

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66382; File No. SR-CBOE-2012-014)

February 10, 2012

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

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 February 1, 2012, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to amend its Fees Schedule to establish fees for transactions in options on the CBOE Emerging Market ETF Volatility Index (“VXEEM”), the CBOE Brazil ETF Volatility Index (“VXEWS”) and the CBOE Crude Oil ETF Volatility Index (“OVX”). 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

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

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

places 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval to list and trade options on the CBOE Emerging Market ETF Volatility Index (“VXEEM”), the CBOE Brazil ETF Volatility Index (“VXEWZ”) and the CBOE Crude Oil ETF Volatility Index (“OVX”) (collectively herein, “volatility indexes”), which are up-to-the-minute market estimates of the expected volatility of their corresponding exchange-traded funds (“ETF”)<sup>3</sup> calculated by using real-time bid/ask quotes of CBOE listed options on the respective ETF.<sup>4</sup> The volatility indexes use 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 list VXEEM options beginning on January 30, 2012, VXEWZ options beginning on February 20, 2012 and OVX options beginning on March 6, 2012.

The purpose of this rule change is to clarify that the existing transaction fees for “Volatility Indexes” shall apply for transactions in VXEEM options, VXEWZ options and OVX options except that the existing Surcharge Fee (currently \$.10 per contract for Volatility Index

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<sup>3</sup> The corresponding ETFs are: the iShares MSCI Emerging Markets Index ETF (“EEM”), the iShares MSCI Brazil Index ETF (“EWZ”) and the United States Oil Fund (“USO”)

<sup>4</sup> See Securities Exchange Act Release No. 64551 (May 26, 2011), 76 FR 32000 (June 2, 2011) (approving SR-CBOE-2011-026).

options) will not apply to VXEEM options, VXEZ options and OVX options.<sup>5</sup> In addition, the Exchange's marketing fee<sup>6</sup> shall not apply to VXEEM options, VXEZ options and OVX options. The Product Research & Development fee shall apply to VXEEM options, VXEZ options and OVX options at the rate of \$0.10 per contract.<sup>7</sup>

For reference, the existing Volatility Index transactions fees that will apply to VXEEM options, VXEZ options and OVX options are as follows:

- \$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;
- \$0.25 per contract for Clearing Trading Permit Holder proprietary transactions;<sup>8</sup>
- \$0.40 per contract for broker-dealer transactions;
- \$0.10 per contract CFLEX Surcharge Fee;

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<sup>5</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>6</sup> See Footnote 6 of the Fees Schedule.

<sup>7</sup> See Section 1 (Index Options), VII.(B) to the Fees Schedule. The Product Research & Development fee is assessed to help offset some of the costs and expenses expended for product research and development and ongoing maintenance of CBOE's products. The Product Research & Development fee applies 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. See Footnote 12 of the Fees Schedule.

<sup>8</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.

- \$0.03 per contract floor brokerage fee;<sup>9</sup>
- \$0.015 per contract floor brokerage fee for crossed orders;<sup>10</sup>
- \$0.03 per contract par official fee;<sup>11</sup> and
- \$0.015 per contract for par official fee for crossed orders.<sup>12</sup>

## 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 is excluding VXEEM, VXEWZ and OVX options from the Index License/Surcharge Fee of \$0.10 per contract because that fee is assessed to help the Exchange recoup license fees that the Exchange pays to different index licensors in order to list options on the respective indexes. The Exchange does not pay fees to index licensors to list VXEEM, VXEWZ and OVX options. The Exchange is assessing a Product Research & Development/Surcharge fee 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. The Product Research & Development/Surcharge fee is

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<sup>9</sup> See Section 3 (Floor Brokerage and Par Official Fees) to the Fees Schedule and Footnotes 1, 5 and 15 of the Fees Schedule.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

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

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

assessed to help the Exchange offset some of the costs and expenses expended for product research and development and ongoing maintenance associated with these new volatility index products.

The Exchange believes that the fees are reasonable because they are comparable to fees that the Exchange currently assesses for another similar volatility index option, i.e., CBOE Gold ETF Volatility Index (“GVZ”) options. The Exchange believes the level of the fees furthers the Exchange’s goal of introducing new products to the marketplace that are competitively priced.

The Exchange believes that the fees are equitable and do not unfairly discriminate because they provide comparable pricing among similar categories of market participants. The Exchange believes that a fee of \$0.20 per contract for CBOE Market-Maker/DPM transactions is equitable since those market participants provide a valuable market service by adding liquidity to the Exchange and since they are subject to liquidity provider obligations. This standard rate is not subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule. The Exchange also believes that a fee of \$0.25 per contract for Clearing Trading Permit Holders is equitable since they contribute capital to facilitate customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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-2012-014 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2012-014. 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

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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).

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 will also 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 No. SR-CBOE-2012-014 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

Kevin M. O'Neill  
Deputy Secretary

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