

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70522; File No. SR-CBOE-2013-090)

September 26, 2013

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 September 17, 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available at the Exchange’s Office of the Secretary, on the Exchange’s website at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, at the Commission’s Public Reference Room, and on the Commission’s website at <http://www.sec.gov>.

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

<sup>2</sup> 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 Fees Schedule. First, the Exchange is proposing to make changes to Footnote 26 of the Fees Schedule. Pursuant to that section, the Exchange charges a Trading Permit Holder (“TPH”) a monthly fee for a Trading Permit or Tier Appointment, the amount of which fee is based on the type of Trading Permit or Tier Appointment. Pursuant to the Fees Schedule, the Exchange assesses these access fees in arrears during the first week of the following month. For example, a TPH will be billed in February for use of a Trading Permit in January. The Fees Schedule further provides that if a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. A Trading Permit will be renewed automatically for the next month unless the TPH submits written notification to the Registration Services Department by the 25<sup>th</sup> day of the prior month (or the preceding business day if the 25<sup>th</sup> is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month.

Under the Fees Schedule, if a TPH cancels a Trading Permit effective prior to the end of the applicable month, the TPH will still be assessed the full access fee for that month (the same amount it would pay if the TPH had cancelled the Trading Permit effective at the end of the month). However, if the TPH later requests that the Exchange issue the same type of Trading Permit for the remainder of that same month, pursuant to the Fees Schedule, the Exchange will assess a prorated access fee based on the remaining trading days in that month. Thus, the TPH would be double-paying the access fee for that remaining portion of the month.

The purpose of the proposed rule change is to prevent a TPH from double-paying a portion of the monthly access fee in this situation. The proposed rule change amends Footnote 26 of the Fees Schedule to provide that if cancellation of a Trading Permit is effective prior to the end of the applicable month, and the cancelling TPH later requests issuance of the same type of Trading Permit for the remainder of that same month, the Exchange may issue the same type of Trading Permit (assuming one is available) but will not impose the additional prorated access fee for the remainder of the month.<sup>3</sup> The proposed rule change results in a TPH that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued during that same month paying the same monthly access fee amount as it would if it had cancelled its Trading Permit effective at the end of a month. This change is similar to a change made by C2 Options Exchange, Incorporated (“C2”).<sup>4</sup>

The Exchange proposes to make one other change to Footnote 26. Currently, Footnote 26 states that “Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month.” The Exchange proposes to amend this statement to give TPHs until 4 p.m. on the second-to-last business day of the prior month to cancel a Trading Permit. This will give TPHs more time to cancel Trading Permits before such permits renew.<sup>5</sup>

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<sup>3</sup> The proposed rule change does not change the amounts of the access fees imposed on TPHs for the use of Trading Permits.

<sup>4</sup> See Securities Exchange Act Release No. 68751 (January 29, 2013), 78 FR 7837 (February 4, 2013) (SR-C2-2013-005).

<sup>5</sup> The proposed new language would read “Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by 4 p.m. [sic] on the second-to-last business day of

The Exchange also proposes to amend Footnote 28 (which is currently “reserved”) to state that monthly fees are assessed and applied in their entirety and are not prorated. This explicit statement will apply specifically to monthly Facility Fees and CBOE Command Connectivity Charges (but is not intended to imply that other monthly charges are not applied in their entireties). This is not a proposed change, as this is the manner in which those fees are currently assessed; the Exchange merely desires to make this fact explicit. This means that, regardless of whether a market participant incurs the fee at the beginning or the end of the month, or the amount of the month for which the market participant incurs the fee, the entirety of the monthly fee will be assessed. For example, the OEX Standard Booth Rental Fee is \$550 per month. Regardless of whether a market participant rents an OEX Standard Booth on the third of the month or the thirtieth of the month, that market participant will be assessed the full \$550 fee. This is how the Exchange’s billing system is set up, and absent a statement that such fees are prorated, the manner that such fees have been and are to be assessed. The Exchange expends resources to provide and administer these facilities and connectivity, and in many circumstances, the same amounts of Exchange resources are necessary regardless of the portion of the month that the services, facilities and connectivity are used (or at the very least, a disproportionate amount of resources are necessary). Further, Exchange billing systems are arranged to bill for these services on a monthly basis, and determining these costs on a prorated basis would prove difficult and require further resources.

The Exchange also proposes to amend its paper fees (which apply to the paper that the Exchange provides for TPHs on the trading floor for use in printing trade tickets). The Fees Schedule currently lists a fee of \$50 per box for 5-part and 2-part paper. However, the Exchange

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the prior month to cancel the Trading Permit effective at or prior to the end of the applicable month.”

no longer offers 5-part and 2-part paper. Instead, the Exchange provides two types of printers to TPHs on the trading floor, and sells paper to TPHs based on the type of printer the TPH uses. For TPHs that use a Hewlett-Packard (“HP”) Laser Printer, the Exchange provides packets of 500 sheets, for which the Exchange proposes to assess a fee of \$5 per packet. For TPHs that use the more powerful Zebra printer, the Exchange provides rolls of ink as well as rolls of paper, and proposes to assess a fee of \$19.50 for each roll of either. The proposed fees would be intended to cover the costs of the paper (and ink), as well as the costs of provision of such paper (and ink).

The Exchange also proposes to add fees for the installation, relocation, and removal of CBOE Trading Floor Terminals to the Fees Schedule. Specifically, the Exchange proposes to list a fee of \$175 for the installation, \$225 for the relocation, and \$125 for the removal of such terminals. These fee amounts are currently being assessed for such services, as they are the fees that are assessed by electricians for their work and then passed through to the relevant TPHs by the Exchange.<sup>6</sup> Because these are set fee amounts, the Exchange proposes to list them on the Fees Schedule for clarity.

Finally, the Exchange proposes to amend a typographical error on its Fees Schedule. The “Trading Permit and Tier Appointment Fees” table of the Fees Schedule lists a column for “Origin Code” to delineate to which origin codes (which correspond to different types of market participants) the different permits and tier appointments apply. Next to the “Electronic Access Permit” and “CBSX Trading Permit”, the letter “M” (corresponding to Market-Makers) is listed in the “Origin Code” column. However, these types of permits are not limited to Market-Makers, and the Exchange believes that the letter “M” was unintentionally added to these rows because it

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<sup>6</sup> This is pursuant to the “DPM requests for post modifications/equipment” fee listed in the “Miscellaneous” section of the Fees Schedule.

was also added (correctly) to a number of rows above it. As such, the Exchange proposes to delete the “M” from these rows.

## 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>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</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 [sic] 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 the Section 6(b)(5)<sup>9</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 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 and other persons using its facilities.

The Exchange believes that the proposed change to amend Footnote 26 to prevent the double-paying of a Trading Permit fee is equitable and not unfairly discriminatory as it applies to

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> Id.

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

all TPHs that cancel a Trading Permit effective prior to the end of a month and request issuance of the same type of Trading Permit during that same month. The Exchange believes the proposed rule change protects investors and the public interest, as it prevents a TPH from paying the monthly access fee twice during the same month for a Trading Permit in the event that the TPH cancels the Trading Permit effective prior to the end of the month but later requests issuance of the same type of Trading Permit during that month. The Exchange believes that the proposed rule change is fair and reasonable, because it results in a TPH that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued that month paying the same amount in access fees for that month as a TPH that cancels a Trading Permit effective at the end of a month. A Trading Permit Holder is able to trade the same amount in either situation; therefore, the Exchange believes it is reasonable that the TPH pay the same amount in either situation.

The Exchange believes that the proposal to amend Footnote 26 to give TPHs until 4 p.m. on the second-to-last business day of the prior month to cancel a Trading Permit is reasonable because it will give TPHs more time to determine whether to cancel a Trading Permit. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it will apply to all TPHs.

The Exchange believes that the proposal to amend Footnote 28 state that monthly Facility Fees and CBOE Command Connectivity Charges are assessed and applied in their entirety and are not prorated removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest because it makes clear this current policy, thereby avoiding possible confusion. The Exchange believes that assessing these fees in their entirety is reasonable, equitable and not unfairly discriminatory

because the Exchange expends resources to provide and administer these facilities and connectivity, and in many circumstances, the same amounts of Exchange resources are necessary regardless of the portion of the month that the services, facilities and connectivity are used (or at the very least, a disproportionate amount of resources are necessary). Further, Exchange billing systems are arranged to bill for these services on a monthly basis, and determining these costs on a prorated basis would prove difficult and require further resources. Also, this policy applies to all TPHs equally.

The Exchange believes that its proposed amendment to state that paper fees are assessed for \$5 per packet of 500 sheets for HP Laser Printer paper and \$19.50 per roll of either Zebra printer paper or ink (and the deletion of the \$50 fee per box of 5-part or 2-part paper) is reasonable because this change would better align the Exchange's paper provision practice, and because the proposed fees would be intended to cover the costs of the paper (and ink), as well as the costs of provision of such paper (and ink). The Exchange believes that this change is equitable and not unfairly discriminatory because the fees will apply to all TPHs equally.

The Exchange believes that the proposed listing of the fees for the installation, relocation, and removal of CBOE Trading Floor Terminals will remove impediments to and perfect the mechanism of a free and open market and a national market system by letting TPHs who may need those services know explicitly on the Fees Schedule what the fees for such services will be (thereby eliminating any possible confusion). The Exchange believes that these fee amounts are reasonable because they reflect the amounts necessary to perform such services (and indeed, are the amounts assessed by electricians for such services). The Exchange believes that these fees are equitable and not unfairly discriminatory because they will apply to all TPHs equally.



The Exchange believes that the proposal to delete the erroneous listing of the letter “M” from the “Origin Code” column of [sic] next to the “Electronic Access Permit” and “CBSX Trading Permit” rows of the Trading Permit and Tier Appointment Fees table of the Fees Schedule will eliminate possible investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

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

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule changes will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply to all TPHs equally, regardless of the type of market participant. The Exchange does does [sic] not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because these changes all apply to billing and fees that affect CBOE only (and not other exchanges). Further, to the extent that the proposed changes make CBOE more attractive to market participants on other exchanges, such market participants may elect 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>11</sup> and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. At any time within 60 days of the filing of

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

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-2013-090 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-2013-090. 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

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<sup>12</sup> 17 CFR 240.19b-4(f).

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 Section, 100 F Street, NE, Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-CBOE-2013-090 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).