SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68131; File No. SR-CBOE-2012-101)

November 1, 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"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on October 25, 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 Web site (http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx), at the Exchange's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

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

1. Purpose

The Exchange proposes to amend its marketing fee. The marketing fee is assessed on certain transactions of Market-Makers, Designated Primary Market-Makers ("DPMs") and e-DPMs.[3] The funds collected via this marketing fee are then put into pools controlled by DPMs and Preferred Market-Makers ("PMMs").[4] The DPM or PMM controlling a certain pool of funds can then determine the order flow provider(s) to which the funds should be directed in order to encourage such order flow provider(s) to send orders to the Exchange. On each order, an order flow provider that receives marketing fee funds can designate the PMM to which the funds generated from the order sent by the order flow provider should be allocated (a "Preferred order").

Currently, Footnote 6 to the Exchange Fees Schedule, which relates to the marketing fee, states that a PMM will only be given access to the marketing fee funds generated from a Preferred order if the PMM has an appointment in the class in which the Preferred order is received and executed. However, CBOE recently learned that other options exchanges allow a PMM (or similar positions) to have access to the marketing fee funds generated from a Preferred order (or similar order type) regardless of whether the PMM has an appointment in the class in which the Preferred order is received and executed. As such, the Exchange decided to examine permitting this activity on CBOE.[5]

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3 See CBOE Fees Schedule, table entitled "Marketing Fee" and Footnote 6 for more details regarding the marketing fee.

4 See CBOE Rule 8.13 for details of the PMM program.

5 See NASDAQ OMX Phlx, LLC ("Phlx") Pricing Schedule, section on Payment for Order Flow Fees, and NYSE Amex Options Fee Schedule, Footnote 10, and also International Securities Exchange, LLC ("ISE") Schedule of Fees, Section IV(D), none of which

Permitting a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, may allow PMMs to encourage greater order flow to be sent to the Exchange. A PMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Indeed, a PMM would likely often not even be the direct beneficiary of the increased order flow, since the PMM would not trade with that order (as the PMM is not appointed in that class). The market participants who can trade with that order would be the direct beneficiaries. Allowing a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, would provide a PMM with an incentive to encourage the routing of order flow into classes in which the PMM otherwise would not (classes in which the PMM is not appointed and quoting). Further, this will also provide PMMs with more flexibility to change their appointments, as they will not have to be concerned with whether or not they have made arrangements to pay for order flow in a specific class prior to changing appointments.

Therefore, the Exchange proposes to eliminate the requirement that a PMM will only be given access to the marketing fee funds generated from a Preferred order if the PMM has an appointment in the class in which the Preferred order is received and executed. The Exchange proposes to amend the relevant sentence in Footnote 6 to simply state that a PMM will be given access to the marketing fee funds generated from a Preferred order. The purpose of this change is to encourage the direction of increased order flow to the Exchange, allow PMMs more flexibility

contain requirements that a PMM (or similar position) have an appointment in the class in which a Preferred order (or similar order type) is received and executed in order to have access to the marketing fee funds generated from that Preferred order.

to change classes to which they are appointed, and place the Exchange on even competitive footing with other exchanges.

The proposed change is to take effect on November 1, 2012.

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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] 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. By removing a requirement that other exchanges do not possess, CBOE puts its PMMs on an even footing with PMMs (or similar positions) on other exchanges. This evening of the playing field removes an impediment to and perfects the mechanism for a free and open market and a national market system.

The Exchange also believes that permitting a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, is consistent with Section 6(b)(4) of the Act[8], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change is reasonable because it will allow PMMs greater access to marketing fee funds. The

6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(5).

8 15 U.S.C. 78f(b)(4).

proposed change is equitable and not unfairly discriminatory because it is designed to allow PMMs to encourage greater order flow to be sent to the Exchange. A PMM could be able to amass a greater pool of funds with which to use to incent order flow providers to send order flow to the Exchange. This increased order flow would benefit all market participants on the Exchange. Further, allowing a PMM to access marketing fee funds generated from a Preferred order, regardless of whether the order is for a class in which the PMM has an appointment, would provide a PMM with an incentive to encourage the routing of order flow into classes in which the PMM otherwise would not (classes in which the PMM is not appointed and quoting).

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)[9] of the Act and paragraph (f) of Rule 19b-4[10] 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.

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9 15 U.S.C. 78s(b)(3)(A).

10 17 C.F.R. 240.19b-4(f).

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. Please include File Number SR-CBOE-2012-101 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-2012-101. 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 the 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-2012-101 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.[11]

Kevin M. O'Neill
Deputy Secretary

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[11] 17 CFR 200.30-3(a)(12).