

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67557; File No. SR-CBOE-2012-075)

August 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 July 27, 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’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 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.

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. Currently, the Marketing Fee assessed on all Penny Pilot Exchange-Traded Fund (“ETF”) options is \$0.25 per contract, with the exception of DIA, for which the listed Marketing Fee is \$0.10 per contract.³ The Exchange hereby proposes to eliminate the exception for DIA, thereby amending the Marketing Fee for DIA to be \$0.25 per contract. This change will place DIA on the same footing regarding the Marketing Fee as other ETFs.

The Exchange also proposes to change references to options on the PowerShares QQQ Trust. The ticker symbol for PowerShares QQQ Trust was changed from QQQQ to QQQ in 2011, but such changes were not reflected on the CBOE Fees Schedule. In order to accurately reflect the ticker symbol for the PowerShares QQQ Trust, the Exchange hereby proposes to change references on the Fees Schedule to from QQQQ to QQQ.

Currently, the marketing fee is not assessed on electronic transactions in SPY and QQQ, except for electronic transactions resulting from the Exchange’s Automated Improvement Mechanism (“AIM”). Because complex order transactions in SPY and QQQ made via the Exchange’s Complex Order Auction (“COA”) and Complex Order Book (“COB”) are electronic and do not result from AIM, such transactions do not incur the Marketing Fee. The Exchange now proposes to assess the Marketing Fee on such transactions (with the exception of complex orders that trade via COB against individual leg markets). By collecting the Marketing Fee on these transactions, the Exchange can then use such funds to attract greater order flow.

³ See CBOE Fees Schedule, Section 2. Exceptions also apply regarding certain types of trades in SPY and QQQ, as discussed elsewhere in this proposal.

When a complex order is entered on CBOE, it first generates a COA and, if not filled there, is placed into the COB. In either case, a market participant is aware that it is a complex order and, in electing to trade against it, will know that such transaction will incur the Marketing Fee and take that fact into account in making such an election. However, CBOE's complex order processing also has the capability to fill a complex order from the posted leg markets. In such an event, the liquidity provider cannot know in advance if a simple or complex order is going to transact against those leg markets and therefore incur the Marketing Fee, and is thus not able to adjust his quoted price accordingly. As such, the Exchange proposes to except electronic complex orders in SPY and QQQ that trade against individual leg markets from being assessed the Marketing Fee.

Currently, transactions in XSP are assessed a Marketing Fee of \$0.10 per contract. The Exchange intends to revise the offering for XSP in coming months, including the market model and fee schedule. In advance of this change, the Exchange proposes to eliminate the XSP Marketing Fee.

The proposed changes are to take effect on August 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁴ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁵, 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. Eliminating the \$0.10 per contract Marketing Fee for XSP is reasonable because XSP transactions will now be assessed lower fees than previously. This

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

change is equitable and not unfairly discriminatory because XSP transactions will now be assessed no Marketing Fee, similar to other singly-listed CBOE products, such as DJX, OEX, SPX, VIX, XEO and Volatility Indexes.

Eliminating the separate Marketing Fee for DIA and assessing the \$0.25 per contract Marketing Fee for DIA is reasonable because that amount is the same amount as is being assessed for other ETFs. This is equitable and not unfairly discriminatory because the \$0.25 per contract Marketing Fee will be assessed to all market participants on whom the Marketing Fee is assessed, and because DIA transactions will now be assessed the same Marketing Fee as transactions in other ETFs.

Assessing the Marketing Fee on complex order SPY and QQQ transactions executed via COA and COB is reasonable because the amount of the fee would be equivalent to the amount of the Marketing Fee assessed on SPY and QQQ transactions executed via other means, as well as the amount assessed on complex order transactions in other ETFs that are executed via COA and COB. Assessing the Marketing Fee on complex order SPY and QQQ transactions executed via COA and COB is equitable and not unfairly discriminatory because the Marketing Fee is assessed on complex transactions in other ETFs that are executed via COA and COB, as well as on SPY and QQQ transactions executed via other means.

Excluding complex orders in SPY and QQQ that trade via COB against individual leg markets from being assessed the Marketing Fee is equitable and not unfairly discriminatory because such exclusion prevents a situation in which a market participant trading the single legs on COB elects to make a trade without knowing that he will be assessed the Marketing Fee for executing such trade. Excluding complex orders in SPY and QQQ that trade via COB against individual leg markets from being assessed the Marketing Fee while still assessing the Marketing

Fee for complex orders in other products that trade via COB against individual leg markets is equitable and not unfairly discriminatory because, since in the other products the Marketing Fee is assessed on simple, single leg electronic orders, a market participant executing a trade in such products will know that the Marketing Fee will be assessed and be able to take that knowledge into account in determining whether or not to execute the trade.

The Exchange believes the proposed change of references from QQQQ to QQQ is consistent with the Section 6(b)(5)⁶ 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. QQQ is now the correct ticker symbol for the PowerShares QQQ Trust. As such, the accurate reflection of the correct ticker symbol of QQQ eliminates potential investor confusion, thereby removing impediments to and to perfecting the mechanism for a free and open market and a national market system, and, in general, protecting 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 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.

⁶ 15 U.S.C. 78f(b)(5).

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)⁷ of the Act and paragraph (f)(2) of Rule 19b-4⁸ 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. Please include File Number SR-CBOE-2012-075 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-2012-075. 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

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 C.F.R. 240.19b-4(f)(2).

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-2012-075 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.⁹

Kevin M. O'Neill
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).