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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70014; File No. SR-CBOE-2013-072)

July 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 July 11, 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

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

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

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, the Exchange proposes to eliminate the \$200-per-month Hybrid Quoting Infrastructure User Fee, which is assessed to Trading Permit Holders ("TPHs") to help cover the costs associated with hardware and maintenance services to third-party vendors that provide quoting software used by TPHs to trade on the Exchange's Hybrid Trading System ("Hybrid"). This elimination will allow TPHs to avoid paying this fee, and may encourage more market participants to trade on CBOE.

The Exchange also proposes to make an amendment to the Fees Schedule regarding Clearing Trading Permit Holder Proprietary Facilitation fees. On April 10, 2013, the Exchange amended its Fees Schedule to, in part, 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), including those executed via the Exchange's Automated Execution Mechanism ("AIM"), in certain classes.<sup>3</sup> However, regular (non-AIM) electronic Clearing Trading Permit Holder Proprietary facilitation orders remained subject to transaction fees. The Exchange

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<sup>3</sup> See Securities Exchange Act Release No. 69422 (April 22, 2013), 78 FR 25112 (April 29, 2013) (SR-CBOE-2013-042).

hereby proposes to cease assessing transaction fees on such orders.<sup>4</sup> This will mean that electronic Clearing Trading Permit Holder Proprietary Facilitation orders will be assessed no fees regardless of whether they are executed via AIM or the Exchange's regular electronic mechanism (placing such executions on the same footing with regard to fees).

Next, the Exchange proposes to amend its Fees Schedule with regard to fees for SPXPM. On February 19, 2013, the Exchange adopted a set of fees for the trading of SPXPM.<sup>5</sup> The Customer SPXPM fees were set at the same rates as the Customer SPX fees. However, SPXPM trades on the Exchange's Hybrid System, while SPX trades on the Exchange's Hybrid 3.0 trading platform. As such, SPXPM is eligible to trade on AIM, while SPX currently does not trade on AIM. Therefore, the Exchange proposes to create separate lines for Customer rates in SPXPM on the Specified Proprietary Index Options Rate Table – SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES and remove SPXPM from those lines listing SPX rates in order to eliminate any potential confusion about where SPXPM can trade. The rate amounts for SPXPM AIM trades will be listed as the same as for other SPXPM trades (as they are now; \$0.44 per contract for SPXpm Premium > or = \$1 and \$0.35 per contract for SPXpm Premium < \$1). The AIM Agency/Primary and AIM Contra columns, which reference the AIM Agency/Primary and AIM Contra Execution Fees, as well as delineate which securities

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<sup>4</sup> As such, along with amending the Equity Options Rate Table, the ETF and ETN Options Rate Table, and the Index Options Rate Table – All Index Products Excluding SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES, to reflect this change, the Exchange also proposes to amend Footnote 11 to state that no Clearing Trading Permit Holder Proprietary transaction fees will be assessed for facilitation orders electronically (including via AIM).

<sup>5</sup> See Securities Exchange Act Release No. 69025 (March 4, 2013), 78 FR 15076 (March 8, 2013) (SR-CBOE-2013-025).

(and types of transactions) are eligible for AIM executions, will be modified to state “SPXpm and VIX Only” to demonstrate that SPXPM is eligible for AIM executions.

## 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</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 elimination of the Hybrid Quoting Infrastructure User Fee is reasonable because it will prevent market participants to whom the fee would otherwise apply from having to pay the fee. This change is equitable and not unfairly discriminatory because it will apply to all market participants.

The Exchange believes that the proposed change to cease assessing transaction fees on regular (non-AIM) electronic Clearing Trading Permit Holder Proprietary facilitation orders is reasonable because Clearing Trading Permit Holders who would otherwise have had to pay for such transactions now will not be required to do so. The Exchange believes that this proposed change is equitable and not unfairly discriminatory because it will place regular electronic (non-AIM) Clearing Trading Permit Holder Proprietary facilitation orders on the same footing (with regards to fees) as Clearing Trading Permit Holder Proprietary facilitation orders executed in AIM. Further, the

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Exchange believes that it is equitable and not unfairly discriminatory to permit Clearing Trading Permit Holders to execute Proprietary Facilitation orders electronically for free and not give this opportunity to other market participants because Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. Finally, this proposed change applies to all regular electronic (non-AIM) Clearing Trading Permit Holder Proprietary facilitation orders equally.

The Exchange believes that the clarification regarding SPXPM and its eligibility for AIM executions is consistent with the Section 6(b)(5)<sup>8</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 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. Making the Fees Schedule more clear that SPXPM trades on AIM will remove any potential confusion, thereby removing an impediment 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.

The Exchange also believes that assessing Customer transactions in SPXPM (Premium < \$1) a fee of \$0.35 per contract is consistent with Section 6(b)(4) of the Act,<sup>9</sup>

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<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 this is reasonable, as well as equitable and not unfairly discriminatory, because it is the same amount as is assessed to Customer transactions in SPX (Premium < \$1) (SPX and SPXPM are based on the same underlying index, the S&P 500). The Exchange believes that assessing a higher fee for Customer transactions in SPXPM options whose premium is greater than or equal to \$1.00 than for Customer transactions in SPXPM options whose premium is less than \$1.00 is equitable and not unfairly discriminatory because nearly all options based on the S&P 500 Index are priced at well above \$1.00. However, most Customers, at the end of an expiration cycle, desire to continue to hold options based on the S&P 500 Index (including both SPX and SPXPM), and because it is the end of an expiration cycle, such options are priced very low. The Exchange therefore offers lower pricing for Customer SPX and SPXPM options in order to encourage such trading and thus encourage Customers to open SPX and SPXPM options positions in the next cycle. As these new positions will almost certainly be priced above \$1.00, offering the lower pricing for SPXPM options whose premium is below \$1.00 therefore benefits market participants trading SPXPM options whose premium is at or above \$1.00 by encouraging Customers to open up those positions (thereby providing greater liquidity). Further, other options based on the S&P 500 Index, such as SPX, offer higher pricing for options with a premium of greater than or equal to \$1.00 than for those with a premium of less than \$1.00.

The Exchange believes that it is equitable and not unfairly discriminatory to offer a higher fee for Customer SPXPM transactions (Premium < \$1) than for CBOE Market-

Maker/DPM/e-DPM/LMM and Clearing Trading Permit Holder Proprietary SPXPM transactions (Premium < \$1) because those market participants undertake certain obligations with respect to trading at CBOE, such as quoting obligations (for CBOE Market-Makers/DPMs/e-DPMs/LMMs) and membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, (for Clearing Trading Permit Holders) that Customers do not undertake. The Exchange believes that it is equitable and not unfairly discriminatory to offer a lower Customer fee for SPXPM transactions (Premium < \$1) than for similar transactions by Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker, Professional, and Voluntary Professional market participants because such market participants often seek to trade with Customers. Further, the lower fee for Customers will encourage more Customer trading, which provides more liquidity and trading opportunities (with this preferred trading partner) for these other market participants. Also, Customers are often not as sophisticated market participants, and there is a long history of permitting preferential pricing treatment of Customers in the options industry (indeed, in a number of places, the Exchange Fees Schedule offers lower pricing for Customers than for other market participants). Finally, the Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee for Customer SPXPM transactions (Premium < \$1) than for Customer transactions in other index products (including non-proprietary index products) (Premium < \$1) because the Exchange has expended significant resources developing SPXPM and desires to recoup some of such costs.

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. The Exchange does not believe that the proposed rule change to eliminate the Hybrid Quoting Infrastructure User Fee will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it applies to all CBOE market participants. The Exchange does not believe that the proposed rule change to cease assessing transaction fees on regular (non-AIM) electronic Clearing Trading Permit Holder Proprietary facilitation orders will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it places regular (non-AIM) electronic Clearing Trading Permit Holder Proprietary facilitation orders on the same footing (with regards to fees) as Clearing Trading Permit Holder Proprietary facilitation orders executed in AIM. Further, Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on. Finally, this proposed change applies to all regular electronic (non-AIM) Clearing Trading Permit Holder Proprietary facilitation orders equally.

The Exchange does not believe that the proposed clarification regarding SPXPM fees will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it merely clarifies the Fees Schedule and also applies equally. Further, the Exchange does not believe that assessing Customer transactions in SPXPM (Premium < \$1) a higher fee than for CBOE Market-

Maker/DPM/e-DPM/LMM and Clearing Trading Permit Holder Proprietary SPXPM transactions (Premium < \$1) will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because those market participants undertake certain obligations with respect to trading at CBOE, such as quoting obligations (for CBOE Market-Makers/DPMs/e-DPMs/LMMs) and membership with the Options Clearing Corporation, significant regulatory burdens, and financial obligations, (for Clearing Trading Permit Holders) that Customers do not undertake. The Exchange does not believe that assessing Customer transactions in SPXPM (Premium < \$1) a lower fee than for similar transactions by Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker, Professional, and Voluntary Professional market participants because such market participants often seek to trade with Customers. Further, the lower fee for Customers will encourage more Customer trading, which provides more liquidity and trading opportunities (with this preferred trading partner) for these other market participants. Also, Customers are often not as sophisticated market participants, and there is a long history of permitting preferential pricing treatment of Customers in the options industry (indeed, in a number of places, the Exchange Fees Schedule offers lower pricing for Customers than for other market participants).

The Exchange does not believe that the proposed rule changes to eliminate the Hybrid Quoting Infrastructure User Fee and to cease assessing transaction fees on regular (non-AIM) electronic Clearing Trading Permit Holder Proprietary facilitation orders will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because they may encourage other exchanges to

adopt fee changes that will provide more attractive pricing on such exchanges (thereby enhancing intermarket competition). Further, all the proposed rule changes apply only to trading on CBOE. Indeed, the Exchange does not believe that assessing Customer transactions in SPXPM (Premium < \$1) a fee of \$0.35 per contract will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because SPXPM is only traded on CBOE. To the extent that market participants on other exchanges may be attracted to CBOE due to the proposed changes, 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>10</sup> and paragraph (f) of Rule 19b-4<sup>11</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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-072 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-2013-072. 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 the 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-2013-072, 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>12</sup>

Kevin M. O'Neill  
Deputy Secretary

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