

across markets concerning decisions to pause trading in a stock when there are significant price movements.

#### *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 proposal.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

The Commission has considered the Exchange's request to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary

interruption in the pilot program.<sup>13</sup> For this reason, the Commission designates the proposed rule change to be operative upon filing.

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 shall 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, as amended, 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-2011-031 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-2011-031. 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 Web site (<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

<sup>13</sup> For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

available for Web site 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 a.m. and 3 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-2011-031, and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Cathy H. Ahn,**  
*Deputy Secretary.*

[FR Doc. 2011-8620 Filed 4-11-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64197; File No. SR-CBOE-2011-034]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Waiver of Transaction Fee for Public Customer Orders in SPY Options Executed in Open Outcry or in the Automated Improvement Mechanism

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange")

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> *Id.*

proposes to amend its Fees Schedule to extend through June 30, 2011, a waiver of the transaction fee for public customer orders in options on Standard & Poor's Depository Receipts that are executed in open outcry or in the Automated Improvement Mechanism. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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

In its filing with the Commission, CBOE 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. CBOE 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, Proposed Rule Change

#### (a) Purpose

The Exchange currently waives the \$.18 per contract transaction fee for public customer ("C" origin code) orders in options on Standard & Poor's Depository Receipts ("SPY options") that are executed in open outcry or in the Automated Improvement Mechanism ("AIM").<sup>3</sup> This fee waiver is due to expire on March 31, 2011. The Exchange proposes to extend the fee waiver through June 30, 2011.<sup>4</sup> The proposed fee waiver is intended to attract more customer volume on the Exchange in this product.

#### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers

the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. The Exchange believes the proposed extension of the fee waiver is equitable because the fee waiver would apply uniformly to all public customers trading SPY options. The Exchange believes the proposed extension of the fee waiver is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY options. Further, the Exchange believes the proposed fee waiver is consistent with other fees assessed by the Exchange. Specifically, the Exchange assesses manually executed broker-dealer orders a different rate (\$.25 per contract) as compared to electronically executed broker-dealer orders (\$.45 per contract).<sup>7</sup> Other exchange fee schedules also distinguish between electronically and non-electronically executed orders.<sup>8</sup>

### 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 purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to 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>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</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.

## 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-2011-034 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.

All submissions should refer to File Number SR-CBOE-2011-034. 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 Web site (<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 Web site 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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

<sup>3</sup> See Securities Exchange Act Release No. 34-62902 (September 14, 2010), 75 FR 57313 (September 20, 2010), Securities Exchange Act Release No. 34-63422 (December 3, 2010), 75 FR 76770 (December 9, 2010) and CBOE Fees Schedule, footnote 8. AIM is an electronic auction system that exposes certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price. AIM is governed by CBOE Rule 6.74A.

<sup>4</sup> The Exchange notes that transaction fees are also currently waived for customer orders of 99 contracts or less in ETF (including SPY options), ETN and HOLDRs options. See CBOE Fees Schedule, footnote 9.

<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, Section 1.

<sup>8</sup> NASDAQ OMX PHLX, Inc. categorizes its equity options transaction fees for Specialists, ROTs, SQTs, RSQTs and Broker-Dealers as either electronic or non-electronic. See NASDAQ OMX PHLX Fees Schedule, Equity Options Fees. NYSE Amex, Inc. categorizes its options transaction fees for Non-NYSE Amex Options Market Makers, Broker-Dealers, Professional Customers, Non BD Customers and Firms as either electronic or manual. See NYSE Amex Options Fees Schedule, Trade Related Charges. NYSE Arca, Inc. categorizes its options transaction fees for Customers, Firms and Broker-Dealers as either electronic or manual. See NYSE Arca Options Fees Schedule, Trade Related Charges.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

Number SR-CBOE-2011-034 and should be submitted on or before May 3, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Cathy H. Ahn,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64199; File No. SR-CBOE-2011-035]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend CBSX Maker and Taker Transaction Fees and Rebates for Transactions in Securities Priced \$1 or Greater

April 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“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 CBOE Stock Exchange (“CBSX”) transaction fees. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

#### 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 self-regulatory organization 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 those 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 parts of such statements.

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

##### 1. Purpose

This filing proposes to make changes to the CBSX Fees Schedule. On March 1, 2011, CBOE modified the CBSX Maker and Taker transaction fees and rebates for transactions in securities priced \$1 or greater.<sup>3</sup> Following that change, transactions in securities priced \$1 or greater in a select group of stocks (BAC, BIL, BGZ, C, CIM, DXD, FAZ, IAU, LVL, NBG, PVI, QID, SDS, SIRI, SKF, SNV, UDN, UNG, UUP, XLF) became subject to Maker fees of \$0.0018 per share and Taker rebates of \$0.0014 per share. Transactions in securities priced \$1 or greater in another select group of stocks (AA, AMAT, AMD, ATML, BRCD, BSX, CMCSA, COCO, CSCO, CX, DELL, DIA, DOW, DRYS, DUK, EBAY, EMC, EWJ, EWT, FAS, FAX, F, FITB, FLEX, GBG, GDX, GE, GLD, GLW, HBAN, HPQ, IDIX, INTC, IWM, IYR, JPM, KEY, LVS, MDT, MFE, MGM, MO, MRVL, MSFT, MU, NLY, NOK, NVDA, NWSA, ONNN, ORCL, PBR, PFE, PSQ, QCOM, Q, QLD, QQQQ, RF, RFMD, SBUX, S, SH, SLV, SMH, SNDK, SPLS, SPXU, SPY, SSO, SYMC, TBT, T, TLT, TNA, TSM, TWM, TXN, TZA, UCO, USO, UWM, UYG, VALE, VVO, VXX, VZ, WFC, XHB, XLB, XLE, XLI, XLK, XLP, XLU, XLV, XLY, XRT, XRX, YHOO) became subject to Maker fees of \$0.0009 per share and Taker rebates of \$0.0006 per share.

Transactions in securities priced \$1 or greater for all other securities became subject to a \$0.0001 fee.

The Exchange now proposes to change the specific securities in the groups. Under the proposed rule change, transactions in the following securities priced \$1 or greater would be subject to Maker fees of \$0.0018 per share and Taker rebates of \$0.0014 per share: ALU, BAC, BIL, C, CIM, IAU, LVL, PVI, SIRI, SNV, UDN, UNG, UUP. Transactions in the following securities priced \$1 or greater would be subject to Maker fees of \$0.0009 per share and Taker rebates of \$0.0006 per share: AA, AMD, BGZ, BRCD, BSX, CSCO, CX, DGZ, DIA, DRYS, DUK, DXD, DZZ, EWJ, FAX, F, GBG, GLD, INTC, IWM, KEY,

MSFT, NBG, NOK, PFE, Q, QQQ, RF, RFMD, SDS, S, SH, SLV, SPF, SPXU, SPY, SSO, TBT, TLT, TWM, TZA, UCO, USO, UWM, VXX, XLI, XLP.

Transactions in securities priced \$1 or greater for all other securities will remain subject to a \$0.0001 fee. The Exchange is modifying the securities in the groups and customizing transaction fees by security due to the different liquidity attributes of the different securities and CBSX’s experience in trades involving those securities.

The Exchange also proposes to re-add a reference to footnote 4, which defines a “Qualified Contingent Trade”. This reference was inadvertently removed in re-organizing the CBSX Fees Schedule in the previous filing.<sup>4</sup>

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. The Exchange is modifying the securities in the groups and customizing transaction fees by security due to the different liquidity attributes of the different securities and CBSX’s experience in trades involving those securities.

#### 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 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

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and

<sup>4</sup> See footnote 1.

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

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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64027 (March 3, 2011), 76 FR 13011 (March 9, 2011) (SR-CBOE-2011-020).