

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69064; File No. SR-CBOE-2013-028)

March 7, 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 March 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 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’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

¹ 15 U.S.C. 78s(b)(1).

² 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 Volume Incentive Program (“VIP”). First, the Exchange proposes to add a column listing tier numbers for each percentage threshold³ in the VIP. The lowest percentage threshold will be tier 1, the next will be tier 2, the next tier 3, and the highest percentage threshold will be tier 4. Neither the percentage threshold amounts nor the fee amounts will change.⁴ The purpose of this change is to make it easier to refer to the different percentage thresholds.

Second, the Exchange proposes to adopt a separate credit structure in its VIP for complex orders. Specifically, all complex orders in tiers 2-4 of the VIP will accrue a per-contract credit of \$0.17. As such, the tiers, thresholds and per-contract credits will be as follows:

Tier	Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)	Per Contract Credit (Simple Orders)	Per Contract Credit (Complex Orders)
1	0% - 0.75%	\$0.00	\$0.00
2	Above 0.75% - 2.00%	\$0.10	\$0.17
3	Above 2.00% - 2.75%	\$0.11	\$0.17
4	Above 2.75%	\$0.14	\$0.17

³ The “percentage thresholds” refer to the column of the VIP table in the Exchange Fees Schedule entitled “Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)”.

⁴ The Commission notes that it understands the Exchange to mean that the credit amounts in the Exchange’s VIP for simple orders will not change as a result of the new tier numbers.

The purpose of this proposed change is to incentivize the sending of complex orders to the Exchange.

The Exchange also proposes to amend the description of its SPX Tier Appointment fee. Currently, the SPX Tier Appointment fee is assessed to any Market-Maker Trading Permit Holder (“MMTPH”) that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month.⁵ However, recently, CBOE Market-Maker firms have, in the process of switching around the Market-Makers to whom tier appointments are assigned, briefly picked up SPX Tier Appointments without the intention of acting as a Market-Maker in SPX. Nonetheless, even though such Market-Makers never engaged in SPX trading during the month, because they had an SPX Tier Appointment at any time during the calendar month, they were assessed the SPX Tier Appointment fee. Since the SPX Tier Appointment fee is intended to be assessed to MMTPHs who actually act as Market-Makers in SPX and engage in trading in SPX (as opposed to those who briefly pick up an SPX Tier Appointment), the Exchange proposes to add the stipulation that, in order for the SPX Tier Appointment to be assessed, an MMTPH must have an SPX Tier Appointment at any time during a calendar month and trade at least 100 SPX contracts while that appointment is active (or conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month; that stipulation is not being amended). The 100-contract threshold allows for the possibility of a very small, unintentional SPX trade without incurring the SPX Tier

⁵ See CBOE Fees Schedule, SPX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

Appointment fee (and is the same threshold used by the Exchange for the VIX Tier Appointment fee)⁶.

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Adding a column listing tier numbers for each percentage threshold is intended to make it easier to refer to the different percentage thresholds. This should prevent any potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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 proposed adoption of a separate set of VIP credits for complex orders is reasonable

⁶ See CBOE Fees Schedule, VIX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(4).

because it provides for a higher VIP credit for such orders than previously existed. Providing a higher credit for complex orders than for simple orders, and providing a credit for tiers 2-4 (and not tier 1), is equitable and not unfairly discriminatory because this is intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that establishing the stipulation that a TPH that does not conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month but does have an SPX Tier Appointment at any time during the calendar month will only be assessed the SPX Tier Appointment fee if such TPX also trades at least 100 SPX contracts while that appointment is active is reasonable because it will prevent MMTPHs who do not trade SPX or intend to trade SPX from being assessed the SPX Tier Appointment fee. This proposed change is equitable and not unfairly discriminatory for the same reason; the SPX Tier Appointment fee is intended to be assessed to MMTPHs who act as Market-Makers in SPX, not those who accidentally pick up an SPX Tier Appointment, and the proposed change will prevent such MMTPHs from being assessed the SPX Tier Appointment fee.

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 adoption of higher VIP credits for complex orders will

impose an unnecessary burden on intramarket competition because such credits will apply to the same market participants as the VIP previously applied (public customers). Moreover, these higher credits for complex orders are intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers, but all market participants.

The Exchange does not believe that the proposed change to adopt different, higher VIP credits for complex orders will impose an unnecessary burden on intermarket competition. Indeed, the proposed change should place the Exchange on a better competitive footing to attract complex orders, which benefits market participants at other exchanges by providing them with another, more attractive exchange to which to send complex orders. To the extent that the proposed change is attractive to such market participants on other exchanges, they may always elect to become CBOE market participants and execute orders (complex and simple) on CBOE. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intramarket competition because it will only apply to MMTPHs, as they are the only market participants to whom the SPX Tier Appointment fee applies. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intermarket competition because SPX is only traded on CBOE, and the proposed change only applies to CBOE MMTPHs.

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 Act¹⁰ and paragraph (f) of Rule 19b-4¹¹ 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:

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-2013-028 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.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2013-028. 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-2013-028, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).