

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64851; File No. SR-CBOE-2011-062)

July 11, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule Regarding Automated Improvement Mechanism Fees

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 June 30, 2011, the 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule regarding Automated Improvement Mechanism ("AIM") fees. 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

¹ 15 U.S.C. 78s(b)(1).

² 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 proposes to amend its Fees Schedule regarding broker-dealer Automated Improvement Mechanism orders. Specifically, the Exchange proposes to adopt a \$0.20 per contract fee to be applied to broker-dealer orders entered as the agency/primary side of an AIM transaction (the "Broker-Dealer AIM Agency Fee") and make related clarifying changes to the Fees Schedule.³

On June 13, 2011, the Commission approved a proposed rule change to allow the Exchange to establish the Qualified Contingent Cross ("QCC") order type.⁴ In conjunction with that approval, on June 29, 2011, the Exchange filed, for immediate effectiveness, a proposed rule change to adopt fees related to the QCC order type.⁵ Included in that proposed rule change is a proposal to adopt a \$0.20 per contract transaction fee for the execution of broker-dealer QCC

³ The Commission notes that the Exchange proposes to add footnote 19 to the Fees Schedule to define the AIM Agency/Primary Fee as applying to all broker-dealer orders in all products, except volatility indexes, executed in AIM that were initially entered into AIM as a Primary/Agency Order (*i.e.*, the "AIM Agency/Primary" fee applies to the original order submitted to AIM that is being facilitated if such order is for a broker-dealer and does not involve a volatility index). The AIM Agency/Primary Fee will apply to such executions instead of the applicable standard transaction fee except in volatility indexes where standard transaction fees will apply. As discussed below, the "AIM contra execution fee" applies to the contra party's side of the trade (*i.e.*, the contracts submitted by the participant that is facilitating the order). See email from Jeff Dritz, Attorney, CBOE to Arisa Tinaves, Special Counsel, Division of Trading and Markets, dated July 7, 2011.

⁴ See Securities Exchange Act Release No. 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR-CBOE-2011-041) and CBOE Rule 6.53(u).

⁵ See SR-CBOE-2011-058.

orders (the “Broker-Dealer QCC Fee”). The Exchange intends to make available the QCC order type and make effective the related fees, including the Broker-Dealer QCC Fee, on July 1, 2011.

Like QCC, AIM involves the crossing of paired orders. AIM can be used to cross options orders through an exposed auction process. QCC can be used to cross options orders in an unexposed procedure, as long as the orders are tied to stock in a manner consistent with Rule 6.53(u).⁶ Therefore, in the case of options orders that are represented as tied to a stock transaction, broker-dealers can elect to use either the QCC or the AIM mechanism to cross orders.

Currently, the transaction fee for broker-dealers to execute the agency/primary side of an AIM order is \$0.45 per contract (as such orders are entered electronically). However, the Broker-Dealer QCC Fee is \$0.20. While there are differences between using QCC and AIM, they can both be used for the execution of paired orders. Therefore, the Exchange proposes to adopt the Broker-Dealer AIM Agency Fee of \$0.20 in order to place AIM on an equal competitive footing with QCC regarding the entrance of broker-dealer orders. The Exchange does not want cost to discourage broker-dealers from using the exposed auction mechanism and encourage them to use the QCC mechanism.

Additionally, the amount of the Broker-Dealer AIM Agency Fee of \$0.20 per contract is competitive with similar fees charged by other exchanges.⁷

The Exchange also proposes to make clarifying changes to the Fees Schedule related to AIM fees. Specifically, the Exchange proposes to clarify that the current AIM Execution Fee applies only to the contra party to the AIM Agency/Primary Order by changing the title of the

⁶ See CBOE Rule 6.53(u).

⁷ The International Securities Exchange, LLC (“ISE”) charges \$0.20 per contract for similar orders transacted through its Price Improvement Mechanism. See ISE Schedule of Fees, page 16-17.

fee to the “AIM Contra Execution Fee.” While the footnote describing the AIM Execution Fee explains this fact, the modification of the title is more descriptive for users and will help to distinguish this existing fee in the Fees Schedule from the new AIM Agency/Primary Order fee for broker-dealer orders that is discussed above.

The Exchange also proposes to make a non-substantive technical correction to the Fees Schedule. Under the Broker-Dealer Index Options Transaction Fees in Section 1, the first bullet point lists the per-contract fee for transactions in OEX, XEO, SPX, S&P 500 Divided Index and VOLATILITY INDEXES. It should read “S&P 500 Dividend Index”, not “S&P 500 Divided Index.” The Exchange proposes to correct this inadvertent error by adding the letter “n” in the correct place to make the word “Dividend.”

The proposed rule change will take effect on July 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4)⁹ 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 Exchange facilities. Adopting a fee of the same amount per contract for broker-dealer orders entered as the agency/primary side of an AIM transaction as is charged for the execution of broker-dealers QCC orders is an equitable allocation of reasonable fees because both AIM and QCC are mechanisms that can be used for the execution of paired orders and the equivalent fee puts the two on a level competitive footing. Further, the amount of the proposed fee is competitive with similar fees charged by other exchanges.¹⁰

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ See Note 7.

In amending the Fees Schedule to change the title of the “AIM Execution Fee” to the “AIM Contra Execution Fee,” and making a non-substantive technical correction, the proposed rule change is more descriptive for users and should help to distinguish this existing fee from the new AIM Agency/Primary Order Execution Fee, and avoids any potential confusion about the applicability of the fees. These technical changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5)¹¹ of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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 Act¹² and subparagraph (f)(2) of Rule 19b-4¹³ 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

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 C.F.R. 240.19b-4(f)(2).

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. Please include File Number SR-CBOE-2011-062 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-2011-062. 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 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-2011-062, 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.¹⁴

Cathy H. Ahn
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).