

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70907; File No. SR-CBOE-2013-111)

November 20, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the CBSX 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 November 14, 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 the Fees Schedule of its CBOE Stock Exchange (“CBSX”). 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to make a number of amendments to Section 1 of its Fees Schedule, which states: The following fees from the CBOE Fee Schedule apply to CBSX Users: Sales Value Fee, Facility Fees (except section A of the Facility Fees), Trading Permit Fees, and Trading Permit Holder Application Fees. First, CBSX proposes [sic] remove “Trading Permit Fees” from the above statement. The only CBOE Trading Permit Fee that is applicable to CBSX is the CBSX Trading Permit Fee, which is \$0<sup>3</sup>. Since this is a CBSX-specific fee, the Exchange proposes to add to the CBSX Fees Schedule Section 9, Permit Fees, with the statement CBSX will assess no permit fees. The Exchange also proposes to amend the reference in Section 1 of the CBSX Fees Schedule to the “CBOE Fee Schedule” to add the letter “s” at the end of the word “Fee”, as that is the correct naming of the CBOE Fees Schedule.

Second, CBSX proposes to clarify that only those fees that are applicable to CBSX Users apply to CBSX Users by adding the parenthetical “(as applicable)” to the end of the statement “The following fees from the CBOE Fee Schedule apply to CBSX Users”. For example, one of the Facility Fees listed on the CBOE Fees Schedule is the \$120 Floor Manager badge fee. However, since CBSX is an all-electronic exchange that

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<sup>3</sup> The actual fee listing corresponding to the CBSX Trading Permit on the CBOE Fees Schedule says “No Access Fee”. See CBOE Fees Schedule, “Trading Permit and Tier Appointment Fees” table.

does not have a trading floor, CBSX Users could not have a Floor Manager, and therefore the Floor Manager badge fee would not be applicable to CBSX.

Third, CBSX proposes to delete from Section 1 the parenthetical that excepts from applicability to CBSX Users section A of the CBOE Facility Fees. For one, the CBOE Fees Schedule has been re-organized since Section 1 of the CBSX Fees Schedule was adopted, and there is no longer a “section A” of the CBOE Facility Fees. Further, the fees listed in the old Section A of the CBOE Facility Fees were the CBOE Booth Fees, which apply to CBOE Trading Permit Holders that have booths on the CBOE trading floor. Since CBSX is an all-electronic exchange that does not have a trading floor, CBSX Users would not have booths, and so this fee would not be applicable to CBSX Users (and therefore the inapplicability of the Booth Fees to CBSX Users would be covered by the aforementioned proposed addition of the parenthetical “(as applicable)”).

The Exchange also proposes to make the proposed new Section 9, Permit Fees, also include CBSX-specific application-related fees, and adopt a one-time “Responsible Person” fee of \$500. A “Responsible Person” is an individual designated by an organization that is the holder of a Trading Permit to represent the organization with respect to that Trading Permit in all matters relating to CBSX. The Responsible Person must be a United States-based officer, director or management-level employee of the Permit Holder, who is responsible for the direct supervision and control of Associated Persons of that Permit Holder. Each organization that is the holder of a Trading Permit must designate an individual as the Responsible Person for the Permit Holder. The Responsible Person

must be affiliated with the Permit Holder.<sup>4</sup> The Exchange conducts an investigation and review of each person who the holder of a Trading Permit has identified as the holder's Responsible Person. This investigation and review may include a fingerprint criminal background check and the individual's consent to the Exchange's jurisdiction over the individual. CBSX proposes to assess this fee in order to cover the costs of this investigation and review. This fee will not be assessed for a Responsible Person who is also an Associated Person with the same Trading Permit Holder, as the same investigation and review is conducted for each Associated Person as is conducted for each Responsible Person. Since the investigation and review will not be conducted twice for a Responsible Person who is also an Associated Person, CBSX does not propose to assess both fees in such a circumstance. Other exchanges [sic] assess a Responsible Person fee.<sup>5</sup>

Finally, CBSX proposes to add the language "after three months, all fees as assessed by CBSX are considered final by CBSX" to the end of the CBSX Fees Schedule. This will serve to encourage CBSX Users to promptly review their Exchange invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges is still easily and readily available. Other exchanges include this language in their Fees Schedules.<sup>6</sup>

## 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

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<sup>4</sup> See CBOE Rule 53.9 and Securities Exchange Act Release No. 70766 (October 28, 2013), 78 FR 65741 (November 1, 2013) (SR-CBOE-2013-101).

<sup>5</sup> See C2 Options Exchange, Incorporated ("C2") Fees Schedule, Section 7K.

<sup>6</sup> See CBOE Fees Schedule, Footnote 7, and the end of the C2 Fees Schedule.

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 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 requires that Exchange rules 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 proposal to remove “Trading Permit Fees” from the list of CBOE fees that are applicable to CBSX and instead add to the CBSX Fees Schedule Section 9, Permit Fees, with the statement CBSX will assess no permit fees will eliminate possible confusion by not forcing CBSX Users to look at the CBOE Fees Schedule to determine permit fees and wonder which permit fees apply to CBSX. Instead, there will be a clear listing on the CBSX Fees Schedule of the fact that there are no permit

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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).

fees on CBSX. The Exchange also believes that the proposal to add the letter “s” to the end of the word “Fee” in Section 1 of the CBSX Fees Schedule will alleviate any potential confusion as it will now accurately refer to the CBOE Fees Schedule. This elimination of possible confusion will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Similarly, the Exchange believes that adding the parenthetical “(as applicable)” to the end of the statement “The following fees from the CBOE Fee Schedule apply to CBSX Users” will help eliminate confusion by simply making clear that only those fees on the CBOE Fees Schedule that are applicable to CBSX will apply to CBSX Users. This will serve to eliminate possible confusion, which in turn will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that its proposal to delete from Section 1 the parenthetical that excepts from applicability to CBSX Users section A of the CBOE Facility Fees will eliminate possible confusion because there is no longer a “section A” of the CBOE Facility Fees. Further, the fees listed in the old Section A of the CBOE Facility Fees were the CBOE Booth Fees, which apply to CBOE Trading Permit Holders that have booths on the CBOE trading floor. Since CBSX is an all-electronic exchange that does not have a trading floor, CBSX Users would not have booths, and so this fee would not be applicable to CBSX Users (and therefore the inapplicability of the Booth Fees to CBSX Users would be covered by the aforementioned proposed addition of the parenthetical “(as applicable)”). Deleting this obsolete reference will serve to eliminate possible confusion, which in turn will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed addition of the language “after three months, all fees as assessed by the Exchange are considered final by the Exchange” to the end of the CBSX Fees Schedule is reasonable because this will serve to encourage CBSX Users to promptly review their invoices so that any disputed charges can be addressed in a timely manner while the information and data underlying those charges is still easily and readily available. The Exchange believes that this is equitable and not unfairly discriminatory because it will apply to all market participants. Further, other exchanges include this language in their Fees Schedules.<sup>11</sup>

The Exchange believes the addition of the Responsible Person fee is reasonable because the amount of the fee is intended to cover the costs of the review and examination of Responsible Persons. The Exchange believes that this is equitable and not unfairly discriminatory because the fee will apply to all Responsible Person applicants (with the exception of those that are also Associated Person applicants.) [sic] The Exchange believes that it is equitable and not unfairly discriminatory to exempt Associated Person applicants with the same Permit Holder from the Responsible Person fee because the same investigation and review is conducted for each Associated Person as is conducted for each Responsible Person. Since the investigation and review will not be conducted twice for a Responsible Person who is also an Associated Person, the Exchange does not believe it would be equitable to assess both fees in such a circumstance. Finally, other exchanges [sic] assess a Responsible Person fee.<sup>12</sup>

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<sup>11</sup> See CBOE Fees Schedule, Footnote 7, and the end of the C2 Fees Schedule.

<sup>12</sup> See C2 Fees Schedule, Section 7K.

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

The Exchange 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. The Exchange does not believe that the proposed rule change 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 qualifying CBSX market participants equally. The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes are all specific to CBSX operations and fees, and are not transaction fee changes or competitive fee changes. To the extent that such changes may make CBSX a more attractive market to market participants at other exchanges, such market participants may elect to become CBSX 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>13</sup> and paragraph (f) of Rule 19b-4<sup>14</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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).



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-2013-111 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-2013-111. 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-2013-111 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>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).