

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64304; File No. SR-CBOE-2011-028)

April 15, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Establish Transaction Fees for CBOE Gold ETF Volatility Index Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 8, 2011, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to establish fees for transactions in CBOE Gold ETF Volatility Index ("GVZ") options. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places

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

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

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange received approval to list and trade options on the CBOE Gold ETF Volatility Index ("GVZ"), which is an up-to-the-minute market estimate of the expected volatility of the SPDR Gold Trust ("GLD") calculated by using real-time bid/ask quotes of CBOE listed GLD options.<sup>3</sup> GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility. The Exchange will begin listing GVZ options on April 12, 2011.

The purpose of this rule change is to clarify that the existing transaction fees for "Volatility Indexes" shall apply for transactions in GVZ options, except that the existing Surcharge Fee (currently \$.10 per contract for Volatility Index options) will not apply to GVZ options.<sup>4</sup> In addition, the Exchange's marketing fee<sup>5</sup> shall not apply to GVZ options.

For reference, the existing Volatility Index transactions fees that will apply to GVZ options are as follows:

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<sup>3</sup> See Securities Exchange Act Release No. 62139 (May 19, 2010), 75 FR 29597 (May 26, 2010) (approving SR-CBOE-2010-018).

<sup>4</sup> This fee is assessed to help the Exchange recoup license fees the Exchange pays to the different index licensors in order to list options on the respective indexes.

<sup>5</sup> See Footnote 6 of the Fees Schedule. In 2007, the Exchange amended its Fees Schedule to broaden the application of existing transaction fees for VIX options to options on all volatility indexes calculated by CBOE. At that time, the Exchange replaced all references to "VIX" in its Fees Schedule with "VOLATILITY INDEXES." The reference to "VIX" in Footnote 6 was inadvertently omitted in that filing. See Securities Exchange Act Release No. 56660 (October 15, 2007), 72 FR 59315 (October 19, 2007). Accordingly, the Exchange is proposing to make a technical change to Footnote 6 to change the reference from "VIX" to "VOLATILITY INDEXES."

- \$0.40 per contract for customer transactions;
- \$0.40 per contract for voluntary professional transactions;
- \$0.40 per contract for professional transactions
- \$0.20 per contract for CBOE Market-Maker/DPM transactions;<sup>6</sup>
- \$0.25 per contract for Clearing Trading Permit Holder proprietary transactions;<sup>7</sup>
- \$0.40 per contract for broker-dealer transactions;
- \$0.10 per contract CFLEX Surcharge Fee;
- \$0.03 per contract floor brokerage fee;<sup>8</sup>
- \$0.015 per contract floor brokerage fee for crossed orders;<sup>9</sup>
- \$0.03 per contract par official fee;<sup>10</sup> and
- \$0.015 per contract for par official fee for crossed orders.<sup>11</sup>

The Exchange is also proposing to establish a new Surcharge Fee on transactions in GVZ options to help the Exchange offset some of the costs and expenses associated with new product research and development and ongoing maintenance. CBOE is a recognized industry leader in product innovation and believes that the introduction of new products is beneficial for the marketplace and provides investors with new and important risk management tools. Product

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<sup>6</sup> This is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

<sup>7</sup> This is the standard rate that is subject to the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as set forth in Footnote 11 to the Fees Schedule.

<sup>8</sup> See Section 3 (Floor Brokerage and Par Official Fees) to the Fee Schedule and Footnotes 1, 5 and 15 of the Fees Schedule.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

innovation necessarily results in costs and expenses to the Exchange and involves risk. For example, the Exchange conducts surveys of market participants to scope new products, invests in development and marketing of new products and engages in ongoing maintenance of new products. Similarly, it takes time to build liquidity in new products. As a result, the Exchange believes that the proposed \$0.10 per contract Surcharge Fee to help offset some of the costs and expenses expended for product research and development and ongoing maintenance is appropriate and will enable the Exchange to continue its longstanding leadership role in options product innovation.

The Exchange is proposing to codify the new "Product Research & Development" Surcharge Fee in Section 1 (Index Options) to the Fees Schedule by setting it forth in new subparagraph (B) under the existing "Surcharge Fee" category (and renaming the category "Surcharge Fees"). The new Product Research & Development Surcharge Fee will apply to all non-public customer transactions (i.e., CBOE and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder and broker-dealer), including voluntary professionals and professionals.<sup>12</sup> The Exchange notes that the existing "Surcharge Fee" is assessed on transactions in certain index options, including Volatility Indexes, and the Exchange is expressly excluding GVZ options from this fee. In order to differentiate between the existing Surcharge Fee and the proposed Product Research & Development Surcharge Fee, the Exchange is proposing to establish a new subparagraph (A) which will be named "Index License." Those products that are currently assessed the existing Surcharge Fee will be itemized under "Index License" and GVZ will be itemized under "Product Research & Development."

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<sup>12</sup> See existing footnote 14 to Fees Schedule, which shall apply to the proposed new Product Research & Development Surcharge Fee.

The Exchange is also proposing to make the first reference to "VOLATILITY INDEXES" in the Fees Schedule an active hyperlink that will take readers to a CBOE website that identifies all of the Volatility Indexes that underlie options traded on the Exchange. Specifically, the first reference to "VOLATILITY INDEXES" in Section 1 (Index Options, I. Customer at the third bullet point) will be displayed in blue text and has been embedded with the following hyperlink: <http://www.cboe.com/products/Cash-SettledIndexOptions.aspx#Volatility>.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>13</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>14</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable because they will apply uniformly to all market participants that trade GVZ options. In addition, the proposed fees are reasonable and comparable to fees that the Exchange currently assesses for other volatility index products. Furthermore, the proposed new Product Research and Development Surcharge Fee will enable to Exchange to offset some (although not all) of the costs and expenses associated with offering new products. For example, the Exchange conducts surveys of market participants to scope new products, invests in development and marketing of new products and engages in ongoing maintenance of new products. Similarly, it takes time to build liquidity in new products. Finally, the proposed fees further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

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

<sup>14</sup> 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-028 on the subject line.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

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-2011-028. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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 publicly available. All submissions should refer

to File Number SR-CBOE-2011-028 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>17</sup>

Cathy H. Ahn  
Deputy Secretary

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