

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68887; File No. SR-CBOE-2013-017)

February 8, 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 February 1, 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 the Substance of the Proposed Rule Change

The Exchange is proposing to amend the Fees Schedule. 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.

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 proposes to amend its Fees Schedule. Specifically, the Exchange proposes to amend its Volume Incentive Program ("VIP"), through which the Exchange credits each Trading Permit Holder ("TPH") the per contract amount resulting from each public customer ("C" origin code) order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding Qualified Contingent Cross ("QCC") trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80), provided the TPH meets certain volume thresholds in a month. The proposed changes are to take effect on February 1, 2013.

First, the Exchange proposes to change the different fee tier thresholds in the VIP. Currently, qualification for the different fee rates at different tiers in the VIP is based on a TPH's percentage of national customer volume in multiply-listed options monthly. The current qualification tiers are set to, in ascending order, 0 through 0.75%,<sup>3</sup> above 0.75% through 2.25%, above 2.25% through 3.50%, above 3.50% through 5.00%, and above 5.00%. The purpose of the change is to eliminate the fifth qualification tier and adjust the threshold percentages for tier one through tier four. The Exchange is proposing to amend the tiers to be, in ascending order, 0 through 0.75%, above 0.75% through 2.00%, above 2.00% through 2.75%, and above 2.75%.

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<sup>3</sup> Each tier is based on the percentage of total national customer volume in multiply-listed options monthly.

Lowering the upper thresholds in the second and third tiers, along with the corresponding lower thresholds in the third and fourth tiers, allows for a greater number of participants to achieve a higher payment in the VIP Program.

The Exchange also proposes to change the amounts of the credits in the tiers of the VIP. The credit in the second tier will be increased from \$0.07 per contract to \$0.10 per contract, the credit in the third tier will be decreased from \$0.12 per contract to \$0.11 per contract, and the credit in the fourth tier will decrease from \$0.18 to \$0.14 per contract. Going forward, the relative volume thresholds and credit amounts will be as follows:

Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Per Contract Credit
0% – 0.75%	\$0.00
Above 0.75% - 2.00%	\$0.10
Above 2.00% - 2.75%	\$0.11
Above 2.75	\$0.14

The purpose of increasing the credit in the second tier and decreasing the credits in the third and fourth tiers is to rationalize the opportunity to receive a credit under the VIP across a broader set of participants. Lowering the credit in the third and fourth tiers allows the Exchange to make up for lowering the thresholds in tier two through tier four.

Next, the Exchange is proposing to eliminate the VIP credit of \$0.10 per contract at every tier in VIP. Currently this \$0.10 credit is given at every tier, including the \$0.00 tier, on each leg, for customer, complex multiply-listed options contracts, when executed electronically against a non-public customer origin. The Exchange is proposing to eliminate this additional credit. Eliminating this credit allows the Exchange to make up for threshold and credit adjustments as proposed above.

Finally, the Exchange is proposing to add to the notes on the VIP table. The Exchange is proposing to amend the section of the “Notes” on the VIP table to state that the VIP payment will be calculated from the first executed contract at the applicable threshold per contract credit. Stated in a different way, VIP payments will be made at the highest achieved tier for each contract executed in that month. Under the current VIP, VIP payments are made for the number of applicable contracts executed in each tier. For example, if TPH Firm XYZ executes 2.50% of the total national customer volume in the month of April, XYZ would receive a \$0.00 credit for the contracts at 0.75% of the market and below, a credit of \$0.10<sup>4</sup> for the contracts above 0.75% though 2.00% of the market, and \$0.11 for each contract above 2.00% of the market through the total 2.50% of the market. In the proposed VIP Program, XYZ will receive a credit of \$0.11 for each contract executed in the month of April. The purpose of the proposed change is to provide a greater incentive to direct greater customer trade volume to the Exchange to achieve a greater monthly percentage and receive a greater credit for all executed contracts at the greatest level achieved.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>6</sup> which

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<sup>4</sup> For sake of the example, credit amounts being applied are the proposed credit changes as mentioned above.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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 changes to amend the fee tier thresholds in the VIP are reasonable. Specifically, decreasing the upper thresholds in the second and third tiers, and thus the corresponding lower thresholds in third and fourth tiers, is reasonable because the slight changes are designed to provide TPHs a greater ability to reach higher tiers. These changes are equitable and not unfairly discriminatory because they will be applied to all TPHs. The Exchange believes that the proposed changes to increase the credit in the second tier of the VIP and decrease the credits in the third and fourth tiers each are reasonable. In the case of the increase in the credit for the second tier, the change will allow TPHs who reach the percentage threshold in that tier to receive an increased credit for doing so. In the case of the decrease in the credit for the third and fourth tiers, the change will still allow TPHs who reach the percentage threshold in that tier to receive a credit which is higher than such TPH would receive in the tier immediately below it. These changes are equitable and not unfairly discriminatory because they will be applied to all TPHs.

The proposed changes to eliminate the VIP credit of \$0.10 per contract at every tier in VIP is reasonable given the other proposed lower threshold and credits in the VIP. Though the Exchange is eliminating the additional credit, through the proposed changes, TPHs have a greater ability to reach higher tiers. Thus, eliminating the fee [sic] is reasonable when coupled with the other changes to the VIP. The elimination of this credit is equitable and not unfairly discriminatory as it applies to all TPHs. Finally, the Exchange believes that amending the Notes Section of the VIP is reasonable because it allows TPHs to receive a greater credit by applying

the greatest credit obtained to all trades done in that particular month. This change is equitable and not unfairly discriminatory because it will be applied to all TPHs.

Moreover, the purpose of all of the proposed changes is to encourage the sending and electronic execution of customer multiply-listed options volume to the Exchange. This increased volume creates greater trading opportunities that benefit all market participants (including TPHs that do not reach the higher-credit tiers in the VIP). Further, the increased volume and improved trading opportunities will provide such TPHs with a better opportunity to reach the higher-credit tiers in the VIP.

**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. To the extent that some of the changes to the VIP may attract greater trading volume to CBOE (and away from other exchanges), the Exchange does not believe the proposed changes will impose any burden on intermarket competition. The Exchange notes that, should the proposed changes make CBOE more attractive for trading, market participants trading on other exchanges can always elect to become TPHs on CBOE. Further, the Exchange exists in a competitive marketplace, and to the extent that these proposed changes make other exchanges less competitive with CBOE, market participants trading on those other exchanges can elect to trade on CBOE.

The Exchange does not believe the proposed changes will impose any burden on intramarket competition. Though the proposed changes only benefit TPHs that meet the VIP thresholds, the purpose of all of the proposed changes is to encourage the sending and electronic execution of customer multiply-listed options volume to the Exchange. This increased volume

creates greater trading opportunities that benefit all market participants (including TPHs that do not reach the higher-credit tiers in the VIP). Further, the proposed changes apply to all TPHs.

The Exchange does not believe that the proposed changes to eliminate the VIP credit of \$0.10 per contract at every tier in VIP will impose any burden on intermarket competition because the change is minimal and the VIP program already gives a credit to qualifying TPHs. Further, to the extent that any change in intramarket competition may result from this change, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The Exchange does not believe that the elimination of the additional \$0.10 credit will cause any unnecessary burden on intermarket competition because the changes are minimal and only apply to certain TPHS that qualify for the VIP.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

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>7</sup> and paragraph (f) of Rule 19b-4<sup>8</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.

#### 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-2013-017 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-2013-017. 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 C.F.R. 240.19b-4(f).



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-2013-017, 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>9</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).