broker Trading Permit Holder that executes an average of 25,000 customer open-outcry contracts per day over the course of a calendar month in multiply-listed options classes will receive a rebate of \$15,000 on that Floor Broker Trading Permit Holder’s Floor Broker Trading Permit fees.” The purpose of the proposed change is to encourage Floor Brokers to execute open-outcry customer trades in multiply-listed options, and the Exchange believes that

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<sup>17</sup> As proposed, the “note” regarding Customer Linkage Fees will read as follows: In addition to the customary CBOE execution charges, for each customer order that is routed, in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80, CBOE shall pass through the actual transaction fee assessed by the exchange(s) to which the order was routed. Multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received within 500 milliseconds will be aggregated for purposes of determining the order quantity.

<sup>18</sup> See NASDAQ OMX PHLX LLC (“PHLX”) Pricing, Non-Customer Routing Fee of \$0.95 per contract.



giving Floor Brokers a further break in their Floor Broker Trading Permit fees will provide such an incentive. The Exchange recognizes the competitive nature of maintaining a Floor Broker operation at CBOE and wants to provide a credit to Floor Brokers that engage in a significant amount of Floor Broker open outcry trading at CBOE. For purposes of determining the rebate, the qualifying volume of all Floor Broker Trading Permit Holders affiliated with a single TPH organization will be aggregated, and, if such total meets or exceeds the customer open-outcry contracts per day thresholds in multiply-listed options classes, that TPH organization will receive a single rebate, regardless of the number of Floor Broker Trading Permits affiliated with that TPH organization.

Finally, the Exchange proposes to amend its Footnote 26, which applies to the Exchange's Trading Permit and Tier Appointment Fees, to state that Affiliated TPHs (TPHs with at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A) may share their allotted bandwidth amongst each other. The purpose is to allow for more efficient use of bandwidth. If a TPH is not using all of its bandwidth and an affiliated TPH could use more, this will allow them to share amongst each other (instead of having to purchase more).

The proposed changes are to take effect on January 1, 2014.

## 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>19</sup> Specifically, the Exchange believes the proposed rule change is

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<sup>19</sup> 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)<sup>20</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. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>21</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposal to increase the fee for electronic Clearing Trading Permit Holder Proprietary executions in equity, ETF, ETN, and index options classes (except the Special Classes) from \$0.25 per contract to \$0.35 per contract is reasonable, equitable and not unfairly discriminatory because, while the per-contract price is increasing, this new fee amount is still within the range of fees paid by other market participants for such transactions.<sup>22</sup> The Exchange further believes this proposed change is equitable and not unfairly discriminatory because the proposed new fee amount is still lower than the fee assessed to Broker-Dealers and Non-Trading Permit Holder Market-Makers for such transactions, and Clearing Trading Permit Holders have some obligations (such as clearing trades) that such market participants do not have. Further, this fee is still lower than is assessed for comparable

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<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> 15 U.S.C. 78f(b)(4).

<sup>22</sup> For example, Broker-Dealers and Non-Trading Permit Holder Market-Makers pay either \$0.45 per contract or \$0.60 per contract for such transactions (See CBOE Fees Schedule, page 1).

executions on other exchanges.<sup>23</sup> Finally, this fee will be assessed to all Clearing Trading Permit Holder Proprietary transactions in the relevant products.

The Exchange believes that the proposal to add “L” orders to the definition of “facilitation orders” (thereby making L facilitation orders free (except as otherwise stated)) is reasonable because such orders will no longer be assessed a fee that they otherwise would be assessed. The Exchange believes this is equitable and not unfairly discriminatory because Non-Trading Permit Holder Affiliates of Clearing Trading Permit Holders are a functional subset of Clearing Trading Permit Holders, and they domicile customer accounts, so it makes sense to put them in the same position as Clearing Trading Permit Holders. Non-Trading Permit Holder Affiliates of Clearing Trading Permit Holders cannot be proprietary trading firms (whereas broker-dealers, for example, can). The Exchange believes that the proposal to assess no fees for Clearing Trading Permit Holder Proprietary facilitation transactions in Mini options is reasonable because such transactions that would otherwise be assessed a fee will now be free. The Exchange believes that this is equitable and not unfairly discriminatory because Mini options are merely 1/10 the size of regular options contracts, and such transactions in regular options contracts are assessed no fee, so it makes sense to also assess no fee for these transactions in Mini options.

The Exchange believes that the reorganization of the Proprietary Options Rate Table will help avoid any potential confusion on the part of market participants regarding which fees apply in different circumstances, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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<sup>23</sup> For example, PHLX assesses firm electronic fees of \$0.45 or \$0.60 per contract for multiply-listed options (see PHLX Pricing, Section II).

The Exchange believes that the proposed changes to the customer VIX options transaction fees are reasonable because the amounts of the new fees are near the range of fees assessed for customer transactions in other CBOE proprietary products. Indeed, the fee for customer transactions in SPX options whose premium is less than \$1.00 is \$0.35 per contract, and the fee for customer transactions in SPX options whose premium is greater than or equal to \$1.00 is \$0.44 per contract. The proposed changes to the customer VIX options transaction fees are equitable and not unfairly discriminatory because they are designed to attract greater customer order flow to the Exchange, which will benefit all market participants. Assessing different fees for customer transactions in VIX options depending on the premium is equitable and not unfairly discriminatory because the Exchange believes that the lowered fees for VIX options trading with a premium of \$0.00-\$0.10 will encourage the trading of such options. The slight increases of the fees for Customer transactions in VIX options whose premium is greater than or equal to \$1.00 as well as those whose premium is \$0.11-\$0.99 is being utilized in order to achieve some level of revenue balance in connection with the lowered fee for customer transactions in VIX options whose premium is \$0.00-\$0.10. Further, the Exchange currently offers different fees depending on the premium for customer transactions in SPX options (as described in the previous paragraph). Finally, these fees will be assessed to all Customer VIX options transactions. The Exchange has expended significant resources to develop proprietary products such as VIX options and must recoup such costs.

The Exchange believes that assessing the same Customer fees to other VOLATILITY INDEXES as are assessed to VIX options is reasonable, equitable and not unfairly discriminatory because VIX is itself a Volatility Index, and therefore it makes sense to assess the same Customer fees to all other VOLATILITY INDEXES as are assessed to the Exchange's

most heavily-traded Volatility Index (VIX). The VIX and VOLATILITY INDEXES fees that apply to each other market participant are already the same. This proposed change will be applied equally to all Customer VOLATILITY INDEX transactions.

The Exchange believes that the proposed fees for CBOE Market-Maker transactions in VIX and VOLATILITY INDEXES are reasonable because they are within the range of those assessed for transactions in VIX and VOLATILITY INDEXES by other market participants, as well as those assessed to CBOE Market-Makers for other products.<sup>24</sup> Indeed, while the proposed change is a slight increase when the premium is \$0.11 or greater, the proposed change is also a sizable decrease when the premium is \$0.00-\$0.10. The Exchange believes this proposed change is equitable and not unfairly discriminatory because it is designed to attract greater customer order flow to the Exchange, which will benefit all market participants. Further, while these fees are still lower than assessed to other market participants for transactions in VIX and other VOLATILITY INDEXES, CBOE Market-Makers/DPMs/E-DPMs/LMMs take on obligations, such as quoting obligations, that other market participants do not. There are different economic potentials for market participants based on the premium of a trade, and therefore it can make sense to offer different fees for different premiums in some products (depending on the economics of trading in such products).

The Exchange believes that the proposed increase in the Hybrid 3.0 Execution Fee is reasonable because it is merely an increase of \$0.02 per contract, and the Exchange uses this fee to cover the costs of operating the Hybrid 3.0 system. The Exchange believes that this proposed increase is equitable and not unfairly discriminatory because it applies to all Hybrid 3.0

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<sup>24</sup> See CBOE Fees Schedule, Proprietary Options Rate Table.

executions<sup>25</sup>, and because the increased fee will cover the costs of operating the Hybrid 3.0 system. At the time that the Hybrid 3.0 Execution Fee was adopted, most orders executed via Hybrid 3.0 were simple orders. Now, with the growing prevalence of complex orders, the Exchange desires to increase the Hybrid 3.0 Execution Fee to cover the increased system complexity (and use of resources necessary) due to the trading of complex orders. The Exchange believes that adding the correct origin codes as applicable to the Hybrid 3.0 Execution Fee, and amending Footnote 21 to remove the reference to the Hybrid 3.0 Execution Fee as being \$0.18 per contract, will help alleviate any potential confusion regarding the amount of the Hybrid 3.0 Execution Fee and to whom it applies. This alleviation of potential confusion serves to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed Customer Priority Surcharges are reasonable, equitable and not unfairly discriminatory. The purpose of the Customer Priority Surcharges is to ensure that there is reasonable cost equivalence between the primary execution channels for the products involved. Manual executions are achieved using floor brokers (the only market participants who can trade contracts using a PAR terminal), who assess a commission for Customer executions. Electronic executions are not assessed a commission, but more heavily rely on the Exchange's systems. The proposed Customer Priority Surcharges will minimize the cost differentials between manual and electronic executions, which is in the interest of the Exchange as it must both maintain robust electronic systems as well as provide for economic opportunity for floor brokers to continue to conduct business, as they serve an important function in achieving price discovery and Customer executions. Floor brokers ensure that the difficult-to-

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<sup>25</sup> With the exception of those listed in Footnote 21 of the Fees Schedule; the Exchange does not herein propose to amend such exceptions.

execute orders (such as large and complex orders) are able to be executed manually by accessing the CBOE's in-person market maker crowds, while also helping to achieve price improvement. SPX, SPXW and VIX are the only products that execute a significant share of their total volume on the trading floor, and the Hybrid 3.0 Execution Fee (which essentially acts as a customer priority surcharge) already applies to SPX. SPXW often has a lower premium (as it is a weekly option with a lower timeframe, as the options have less time value than the regular SPX options), so it makes sense to assess a lower SPXW Customer Priority Surcharge than the Hybrid 3.0 Execution Fee. VIX options trade at a lower underlying value than SPX and so also have a lower premium value, so it also makes sense for the VIX Customer Priority Surcharge to be lower than the Hybrid 3.0 Execution Fee. As described above, the Exchange wants to encourage the execution of VIX options Customer orders for options with a premium of \$0.00-\$0.10, and therefore is not proposing to assess the Customer Priority Surcharge on such options. The Exchange believes that it is equitable and not unfairly discriminatory to only assess this surcharge to Maker Non-Turners because VIX options is such a unique product that we want to continue to encourage market participation and price improvement with a low underlying (unlike SPX or SPXW, which has a higher underlying). Someone improving the market ("turning") has a much greater proportional impact in a product with a lower underlying, and the Exchange wants to encourage such market improvement.

The Exchange believes that converting the qualification for the different fee tiers in the Liquidity Provider Sliding Scale from measuring by a nominal contracts per month to measuring by the relative contracts per month (based on the percentage of national Market-Maker volume in multiply-listed options) is reasonable because it allows the Exchange to control and account for changes in national industry-wide multiply-listed options volume. Further, it will still allow

Market-Makers to pay lower fees for executing more orders in multiply-listed options, just as prior to this change. The Exchange believes that the change is equitable and not unfairly discriminatory because it will be applied to all Market-Makers. The change merely switches out the measuring stick to use one that accounts for changes in industry-wide volume. Finally, Market-Makers must take on certain obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that the changes to the prepayment for the Liquidity Provider Sliding Scale are reasonable because they correspond with the adoption of relative, percentage-based tiers, and also because the new prepayment amount will be lower than previously (making it easier to prepay). The Exchange believes that these changes are equitable and not unfairly discriminatory because they will apply to all market participants to whom the Liquidity Provider Sliding Scale applies.

Similar to the changes to the Liquidity Provider Sliding Scale, the Exchange believes that the changes to the CBOE Proprietary Products Sliding Scale are reasonable because they allow the Exchange to control and account for changes in national industry-wide multiply-listed options volume, as well as the differing number of days in a month. The Exchange believes that these changes are equitable and not unfairly discriminatory because, first and foremost, there are no substantive changes to the fees in the CBOE Proprietary Products Sliding Scale. Indeed, these changes merely serve to better standardize the CBOE Proprietary Products Sliding Scale (as well as make it easier to read). The changes merely switch out the measuring stick to use one that accounts for changes in industry-wide volume. Further, the changes will apply to all market participants who qualify for the CBOE Proprietary Products Sliding Scale. Finally, Clearing Trading Permit Holders must take on certain obligations, such as clearing, that other market



participants do not have. The Exchange believes that the cosmetic changes to the CBOE Proprietary Products Sliding Scale will prevent any possible potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that lowering the fee in Tier 1 of the Liquidity Provider Sliding Scale is reasonable because it will allow Market-Makers in that tier to pay a lower fee for transactions. The Exchange believes that this is equitable and not unfairly discriminatory because the lower fee is designed to encourage Market-Makers to execute more transactions, and the resulting increased volume and trading opportunities will benefit all market participants (including Market-Makers at the other tiers of the Liquidity Provider Sliding Scale). Further, Market-Makers take on obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that the deletion of the VIX Options Sliding Scale is reasonable, equitable and not unfairly discriminatory because it will merely result in Clearing Trading Permit Holders being assessed the standard Clearing Trading Permit Holder Proprietary transaction fee for VIX options transactions (instead of having the fee amount for such transactions change based on the number of VIX options transactions the Clearing Trading Permit Holder executes in a month). As such, all Clearing Trading Permit Holder Proprietary VIX options transactions will be assessed the same fee amount. As always, Clearing Trading Permit Holders must take on certain obligations, such as clearing, that other market participants do not have.

The Exchange believes the imposition of the PULSe-to-PULSe Routing Fee is reasonable because it is intended to cover the costs associated with the development of PULSe-to-PULSe routing, as well as the upkeep of such systems. The Exchange believes that it is equitable and not

unfairly discriminatory because it will be assessed to all receiving TPHs that elect to receive PULSe-to-PULSe orders. The Exchange proposes to assess the fee to the receiving TPH because, by electing to receive PULSe-to-PULSe orders, the receiving TPH then gets the ability to execute those orders on the Exchange. The Exchange believes that the proposal to amend the listing of the fee and note for the PULSe On-Floor Workstation in the “Trading Floor Terminal Rentals” section of the “Facility Fees” table will alleviate any potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that lowering the HAL Step-Up Rebate is reasonable because it will still allow Market-Makers to receive a rebate for trading activity that they would not otherwise receive (just a smaller rebate). The Exchange believes that this proposed change is equitable and not unfairly discriminatory because it applies to all Market-Makers who qualify for the HAL Step-Up Rebate (only Market-Makers can quote and therefore “step up”). Moreover, the proposed change does not affect who may qualify for the HAL Step-Up Rebate. Further, Market-Makers have certain obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that its proposal to charge all customer orders routed via Linkage the actual transaction costs assessed by the exchange(s) to which the orders are routed is reasonable, equitable and not unfairly discriminatory because the Exchange will merely be passing through these execution costs to the customer. Further, this pass-through will be applied equally to all customer orders, regardless of size.

The Exchange believes that its proposal to increase the non-customer Linkage fee by \$0.05, to \$0.55 per contract, is reasonable, equitable and not unfairly discriminatory because

such increase will help offset the costs associated with routing orders through Linkage and paying the transaction fees for such executions at other exchanges. The amount of this fee is lower than corresponding non-customer Linkage fees assessed by other exchanges.<sup>26</sup> This fee amount will be assessed to all non-customer orders routed via Linkage. The Exchange notes that there exists in the options industry a historical practice of preferential pricing for customers, whose orders are more attractive for trading partners and who also often do not have as sophisticated trading systems as other market participants.

The Exchange believes that offering a second tier of the Floor Broker Access Rebate is reasonable because it allows the qualifying Floor Brokers to pay lower Floor Broker Trading Permit fees than they otherwise would have. The Exchange believes that it is equitable and not unfairly discriminatory to offer the second tier of the rebate to Floor Brokers only, and only those who execute 25,000 contracts per day (of customer, open-outcry trading in multiply-listed options classes) because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support. Further, the proposed change is designed to encourage the execution of orders via open outcry, which should increase volume, which would benefit all market participants (including Floor Brokers who do not hit the 25,000 contracts-per-day threshold) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the 25,000 contracts-per-day threshold). Also, only Floor Brokers are assessed Floor Broker Trading Permit fees. The Exchange proposes limiting the rebate qualification to open outcry trading because Floor Brokers only engage in open outcry trading (at least in their capacities as Floor Brokers), and because, as previously stated, the Exchange wishes to support

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<sup>26</sup> See PHLX Pricing, Non-Customer Routing Fee of \$0.95 per contract.

and encourage open-outcry trading, which allows for price improvement and has a number of positive impacts on the market system. The Exchange proposes limiting the rebate qualification to customer orders because market participants generally prefer to trade against customer trades, and encouraging customer trading in this manner should provide such market participants with more customer orders with which to trade. Further, the options industry has a long history of promoting customer orders through rebates and other preferential fee structures. The Exchange proposes limiting the rebate qualification to multiply-listed options classes because the Exchange expended considerable resources developing its proprietary, singly-listed products and therefore does not desire to offer this rebate associated with such products.

The Exchange believes that the proposed change to permit the sharing of bandwidth between affiliated TPHs is reasonable because it will allow such TPHs more efficient use of bandwidth without having to purchase more (if they can share with each other). The Exchange believes that this proposed change is equitable and not unfairly discriminatory because it will apply to all groupings of affiliated TPHs.

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 rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances (as described in the "Statutory Basis" section above). For example, Clearing Trading Permit Holders have clearing obligations that other market participants do not have. Market-Makers have

quoting obligations that other market participants do not have. There is a history in the options markets of providing preferential treatment to Customers, as they often do not have as sophisticated trading operations and systems as other market participants, which often makes other market participants prefer to trade with Customers. Further, the Exchange fees, both current and those proposed to be changed, are intended to encourage market participants to bring increased volume to the Exchange (which benefits all market participants), while still covering Exchange costs (including those associated with the upgrading and maintenance of Exchange systems).

CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are intended to improve the Exchange's competitive position and make CBOE a more attractive marketplace in order to encourage market participants to bring increased volume to the Exchange (while still covering costs as necessary). Further, the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome 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>27</sup> and paragraph (f) of Rule 19b-4<sup>28</sup> thereunder. At any time within 60 days of the filing of

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<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f).

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-2013-129 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-2013-129. 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, D.C. 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 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-2013-129, 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>29</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>29</sup> 17 CFR 200.30-3(a)(12).