

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66556; File No. SR-CBOE-2012-022)

March 9, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its 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, 2012, the 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, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. First, the Exchange proposes to amend the Customer Large Trade Discount (the "Discount") to state that regular customer transaction fees will only be assessed for the first 10,000 CBOE Volatility Index ("VIX") options contracts in a qualifying customer transaction. The Discount is intended to cap fees on large customer trades. Currently, there is no separate carve-out for VIX options, which means that regular customer transaction fees are currently assessed for the first 5,000 VIX options contracts in a qualifying customer transaction (the threshold for all index options is set at 5,000 contracts other than S&P 500 index options, for which the threshold is 10,000 contracts). The Exchange offers the Discount in order to encourage growth of new products. VIX options trading volume has increased greatly since it began trading, and due to increased demand, the Exchange proposes to raise increase [sic] the threshold before which customers cease paying transaction fees for qualifying VIX options transactions in order to recoup costs from developing VIX options, as well as other administrative costs. Moreover, because VIX options trade at a significantly lower price than the vast majority of other highly-traded index options, the notional value of 10,000 VIX options contracts is still much lower than the notional value of 5,000 contracts of nearly all other highly-traded index options (and 10,000 contracts of S&P 500 index options).³

The Exchange also proposes to lower the Hybrid Agency Liaison ("HAL") Step-Up Rebate to \$0.10 per contract. The HAL system allows CBOE Market-Makers to step up to meet

³ For reference, the February 2012 settlement value for VIX options was \$20.44. Compare with the February 2012 settlement values for NASDAQ 100 index options (\$2586.93), Russell 2000 index options ((\$833.16) and S&P 500 index options (\$1363.80).

the National Best Bid/Offer (“NBBO”) before an order is routed to another exchange through the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80 (“Linkage”). The HAL Step-Up Rebate is the rebate a Market-Maker receives per each contract against transaction fees generated from a transaction on the HAL system in a penny pilot class, provided that at least 60% of the market-maker’s quotes in that class (excluding quotes in LEAPS series) in the prior calendar month were on one side of the NBBO. Currently, the rebate is \$0.15 per contract. The Exchange proposes lowering it to \$0.10 per contract as a change in the Exchange’s competitive offering and in order to recoup costs related to Linkage and Exchange administrative fees. Further, the Exchange is not aware of any other exchanges that offer Market-Makers a rebate for stepping up to meet the NBBO.

The Exchange also proposes to amend its Linkage fees for customer orders. Currently, when CBOE sends a customer order with an original size of 100 or more contracts to another exchange(s) through the Linkage, CBOE passes through the actual transaction fee assessed by the exchange(s) to which the order was routed, minus \$0.05 per contract. Also, when CBOE currently sends a customer order with an original size of 99 or fewer contracts to another exchange(s) through the Linkage, CBOE assesses no fee (thereby “eating” whatever fee is assessed by the exchange(s) to which the order was routed). As orders continue to be routed through Linkage, the Exchange finds that it is not currently financially prudent to continue to “eat” fees or pay for orders executed at other exchanges to the current extent.

As such, CBOE now proposes to eliminate the \$0.05 discount for the routing of customer orders with an original size of 100 or more contracts to another exchange(s) through the Linkage, and instead simply pass through the actual transaction fee assessed by the exchange(s) to which the order is routed. For customer orders with an original size of 99 contracts or fewer routed to

another exchange(s) through Linkage, CBOE proposes to pass through the actual transaction fees assessed by the exchange(s) to which the order was routed, minus \$0.05 per contract (provided that such exchange(s) assess transaction fees). As such, the CBOE will no longer be paying for executions of customer orders with an original size of 100 or more contracts routed to another exchange through Linkage, or eating the entire costs of customer orders with an original size of 99 contracts or fewer routed to another exchange(s) through Linkage. These changes put CBOE on a more even financial footing with other exchanges that do not subsidize the costs of customer orders routed through Linkage. Even after instituting the proposed changes, CBOE still offers favorable Linkage pricing compared to other exchanges. For example, NYSE Amex, LLC (“Amex”) passes through fees for customer orders routed to other exchanges through Linkage and assesses its own \$0.11 per contract fee on top.⁴

The proposed changes are to take effect March 1, 2012.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act⁶, 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. Raising the Discount threshold for VIX options to 10,000 customer contracts is reasonable because customers will still be receiving a discount for large trades that they would not otherwise receive, and because that amount is within the range of

⁴ See Amex Fee Schedule, Routing Surcharge.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

Discount thresholds for other products (the SPX threshold is 10,000). This change is equitable and not unfairly discriminatory because, while the threshold is lower for some products, it is the same as for SPX, and because all customers whose large trades qualify for the Discount will still receive it. Moreover, because VIX options trade at a significantly lower price than the vast majority of other highly-traded index options, the notional value of 10,000 VIX options contracts is still much lower than the notional value of 5,000 contracts of nearly all other highly-traded index options (and 10,000 contracts of S&P 500 index options).⁷ Finally, raising the Discount threshold to 10,000 for VIX options is equitable and not unfairly discriminatory also because the Exchange expended considerable resources in developing VIX options and needs to recoup those and other related expenses.

Lowering the HAL Step-Up Rebate is reasonable because Market-Makers will still be receiving a rebate for stepping up to the NBBO. This change is equitable and not unfairly discriminatory because it will apply to all qualifying Market-Makers equally, and because it is still favorable to other exchanges, which offer no similar rebates for stepping up (to the Exchange's knowledge).

Eliminating the \$0.05 discount for the routing of customer orders with an original size of 100 or more contracts to another exchange(s) through Linkage, and instead simply passing through the actual transaction fee assessed by the exchange(s) to which the order is routed, is reasonable because a customer will now merely be charged by CBOE the amount that CBOE is charged by the exchange(s) that execute the customer's order. This change is equitable and not unfairly discriminatory for the same reason; it is certainly equitable and not unfairly discriminatory to merely pass through the costs being assessed for a trade (indeed, it is equitable because that is the

⁷ See Note 3.

exact amount being assessed for the trade). Further, this fee will be applied equally; all customer orders with an original size of 100 or more contracts that are routed to another exchange(s) through Linkage will accrue the pass-through amount. Finally, merely passing through the costs is favorable to the Linkage arrangement on other exchanges such as Amex (which passes through fees for customer orders routed to other exchanges through Linkage and assesses its own \$0.11 per contract fee on top).⁸

Passing through the Linkage fees for customer orders with an original size of 99 contracts or less, minus \$0.05 per contract, is reasonable because a customer will still be assessed a lower amount than the cost to CBOE for routing such orders to another exchange(s). This is equitable and not unfairly discriminatory because it is certainly not unfair to pass through the costs being assessed for a trade (especially not when the Exchange is eating \$0.05 per contract). Further, this fee will be applied equally; all customer orders with an original size of 99 contracts or less that are routed to another exchange(s) through Linkage will be assessed the actual transaction fees assessed by the exchange(s) that execute the orders, minus \$0.05 per contract.

Finally, the Exchange believes that it is equitable and not unfairly discriminatory to continue to assess different Linkage fees for customer orders of 100 or more contracts than are assessed for orders of 99 or fewer contracts⁹ because customer orders of 99 or fewer contracts are generally entered by small retail customers, whereas customer orders of 100 or greater contracts are generally entered by larger, more active customers. Such customers are largely more sophisticated than smaller retail customers and have the capability to “link” orders themselves

⁸ See Note 4.

⁹ Prior to this proposed rule change, the Exchange also offered different Linkage fees for customer orders of 100 or more contracts (passing through Linkage fees, minus \$0.05 per contract) than for orders of 99 or fewer contracts (no Linkage fees) (See Exchange Fees Schedule, Section 20).

(send orders to the exchange displaying the NBBO), while smaller retail customers often do not have such capabilities. As such, CBOE does not want to unduly subsidize Linkage orders for parties that are capable of handling that function themselves. Moreover, different fee structures are appropriate for these different groups due to their different demographics and trading characteristics, and the Exchange currently has set this 100-contract threshold in multiple places in its Fees Schedule.¹⁰

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.

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)¹¹ of the Act and paragraph (f) of Rule 19b-4¹² 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.

¹⁰ See Note 9 and also Exchange Fees Schedule, footnote (9), in which the Exchange waives transaction fees for customer orders of 99 contracts or less in ETF, ETN and HOLDRs options.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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. Please include File Number SR-CBOE-2012-022 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-2012-022. 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 will also 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 No. SR-CBOE-2012-022 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).