

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68169; File No. SR-CBOE-2012-105)

November 6, 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”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 26, 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 the 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

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

<sup>2</sup> 17 CFR 240.19b-4.

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

The Exchange intends to introduce its Automated Improvement Mechanism ("AIM") for FLEXible EXchange Options ("FLEX Options") transactions beginning November 1, 2012. In conjunction with that introduction, the Exchange proposes to amend its CFLEX fees in order to encourage greater FLEX Options trading activity. Specifically, the Exchange proposes to eliminate the CFLEX Surcharge Fee as it applies to equity, ETF, ETN, HOLDRs and index (excluding SPX, SPXW, SPX Range Options, OEX, XEO, VIX and Volatility Indexes, XSP and DJX (the "Excluded Classes")) FLEX Options transactions (the "Fee Elimination").

The Exchange also proposes to provide a \$0.10-per-contract credit for all equity, ETF, ETN, HOLDRs and index (excluding the Excluded Classes) FLEX Options orders executed via a CFLEX AIM auction from November 1, 2012 through December 31, 2012 (the "CFLEX AIM Credit"). The CFLEX AIM Credit would apply to transactions executed via AIM because the Exchange wants to encourage the distribution of the newly-developed CFLEX AIM technology among Trading Permit Holders ("TPHs") in order to attract greater FLEX Options order flow. AIM is a facilitation mechanism, and facilitation trades are the manner in which most FLEX Options trades are currently executed, and so the Exchange correspondingly wants to attract more FLEX Options facilitation trades to the Exchange via this CFLEX AIM technology. The CFLEX AIM Credit is limited to the Agency/Primary side of a FLEX Options AIM transaction because this will encourage the entry of FLEX Options AIM orders, as well as the adoption of the FLEX Options AIM technology by any party wishing to execute a FLEX Options AIM order. The

CFLEX AIM Credit would be capped at \$250 (2,500 contracts) per trade in order to limit the Exchange's potential exposure for providing the CFLEX AIM Credit and ensure that the provision of the CFLEX AIM Credit is economically viable to the Exchange. In addition, \$250 per trade is the current maximum fee for the CFLEX Surcharge Fee.

Each TPH may only receive the CFLEX AIM Credit on one order per underlying product per day, and the CFLEX AIM Credit will be applied to the smallest-sized order in each underlying product sent to the Exchange by that TPH on each day. The purpose of this limitation is to limit the Exchange's potential exposure for providing rebates and ensure that the provision of the CFLEX AIM Credit is economically viable to the Exchange. For purposes of the CFLEX AIM Credit, multiple legs of a complex order will be considered separate simple orders in order to prevent parties from being able to receive the CFLEX AIM Credit on multiple orders in the same underlying product in the same day. These details of the CFLEX AIM Credit will be explained in new Footnote 28 to the Exchange Fees Schedule.

The purpose of this is to encourage greater FLEX Options trading via the newly-introduced AIM (which encourages facilitation) and the distribution of the FLEX Options AIM technology among the Exchange's TPHs. The proposed changes are 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.<sup>3</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>4</sup>, which provides that Exchange rules may provide for

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<sup>3</sup> 15 U.S.C. 78f(b).

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

the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Fee Elimination is reasonable because it will allow market participants who are currently engaging in FLEX Options trades in equity, ETF, ETN, HOLDRs and index options (excluding the Excluded Classes) to avoid having to pay the CFLEX Surcharge Fee in the future. Eliminating the CFLEX Surcharge Fee for equity, ETF, ETN, HOLDRs and most index options while not eliminating the CFLEX Surcharge Fee for the Excluded Classes is equitable and not unfairly discriminatory because the Exchange expended significant resources developing the products listed in the Excluded Classes and must receive fees in order to recoup such expenditures.

The CFLEX AIM Credit is reasonable because it will allow market participants who engage in FLEX Options trades in equity, ETF, ETN, HOLDRs and index options (excluding the Excluded Classes) to receive a rebate for such transactions. Excluding the Excluded Classes from the CFLEX AIM Credit is equitable and not unfairly discriminatory because the Exchange expended significant resources developing the products listed in the Excluded Classes and must receive fees in order to recoup such expenditures. Limiting the CFLEX AIM Credit to FLEX Options AIM transactions is equitable and not unfairly discriminatory because the Exchange expended considerable resources to develop the new FLEX Options AIM technology and therefore desires to encourage the adoption of such technology. Further, AIM is a facilitation mechanism and greater facilitation of FLEX Options trading will encourage greater trading of FLEX Options. Limiting the CFLEX AIM Credit to the Agency/Primary side of FLEX Options AIM transactions is equitable and not unfairly discriminatory because the Agency/Primary side of an AIM transaction is the side on which an order is entered. Providing the CFLEX AIM Credit for the Primary side of FLEX Options AIM orders will encourage the entry of more FLEX

Options orders, which will benefit parties wishing to take the Contra side of FLEX Options AIM orders by providing them with more FLEX Options AIM orders on which to take the Contra side. Capping the CFLEX AIM Credit at \$250 per transaction and limiting the CFLEX AIM Credit to one order per underlying product per TPH (per day and only the smallest order from that TPH) is equitable and not unfairly discriminatory because such limitations are necessary to ensure the financial viability of the CFLEX AIM Credit, and without such limitations the Exchange would not be able to offer the CFLEX AIM Credit at all. Further, these limitations will apply to all market participants equally.

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)<sup>5</sup> of the Act and paragraph (f) of Rule 19b-4<sup>6</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 appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 C.F.R. [sic] 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-105 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-2012-105. 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, D.C. 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-2012-105, 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>7</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).