

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69000; File No. SR-CBOE-2013-023)

February 27, 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 20, 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 proposes to amend its 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 with regard to the data reports it provides to Trading Permit Holders ("TPHs"), Options Clearing Company ("OCC") firms and other interested parties at their requests. These persons and organizations often approach the Exchange and request that the Exchange prepare and provide various reports regarding their trading activity. The production of these reports sometimes requires that CBOE employees put in a significant amount of time and work to write and develop the programs necessary to be able to run or generate such reports. Currently, the Fees Schedule merely states that "Ad Hoc Information Services Requests" are provided at production costs, that ORS Analysis, Floor Efficiency Project or Market Penetration Reports are assessed a monthly fee of \$100, and that ABIL Brokerage Billing are assessed a fee of \$0.005 per contract (on a monthly basis, with a minimum of \$50 and a maximum of \$200 per month). The Exchange proposes to eliminate these statements and replace them with a more comprehensive, consistent and standard structure regarding the provision of Exchange data reports (including those being deleted).

The Exchange proposes to establish three different tiers of data report requests. The first, most basic tier (referred to as "C Level" requests) will regard requests for standard reports regularly generated and run by the Exchange and made available on a daily, weekly or monthly basis (for example, Monthly LP Scorecard, Daily Firm Report, etc.) that do not require historical data generation, customization beyond a standard format (PDF, HTML, etc.) or distribution frequency (daily, weekly, monthly, etc.), or specialized development. There will be no cost for

such requests, regardless of whether they are one-time, initial, or daily, weekly, or monthly requests.

The second tier (referred to as “B Level” requests) will regard initial report requests (or enhancements to existing report subscriptions) that require less than one (1) man-hour to develop and/or generate. The [sic] will be no cost for such requests. The third tier (referred to as “A Level” requests) will regard initial report requests (or enhancements to existing subscriptions) that require one (1) or more man-hours to develop and/or generate. The cost for such requests will be \$100 for first 5 man-hours and \$100 per hour for each additional man-hour. Fees for reports will be estimated in advance and such estimates will be provided to the requester. If the estimate changes once creation of the report begins, a revised estimate will be provided to the requester. For parties requesting to receive B or A Level reports on a recurring basis, subscriptions to such reports will be provided at a cost of \$100 per month for monthly reports and \$200 per month for daily or weekly reports.

## 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 requires that Exchange rules 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 new fee structure for data reports is reasonable because it is designed to reflect the Exchange’s costs in

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

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

creating such reports. The Exchange believes that the proposed new fee structure for data reports is equitable and not unfairly discriminatory because it will apply to all requesting parties equally. The Exchange believes it is equitable and not unfairly discriminatory to assess no fees for C Level reports because these are standard reports that do not require specific development, customization or generation. The Exchange believes that it is equitable and not unfairly discriminatory to assess no fees for initial B Level requests because these reports do not require very much (less than one man-hour) work on the Exchange's part to create and produce. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of \$100 for the first five man-hours of work for A Level requests because these reports take at least one man-hour of work on the Exchange's part to develop and generate and the Exchange must begin to recoup the costs of such work, while still desiring to be able to provide requesting market participants with a reasonable amount of information to assist them. The Exchange believes that it is equitable and not unfairly discriminatory to assess a fee of \$100 per man-hour above five hours for A Level requests because such requests can take up a significant amount of Exchange resources and at this point the Exchange must begin to be more fully-compensated for dedicating resources to these tasks. The Exchange believes that it is equitable and not unfairly discriminatory to assess subscription fees for requests for information on a more regular basis (as opposed to re-assessing the initial fees) because the development for such work has already been done.

**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. The Exchange does not believe that the proposed fees structure will impose an unnecessary burden on intramarket competition because it will apply equally to all requesting parties. The Exchange

does not believe that the proposed fees structure will impose an unnecessary burden on intermarket competition because the Exchange is providing reports specific to activity on CBOE, and other exchanges may provide reports specific to activity on those exchanges, and the costs for development, generation and production of such reports may be different on those exchanges. Further, to the extent that the proposed fees structure for data reports may attract market participants on other exchanges to CBOE, such market participants can always elect to become CBOE market participants [sic]

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>5</sup> 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

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

<sup>6</sup> 17 C.F.R. 240.19b-4(f).

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-2013-023 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-2013-023. 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-2013-023, 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).