

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-68105; File No. SR-CBOE-2012-097)**

**October 25, 2012**

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated;  
Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend  
the Fees Schedule**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 16, 2012, 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

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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 aspects of such statements.

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

1. Purpose

On June 18, 2010, the Exchange established an SPX Tier Appointment Fee (the "Fee").<sup>3</sup> The Fee is assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month.<sup>4</sup>

CBOE Rule 24.19 permits the execution of Multi-Class Broad-Based Index Option Spread Orders ("Multi-Class Spread Orders"), which are generally defined as orders to buy a stated number of contracts of a broad-based index option or ETF/ETN option derived from a broad-based index and to sell an equal number, or an equivalent number of contracts of a different broad-based index option or ETF/ETN option derived from a broad-based index. These orders may be represented at the trading station of either option involved, subject to the conditions in Rule 24.19.<sup>5</sup> For example, a common Multi-Class Spread Order involves executing an OEX (which is based on the S&P 100) order along with an SPX (which is based on the S&P 500) order. This is often executed by Market-Makers who have an OEX Tier Appointment but not an SPX Tier Appointment, and who do not otherwise engage in SPX transactions.

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<sup>3</sup> See Securities Exchange Act Release No. 62386 (June 25, 2012) 75 FR 38566 (July 2, 2012) (SR-CBOE-2012-060) [sic].

<sup>4</sup> See CBOE Fees Schedule, table on Trading Permit and Tier Appointment Fees.

<sup>5</sup> See CBOE Rule 24.19.

The Fee was not enacted with the intention of assessing it to Market-Makers to whom it would only apply due to their execution of Multi-Class Spread Orders that included an SPX component; the Fee was intended to be assessed on Market-Makers holding an SPX Tier Appointment and those doing regular SPX trades in the SPX trading crowd. As such, on July 6, 2010, the Exchange put out a regulatory circular (the “Regulatory Circular”) that stated that the Fee is not applicable to Multi-Class Spread Orders executed by Market-Makers that include SPX options (the “Exclusion”) because these spread transactions also include non-SPX options.<sup>6</sup> In order to avoid being assessed the Fee as a result of the execution of Multi-Class Spread Orders with an SPX component, Market-Makers to which the Fee is not otherwise applicable were directed to submit a form to the Exchange within three business days following the execution of the applicable spread transaction(s).<sup>7</sup>

The Exchange believed, upon releasing the Regulatory Circular, that the Exclusion was fairly and reasonably implied from the language in the Fees Schedule that describes the Fee. As such, the Exchange did not, at the time, include the Exclusion in such language in the Fees Schedule. However, the Exchange now proposes to codify the Exclusion in the Fees Schedule by stating that the Fee will not be assessed to a Trading Permit Holder Market Maker who (i) does not have an SPX Tier Appointment, (ii) only executes SPX or SPX Weeklys open outcry transactions as part of multi-class broad-based index spread transactions, and (iii) submits the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form (the “Form”)

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<sup>6</sup> See CBOE Regulatory Circular RG10-80.

<sup>7</sup> See CBOE Regulatory Circular RG10-80.

within three business days of execution of the applicable spread transaction(s). Upon effectiveness of this rule change, the Exchange will issue another Regulatory Circular which will explain the Exclusion and provide directions on how Market-Makers may access and submit the Form.

## 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>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Codifying the Exclusion prevents any potential confusion regarding whether or not Market-Makers trading Multi-Class Spread Orders that include an SPX component will be assessed the Fee. This elimination of any potential confusion serves to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>10</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

and other persons using its facilities. The Exclusion itself is reasonable because it allows Market-Makers to whom the Fee would apply only due to their execution of Multi-Class Spread Orders with an SPX component to avoid having to pay the Fee. The Exclusion is equitable and not unfairly discriminatory because the Fee is intended to be assessed on those Market-Makers who hold an SPX Tier Appointment or conduct open outcry transactions in SPX or SPX Weeklys (i.e., Market-Makers who are engaging in regular SPX trades), since those Market-Makers are engaging in transactions for which executing SPX trades is the primary purpose of such transactions (or are signing up to do so). Market-Makers who only engage in SPX transactions through the execution of Multi-Class Spread Orders with an SPX component are not engaging in such transactions with primary purpose of executing an SPX order, but instead are just executing an SPX order as part of a larger Multi-Class Spread Order.

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

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

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup>

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

of the Act and paragraph (f)(2) of Rule 19b-4<sup>12</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-2012-097 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-2012-097. 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

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<sup>12</sup> 17 C.F.R. 240.19b-4(f)(2).

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-2012-097 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).