

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68901; File No. SR-CBOE-2013-018)

February 11, 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”),¹ and Rule 19b-4 thereunder,² 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 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

¹ 15 U.S.C. 78s(b)(1).

² 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Fee Schedule. Specifically, the Exchange is proposing to increase the threshold in which it waives customer transaction fees, implement a \$0.25 marketing fee for trading in SPY and QQQ options, and eliminate the complex order surcharge.

First, the Exchange is proposing to increase the threshold at which the Exchange waives the customer transaction fee in "ETF, ETN and HOLDERS Options." Currently, the Exchange waives transaction fees for customer orders of 99 contracts or less in transactions in ETFs, ETNs, and HOLDERS options. Any order that is 100 contracts or more is charged a fee of \$0.18. The Exchange is proposing to increase this threshold and waive transaction fees for customer orders of 249 contracts or less in these options. The Exchange will charge any leg of a complex orders in these options that exceeds 249 even if the leg is only partially executed below the 249 threshold. For orders 250 contracts and above, the Exchange will continue to charge a fee of \$0.18. Corresponding edits will also be made to Footnote 9 in the Fees Schedule to reflect the change. Raising the threshold for which the Exchange will waive transaction fees will allow customers who engage in ETF, ETN and HOLDERS options trading the opportunity to pay lower fees for larger transactions and provide greater incentives for such trading. In addition, increasing this threshold will encourage more interaction with Exchange customers and encourage the direction of customer ETF, ETN and HOLDERS options orders to the Exchange.

Next, the Exchange is proposing to implement a \$0.25 marketing fee for electronic trading in SPY and QQQ options. Currently, the Marketing Fee assessed on all Penny Pilot Exchange-Traded Fund (“ETF”) options is \$0.25 per contract, with the exception of SPY and QQQ. The Exchange only charges a \$0.25 fee per contract in SPY and QQQ options for qualifying complex orders that trade via the Exchange Complex Order Book against individual leg markets. The Exchange is proposing to amend the Fees Schedule to assess this \$0.25 fee per contract on all qualifying orders whether simple or complex. This change will place SPY and QQQ on the same footing regarding the Marketing Fee as other options in the Penny Pilot classes. Other exchanges assess their marketing fees on SPY and QQQ.³ To correspond with this proposed change, the Exchange also proposes to eliminate the “Notes” section of the “Marketing Fee” table of the Fees Schedule to reflect this change.⁴

Finally, the Exchange is proposing to eliminate the surcharge on complex orders. Currently, the Exchange has a \$0.10 surcharge per contract for the electronic execution leg of a complex order in multiply-listed options that executes against a customer complex order. This surcharge is in addition to the other transaction fees. The Exchange is proposing to eliminate this surcharge. Eliminating the surcharge for complex orders

³ See Section II, “Payment for Order Flow Fees,” of the Nasdaq OMX PHLX (“Phlx”) Fee Schedule.

⁴ The “Notes” section of the “Marketing Fee” table reads “The marketing fee will not be assessed on electronic transactions in SPY and QQQ, except for electronic transactions resulting from AIM and complex orders that trade in either COA or COB (excluding complex orders that trade against the leg markets, on which the marketing fee will not be assessed). The marketing fee will continue to be assessed on open outcry transactions in SPY and QQQ.” Because the Exchange proposes to assess the Marketing Fee to SPY and QQQ in the same manner as it applies to other Penny Pilot classes the SPY- and QQQ-specific specifications set out in the “Notes” section are no longer relevant and can be deleted.

will allow Trading Permit Holders (“TPHs”) who engage in complex order trading the opportunity to pay lower fees for such transactions and provide greater incentives for such trading. In addition, eliminating the \$0.10 surcharge will encourage more interaction with Exchange customers.

Thus, the proposed changes are designed to attract greater order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The proposed changes are to take effect on February 1, 2013

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁶ 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.

In particular, the proposed change to increase the threshold at which the Exchange waives the transaction fee for customer orders is reasonable because it will allow customers who engage in such trading to trade larger orders without any electronic transaction fee. It is equitable and not unfairly discriminatory because, while customers are assessed different, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

Further, to the extent that any change in intramarket competition may result from the proposed change to the threshold for waiving options customer transaction fees, 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. Further, the proposed change will be applied to all customers equally.

Next, the proposed change to assess a \$0.25 marketing fee for all SPY and QQQ options contracts is reasonable because it puts trading in SPY and QQQ options on the same footing regarding the Marketing Fee as other options in the Penny Pilot Classes. It is equitable and not unfairly discriminatory because it is applied to all TPHs equally and puts TPHs trading SPY and QQQ on the same footing, with regards to the Marketing Fee, as other Penny Pilot classes. Moreover, other exchanges assess their marketing fees on SPY and QQQ transactions.⁷

Finally, the proposed change to eliminate the complex order surcharge is reasonable because it will allow TPHs who engage in complex order trading the opportunity to pay lower fees for such transactions. It is equitable and not unfairly discriminatory because it is applied to all TPHs equally and will no longer place non-customer market participants on a different footing, with regards to the complex order surcharge, from customers.

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

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁷ See Section II, "Payment for Order Flow Fees," of the Phlx Fee Schedule.

The Exchange does not believe that the proposed changes to increase the threshold for waiving the electronic customer transaction fee will cause any unnecessary burden on intramarket competition because, while customers are assessed different, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess. Further, to the extent that any change in intramarket competition may result from the proposed change to the threshold for waiving options customer transaction fees, 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 proposed change will cause any unnecessary burden on intermarket competition because the changes are minimal. Further, to the extent that this change makes trading on CBOE more attractive to customers or other market participants on other exchanges, they can always elect to send orders to CBOE.

The Exchange does not believe the proposed changes to assess a \$0.25 fee in SPY and QQQ options will cause any unnecessary burden on intramarket competition because it merely puts these options classes on the same footing regarding the Marketing Fee as other options in the Penny Pilot Classes and will be assessed to the same market participants as other classes to which the Marketing Fee is assessed. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket

competition because the fee is similar to fees assessed at other exchanges assess their marketing fees on these classes.⁸

Finally, the Exchange does not believe the proposed changes to eliminate the complex order surcharge will cause any unnecessary burden on intramarket competition because the change is minimal and applies to a specific set of orders. Further, it puts non-customer market participants on the same footing, with regards to the complex order surcharge, as customers. Moreover, to the extent that any change in intramarket competition may result from the proposed 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 proposed change will cause any unnecessary burden on intermarket competition because the changes are very minimal and specific to certain order types. Further, to the extent that this change makes trading on CBOE more attractive to market participants on other exchanges, they can always elect to send orders to CBOE.

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 changes 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

⁸ See Section II, "Payment for Order Flow Fees," of the Phlx Fee Schedule.

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 Act⁹ and paragraph (f) of Rule 19b-4¹⁰ 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-2013-018 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.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2013-018. 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 CBOE's principal office. 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-2013-018, 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.¹¹

Kevin M. O'Neill
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).