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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-70313; File No. SR-CBOE-2013-085)

September 4, 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 August 22, 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 exclude the Russell 2000 Index (“RUT”) from the Exchange’s Volume Incentive Program (“VIP”). This would mean that RUT volume would not be included in the calculations used for determining VIP, nor would the Exchange pay out a credit for RUT trades. The reason for this proposed change is due to changing economic circumstances regarding RUT (including changed license fees (which are lower than those offered by other exchanges)<sup>3</sup> and other effects of the new RUT licensing structure). The changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE’s competitive offering for RUT, including the trading of RUT over CBOE’s Complex Order Book and the assessment of the Marketing Fee for RUT transactions<sup>4</sup> as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP’s incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE’s competitive offering regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

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<sup>3</sup> See SR-CBOE-2013-83, which increases the Exchange’s RUT Surcharge Fee to \$0.30 per contract, compared to SR-NYSEMKT-2013-65, which increased the NYSE MKT LLC (“AMEX”) Royalty Fee for RUT from \$0.15 per contract to \$0.40 per contract.

<sup>4</sup> See CBOE Fees Schedule, Marketing Fee table.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (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 Section 6(b)(4) of the Act<sup>6</sup>, which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes that excluding RUT from the VIP is reasonable because the VIP is a credit program, and excluding RUT from the VIP does not impose any extra fee for RUT trades, it just prevents them from incurring a credit (or counting towards incurring credits). As such, qualifying market participants trading RUT will merely be required to pay regular transaction fees. The Exchange believes that excluding RUT from the VIP is equitable and not unfairly discriminatory because the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. Further, CBOE’s competitive offering for RUT, including the trading of RUT over CBOE’s Complex Order Book and the assessment of the Marketing Fee for RUT transactions<sup>7</sup> as well as other economic circumstances regarding the trading of RUT, has caused CBOE to gain such market share that CBOE has deemed it unnecessary to offer the VIP’s incentives in order to attract RUT volume (the purpose of the VIP is to attract volume via offering volume-based incentives). Unlike for other multiply-listed indexes traded at CBOE that are still included in the VIP, CBOE’s competitive offering

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> See CBOE Fees Schedule, Marketing Fee table.

regarding RUT offers enough incentives to market participants wishing to trade RUT that including RUT in the VIP is unnecessary.

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 excluding RUT from the VIP will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change does not affect to whom the VIP applies. Further, the different licensing schemes for RUT (and all licensed products) make such products incomparable, and the changed licensing structure for RUT makes it less economically feasible to include RUT in the VIP. The Exchange does not believe that excluding RUT from the VIP is will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because this exclusion only applies to trading on CBOE, and the VIP only applies to CBOE.

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,

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

<sup>9</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-085 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-2013-085. 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 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-2013-085, 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>

Kevin M. O'Neill  
Deputy Secretary

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