

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-69422; File No. SR-CBOE-2013-042)

April 22, 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 April 10, 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’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 Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

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

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

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 make a number of technical and superficial changes to its Fees Schedule. No substantive changes to Exchange fees are proposed herein.

First, HOLDRs options are no longer traded on the Exchange, so the Exchange proposes to remove all references to such options. As such, references to HOLDRs options in the ETF, ETN and HOLDRs Options Rate Table, the Customer Large Trade Discount table, and Footnotes 6, 8 and 9 will be deleted. The ETF, ETN and HOLDRs Options Rate Table will now be called the ETF and ETN Options Rate Table, the Customer Large Trade Discount table will refer to "ETF and ETN Options", and applicable sections of footnotes 8 and 9 will simply say "ETF and ETN options".

Next, the Exchange proposes to re-name the Proprietary Index Options Rate Table – SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES the "Specified Proprietary Index Options Rate Table – SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES" (the "Specified Index Options Rate Table"). The addition of the word "Specified" is intended to clarify that not all proprietary index options are subject to this rate table (those not specified are subject to the Index Options Rate Table – All Index Products Excluding SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES (the "Other Index Options Rate Table")).

Footnote 20 describes the CFLEX AIM Response fee. However, on the Equity Options Rate Table, the ETF and ETN Options Rate Table, the Specified Index Options Rate Table, the Other Index Options Rate Table, and the Mini-Options Rate Table, this fee is merely listed as the

CFLEX AIM fee. The Exchange proposes to add the word “Response” and list the fee in all the above-mentioned rate tables as the CFLEX AIM Response fee in order to more accurately display the fee’s name.

Next, the Exchange proposes to make more clear the fact that the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees for certain types of facilitation orders (as defined in Footnote 11 of the Fees Schedule) in certain classes.<sup>3</sup> As such, the Exchange proposes to add to the Equity Options Rate Table, the ETF and ETN Options Rate Table, and the Other Index Options Rate Table a line that lists the Clearing Trading Permit Holder Proprietary Facilitation fees as being assessed a fee of \$0.00 per contract for manual, AIM Agency/Primary, AIM Contra, QCC and CFLEX AIM Response transactions (regular electronic Clearing Trading Permit Holder Proprietary facilitation transactions are assessed a \$0.25 per-contract fee, like other Clearing Trading Permit Holder Proprietary transactions, as they are not subject to the waiver), per the language currently in Footnote 11. On all such rate tables, the new line will include a reference to Footnote 11.

Next, the Broker-Dealer line on the Equity Options Rate Table, the ETF and ETN Options Rate Table, the Specified Index Options Rate Table, the Other Index Options Rate Table, the Mini-Options Rate Table and the Credit Default Options and Credit Default Basket Options Rate Table (together, the “Rate Tables”) contains an erroneous reference to Footnote 11 (such reference being erroneous because Footnote 11 does not apply to Broker-Dealers. As such, the Exchange proposes to delete such references.

The Exchange’s Hybrid 3.0 Execution Fee applies to products traded on the Hybrid 3.0 system. Occasionally, the Exchange receives questions regarding to which products that fee

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<sup>3</sup> See CBOE Fees Schedule, Footnote 11 for more details.

applies. As such, the Exchange proposes to amend the line on the Specified Index Options Rate Table listing the Hybrid 3.0 Execution Fee to state that it applies to SPX and SPXQ only (as those are the products traded on Hybrid 3.0).

The Exchange instituted a CFLEX AIM Credit for some orders executed via a CFLEX AIM auction from November 1, 2012 through December 31, 2012 (the “CFLEX AIM Credit”).<sup>4</sup> As it is now past December 31, 2012, the CFLEX AIM Credit has expired. As such, the Exchange proposes to delete references to it from the Equity Options, ETF and ETN Options, and Other Index Options Rate Tables. The Exchange also proposes to delete the text of Footnote 28 (which describes the CFLEX AIM Credit) and merely label such footnote as “Reserved.” Next, the Exchange no longer operates under a structure in which persons or organizations own seats on the Exchange and therefore could lease seats out to other parties. As such, there are no longer lessees or lessors on the Exchange, and the reference in the “Individual” line on Trading Permit Holder Application Fees table to “/Lessee/Lessor” is obsolete and no longer relevant, and thus the Exchange proposes to delete such reference.

The Exchange’s Options Regulatory Fee (“ORF”) is listed as being \$0.0065 per contract through December 31, 2012 and \$0.0085 per contract effective January 2, 2013. As these dates have passed and the ORF is now simply \$0.0085 per contract, the Exchange proposes to delete the reference to the ORF being \$0.0065 per contract through December 31, 2012 and the January 2, 2013 effective date of the \$0.0085 per contract ORF.

The Notes for the Exchange’s Non-Standard Booth Rental Fee state that “Effective April 1, 2012, a Trading Permit Holder (“TPH”) organization will pay the fees per square foot on a monthly basis for use of a non-standard booth.” Since April 1, 2012 has passed, the Exchange

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<sup>4</sup> See Securities Exchange Act Release No. 68169 (November 6, 2012), 77 FR 67703 (November 13, 2012) (Sr-CBOE-2012-105).

proposes to eliminate the reference to such date and merely have the sentence read “A Trading Permit Holder (“TPH”) organization will pay the fees per square foot on a monthly basis for use of a non-standard booth.”

The Notes to the Exchange’s CMI and FIX Login ID fees state that CMI and FIX Login ID fees are waived through September 30, 2012 for CMI and FIX Login IDs used to access the CFLEX system. As September 30, 2012 has passed, the Exchange proposes to delete this note.

The Exchange Fees Schedule has a Trading Permit Holder Transaction Fee Policies and Rebate Programs table that lists one fee, the Chicago Mercantile Exchange (CME) Members SPX and OEX Fees, which states that “Pursuant to an agreement between the CBOE and the CME, CME members are eligible to receive rebates from customer transaction fee rates on SPX and OEX transactions for their own account. Although CME members activity clears as customer trades and are charged customer rates, CME members will receive a transaction fee rebate of \$.06 per contract when the premium is \$1 or higher and \$.03 when the premium is under \$1, upon submission of an itemized rebate request (see policy below). CBOE Trading Permit Holders are also eligible for reduced fees on their CME S&P 500 and S&P 100 activity.” The table then states that “ALL REBATE REQUESTS MUST BE RECEIVED NO LATER THAN 60 DAYS AFTER THE MONTH-END TO WHICH THE TRADE RELATES AND INCLUDE TRANSACTION DETAIL AS REPORTED TO TRADE MATCH. REBATE REQUEST FORMS MAY BE OBTAINED BY CALLING DON PATTON AT (312) 786-7026.” The agreement referenced between the CBOE and CME is no longer valid. As such, the fee listed and all other text in this table is no longer valid, and therefore the Exchange proposes to delete such table.

Footnote 19 to the Exchange Fees Schedule reads, in part, “The AIM Agency/Primary Fee applies to all broker-dealer, non-Trading Permit Holder market-maker, JBO participant, voluntary professional, and professional orders in all products, except volatility indexes, executed in AIM, SAM, FLEX AIM and FLEX SAM auctions, that were initially entered as a Agency/Primary Order.” This is grammatically incorrect, and the Exchange proposes to amend the end of this sentence to read “entered as an Agency/Primary Order.”

The Exchange proposes to add (in two places) to the Customer line on the Linkage Fees table that such fees apply in addition to the customary CBOE execution charges. As this table only applies to Linkage fees and not other execution fees, the Exchange believes that this fact was already clear, but has elected to clarify due to a question received from a customer.

Footnote 25 of the Exchange Fees Schedule states that “An additional monthly fee of \$2,000 per month will be assessed to any Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute VIX options transactions, the VIX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$2,000 fee for the combined VIX executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month.” The Exchange desires to make this more prominent, and therefore proposes to move it to the Trading Permit and Tier Appointment Fees table and title it the Floor Broker VIX Surcharge.

Footnote 25 of the Exchange Fees Schedule also states that “An additional monthly fee of \$3,000 per month will be assessed to any Floor Broker Trading Permit Holder that executes more

than 20,000 SPX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute SPX options transactions, the SPX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$3,000 fee for the combined SPX executions through those Floor Broker Trading permits if the executions exceed 20,000 contracts per month. For purposes of determining the 20,000 contracts per month threshold, SRO executions are excluded for purposes of the calculation of executed SPX contracts during the month.” The Exchange desires to make this more prominent, and therefore proposes to move it to the Trading Permit and Tier Appointment Fees table and title it the Floor Broker SPX Surcharge.

The Exchange noticed that the origin code “B” is erroneously listed as corresponding to the Floor Broker Trading Permit on the Trading Permit and Tier Appointment Fees table and therefore proposes to delete this listing. Also, the Exchange proposes to add “Floor Broker” as an origin to this table, as the table lists some fees that are applicable to floor brokers.

Finally, the Exchange proposes to split up the “Regulatory Fees” table on the Fees Schedule (and add the word “continued” at the top of the 2<sup>nd</sup> portion of the table) in order to better fit such table on the Fees Schedule.

The purpose of the changes proposed herein is to fix erroneous and obsolete references in the Exchange Fees Schedule and make the Fees Schedule more clear and less confusing for investors.

## 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>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> 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 facilitating 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. Fixing erroneous and obsolete references in the Exchange Fees Schedule and making the Fees Schedule more clear and less confusing for investors is designed to eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as this newly-cleaned-up Fees Schedule is available to all market participants.

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

CBOE does not believe that the proposed rule change will impose any burden on

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> Id.



competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an unnecessary burden on intramarket competition because no substantive changes were made to the Fees Schedule and the newly-cleaned-up Fees Schedule is available to all market participants. The Exchange believes that the proposed rule change will not impose an unnecessary burden on intermarket competition because no substantive changes were made to the Fees Schedule and because this Fees Schedule only applies to Exchange fees. To the extent that the newly-cleaned-up Fees Schedule may be attractive to market participants on other exchanges, such market participants may always elect to become CBOE market participants.

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>8</sup> and paragraph (f) of Rule 19b-4<sup>9</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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 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-2013-042 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-2013-042. 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 St 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 offices 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-2013-042, 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>10</sup>

Elizabeth M. Murphy  
Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).