II. Adjustment of Dollar Amount Thresholds Under the Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act [4] (''Dodd-Frank Act'') amended section 205(e) of the Advisers Act to provide that, by July 21, 2011 and every five years thereafter, the Commission shall adjust for inflation the dollar amount thresholds included in rules issued under section 205(e), rounded to the nearest $100,000.[5] As discussed above, there are two dollar amount thresholds in rules issued under section 205(e), and they are in the assets-under-management and net worth tests in rule 205–3's definition of ''qualified client.''

On May 10, 2011, the Commission published a notice of intent to issue an order revising the dollar amount thresholds of the assets-under-management test and the net worth test.[6] We stated that, based on calculations of inflation since 1998 when the dollar amount thresholds were last revised, we intended to revise the threshold in the assets-under-management test from $750,000 to $1 million, and in the net worth test from $1.5 million to $2 million.[7] We also stated that these revised dollar amounts would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index, which is published by the Department of Commerce and often used as an indicator of inflation in the personal sector of the U.S. economy.[8] The revised dollar amounts would reflect inflation from 1998 to the end of 2010, and are rounded to the nearest $100,000 as required by section 205(e) of the Advisers Act, as amended by section 418 of the Dodd-Frank Act.

The Commission's notice established a deadline of June 20, 2011 for submission of requests for a hearing. No requests for a hearing have been received by the Commission.[9]

III. Effective Date of the Order

This Order is effective as of September 19, 2011.

IV. Conclusion

Accordingly, pursuant to section 205(e) of the Investment Advisers Act of 1940 and section 418 of the Dodd-Frank Act,

It is hereby ordered that, for purposes of rule 205–3(d)(1)(i) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(i)], a qualified client means a natural person who or a company that immediately after entering into the contract has at least $1,000,000 under the management of the investment adviser; and

It is further ordered that, for purposes of rule 205–3(d)(1)(ii)(A) under the Investment Advisers Act of 1940 [17 CFR 275.205–3(d)(1)(ii)(A)], a qualified client means a natural person who or a company that the investment adviser entering into the contract (and any person acting on his behalf) reasonably believes, immediately prior to entering into the contract, has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than $2,000,000 at the time the contract is entered into.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–17854 Filed 7–14–11; 8:45 am]

BILLING CODE 8011–01–P

[4] Pub. L. 111–203, 124 Stat. 1376 (2010).

[5] *See* section 418 of the Dodd-Frank Act.

[6] *See* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3198 (May 10, 2011) [76 FR 27959 (May 13, 2011)] (''Proposing Release''). The Commission also proposed for public comment certain amendments to rule 205–3 that would reflect any inflation adjustments to the rule that we issue by order, as well as other rule amendments that would (i) provide that the Commission will issue an order every five years adjusting for inflation the dollar amount tests, (ii) exclude the value of a person's primary residence from the test of whether a person has sufficient net worth to be considered a ''qualified client,'' and (iii) add certain transition provisions to the rule. The deadline for comments on the proposed rule amendments was July 11, 2011. *Id.*

[7] *See id.* at nn.17–18 and accompanying text.

[8] *See id.* at nn.19–21 and accompanying text.

[9] The Commission has received comments on the rule amendments that it proposed in May 2011, and those comments are available in the public rulemaking file S7–17–11 (available on the Commission's Web site at *http://www.sec.gov/comments/s7-17-11/s71711.shtml*). Several commenters expressed concern about the Commission's expressed intent to raise the dollar amount thresholds of rule 205–3. The Dodd-Frank Act clearly mandates that the Commission adjust the dollar amount thresholds that are the subject of this Order. The Commission intends to evaluate the comments it receives on the rulemaking proposal in its consideration of any adoption of the proposed amendments. *See* Proposing Release, *supra* note 6.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64834; File No. SR–CBOE–2011–057]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees in Volatility Index Options

July 7, 2011.

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 June 29, 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'') proposes to amend its Fees Schedule effective July 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in Volatility Index Options classes based on the percentage of volume that is effected by a PAR Official on behalf of an order originating firm or, as applicable, an executing firm. The text of the proposed rule change is availableon the Exchange's Web site (*http://www.cboe.org/legal*), 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, 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.

[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

CBOE is proposing to amend its Fees Schedule effective July 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in Volatility Index Options. CBOE amended its Fees Schedule to establish distinct PAR Official Fees in Volatility Index Options in March 2011.[3] PAR Official Fees apply to all orders executed by a PAR Official, except for customer orders (''C'' origin code) that are not directly routed to the trading floor (an order that is directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). Currently, CBOE assesses PAR Official Fees in Volatility Index Options in the amount of $.03 per contract and, like Floor Brokerage Fees, a discounted rate of $.015 per contract applies for crossed orders.[4] These fees help to offset the Exchange's costs of providing PAR Official services (*e.g.,* salaries, etc).

PAR Official Fees compensate CBOE for providing overflow services to order originating firms or, as applicable, executing firms, particularly Floor Brokers,[5] when they do not have personnel available to act as agent. CBOE is proposing to establish volume threshold tiers in Volatility Index Options for the assessment of PAR Official Fees. Those order originating firms or executing firms that maintain sufficient staff to manage their floor brokerage operations and thus, do not rely heavily on CBOE personnel to execute their orders will be subject to lower PAR Official Fees than those order originating firms, or as applicable, executing firms that route a significant portion of their orders to PAR Officials for execution. CBOE believes that those firms that rely heavily on PAR Officials to conduct their floor brokerage business, such that PAR Officials execute more than an incidental number of orders on their behalf, may obtain a minimum number of Trading Permits to access the floor. Thus, these firms subsidize their floor brokerage operations at CBOE's expense in that PAR Officials are either contractors paid by CBOE or CBOE employees. Under the current proposal, Trading Permit Holders that routinely rely on PAR Officials to execute their orders in Volatility Index Options will be subject to higher PAR Official Fees as CBOE is, in effect, subsidizing their floor brokerage operations and going beyond the Exchange's intent to provide PAR Official services as a supplementary means of execution for overflow orders.

CBOE currently assesses the same amount for PAR Official Fees and Floor Brokerage Fees in Volatility Index Options.[6] In establishing the same fee amounts for Floor Brokerage Fees and PAR Official Fees, CBOE eliminated the disparity that existed between the amounts assessed for Floor Brokerage Fees and PAR Official Fees in Volatility Index Options. However, CBOE did not take into consideration the pricing advantage gained by those firms that continue to execute a significant number of orders through a PAR Official rather than obtain an appropriate amount of Trading Permits to staff their floor brokerage operations.

CBOE is proposing to amend the Fees Schedule to establish volume threshold tiers for the assessment of the PAR Official Fees in Volatility Index Options. Specifically, CBOE is proposing to assess PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume in Volatility Index Options that is effected by a PAR Official during a calendar month. The percentage will be calculated on a monthly basis by dividing the number of contracts executed by PAR Officials on behalf of an order originating firm or executing firm (as applicable) in Volatility Index Options by the total number of contracts executed in open outcry (by or on behalf of an order originating firm or, as applicable, an executing firm) in Volatility Index Options. The following sets forth the tier levels and specific fees that would be assessed to orders that are subject to PAR Official Fees in Volatility Index Options classes:

Tier level	% monthly volume executed through PAR official	Standard orders	Crossed orders (per side)
1	0–24.99	$.03	$.015
2	25–49.99	.06	.03
3	50–74.99	.09	.045
4	75–100	.12	.06

For example, a Floor Broker Trading Permit Holder would be assessed $.06 for all standard (non-cross) orders and $.03 for all crossed orders executed by a PAR Official on behalf of the Floor Broker during a calendar month if 25.5% of the Floor Broker Trading Permit Holder's total monthly (open outcry) volume in Volatility Index Options is executed by a PAR Official (Tier 2).

Reliance on PAR Officials as the primary means of execution is inconsistent with the Exchange's intent to provide PAR Official services as a supplementary means of execution for incidental orders. CBOE recently addressed similar concerns with the PAR Official Fees that are assessed in classes other than Volatility Index Options by establishing a threshold tier that assesses PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume that is effected by a PAR Official during a

[3] *See* Securities Exchange Act Release No. 64070 (March 11, 2011), 76 FR 15025 (March 18, 2011) (SR–CBOE–2011–022).

[4] PAR Official Fees and Floor Brokerage Fees for cross orders are assessed at a discounted rate because these Fees are assessed ''per side'' and thus, these fees are equal to the amount assessed for one standard (non-cross) order.

[5] CBOE Rule 6.70 provides: ''A Floor Broker is an individual (either a Trading Permit Holder or a nominee of a TPH organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received from Trading Permit Holders or from registered broker-dealers. A Floor Broker shall not accept an order from any other source unless he is the nominee of a TPH organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, a Floor Broker who is the nominee of such organization may then accept orders directly from public customers where (i) The organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements a Floor Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of demonstrating an adequate knowledge of the securities business.''

[6] Floor Brokerage Fees are also assessed in OEX and SPX trading crowds but there are currently no PAR Officials in OEX or SPX trading crowds.

calendar month.[7] CBOE elected to exclude Volatility Index Options classes from the tier structure at that time because Volatility Index Options classes are the only classes at CBOE where Floor Brokerage Fees are also assessed. Specifically, CBOE assesses Floor Brokerage Fees in its proprietary options products. However, Volatility Index Options classes are the only proprietary classes where there is also a PAR Official available to execute orders in the trading crowd. Thus, CBOE maintained set PAR Official Fees in Volatility Index Options so that the PAR Official Fees and Floor Brokerage Fees were consistent in these classes.

After further evaluation, CBOE has determined that Trading Permit Holders continue to rely on PAR Officials for execution of orders as they are able to avoid the cost to obtain additional Trading Permits to adequately staff their business. Therefore, CBOE is proposing to establish a similar tier structure setting forth the PAR Official Fees in Volatility Index Options. CBOE is proposing to assess higher PAR Official Fees at each tier level in Volatility Index Options than the amounts assessed in other classes to account for the amount assessed for Floor Brokerage Fees in Volatility Index Option classes. As CBOE currently assesses flat Floor Brokerage Fees of $.03 per contract for standard orders and $.015 per contract for crossed orders, CBOE is proposing to establish a tier structure where the lowest tier amount is equivalent to the Floor Brokerage Fees assessed in Volatility Index Options. Thus, CBOE will not implement a fee structure that would provide an incentive for Floor Brokers to route a certain percentage of their orders to a PAR Official to avoid the Floor Brokerage Fees. CBOE believes that the proposed tier levels are reasonable and equitable in that, as provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. Further, each order originating firm or executing firm (as applicable) has the ability to control the number of orders that are routed to a PAR Official and thus, the amount of PAR Official Fees that will be assessed on a monthly basis.

An additional consideration when evaluating the equitability of the proposed tier structure is the cost of each Trading Permit. For example, Floor Broker Trading Permit Holders are subject to a $6,000 per month Trading Permit Fee.[8] A Floor Broker Trading Permit Holder that requires ten Floor Broker Trading Permits to adequately staff its business is subject to a cost of $60,000 per month for Trading Permit Fees (totaling $720,000 per year). By comparison, a Trading Permit Holder that routes the majority of its orders to PAR Officials for execution and maintains one Trading Permit is subject to a $6,000 per month Trading Permit Fee ($72,000 annually). The existing PAR Official Fee structure that imposes a flat per contract fee does not provide an incentive for firms to adequately staff their business as each Trading Permit Holder is currently assessed the same PAR Official Fees.

As provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. CBOE never intended PAR Officials to serve as the primary means of execution for order originating firms or executing firms. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials. CBOE believes that this proposal will ''level the playing field'' between those Trading Permit Holders that rely incidentally on PAR Officials and those Trading Permit Holders that rely heavily on PAR Officials by basing the PAR Official Fees on an order originating firm's or, as applicable, an executing firm's overall reliance on a PAR Official to conduct their business. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials are incurring higher costs to retain a sufficient number of Trading Permits and should not be subject to the same amount for PAR Official Fees incurred by a Trading Permit Holder that relies disproportionately on PAR Officials to conduct its floor brokerage business because it does not maintain an adequate number of Trading Permits to conduct its floor brokerage business and further, is not subject to the cost of the additional Trading Permits required to adequately staff its business.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(4)[10] of the Act in particular, in that it is designed to 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 the proposed change is equitable, reasonable and not unfairly discriminatory, in that, in general, PAR Official Fees are intended to help the Exchange recover its costs of providing PAR Official services to Trading Permit Holders and the proposed change is intended to reasonably allocate such costs to order originating firms and executing firms based on the amount of business they conduct through PAR Officials. Specifically, the proposed fee tier structure is equitable in that all order originating firms or, as applicable, executing firms, are assessed the same fees at each tier level for orders executed by a PAR Official in Volatility Index Options. CBOE's proposal to establish a tier structure where the lowest tier amount is equivalent to the Floor Brokerage Fees assessed in Volatility Index Options classes is reasonable as CBOE assesses Floor Brokerage Fees in its proprietary products, (including Volatility Index Options classes), and Volatility Index Options classes are the only classes where a PAR Official is available to execute orders at CBOE where Floor Brokerage Fees are also assessed. Further, the proposed fee structure is not unfairly discriminatory because the tiers are based on the percentage of activity executed by a PAR Official. Each firm has the ability to route fewer orders to a PAR Official in Volatility Index Options, such that they are not subject to higher PAR Official Fees.

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[11] and subparagraph (f)(2) of Rule 19b–4[12] 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

[7] *See* Securities Exchange Act Release No. 64217 (April 6, 2011), 76 FR 20793 (April 13, 2011) (SR–CBOE–2011–030).

[8] *See* CBOE Fees Schedule, Section 10.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

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*. Please include File Number SR–CBOE–2011–057 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–2011–057. 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 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–2011–057 and should be submitted on or before August 5, 2011.

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

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–17791 Filed 7–14–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64851; File No. SR–CBOE–2011–062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Its Fees Schedule Regarding Automated Improvement Mechanism Fees

July 11, 2011.

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 June 30, 2011, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule regarding Automated Improvement Mechanism (''AIM'') 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'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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule regarding broker-dealer Automated Improvement Mechanism orders. Specifically, the Exchange proposes to adopt a $0.20 per contract fee to be applied to broker-dealer orders entered as the agency/primary side of an AIM transaction (the ''Broker-Dealer AIM Agency Fee'') and make related clarifying changes to the Fees Schedule.[3]

On June 13, 2011, the Commission approved a proposed rule change to allow the Exchange to establish the Qualified Contingent Cross (''QCC'') order type.[4] In conjunction with that approval, on June 29, 2011, the Exchange filed, for immediate effectiveness, a proposed rule change to adopt fees related to the QCC order type.[5] Included in that proposed rule change is a proposal to adopt a $0.20 per contract transaction fee for the execution of broker-dealer QCC orders (the ''Broker-Dealer QCC Fee''). The Exchange intends to make available the QCC order type and make effective the related fees, including the Broker-Dealer QCC Fee, on July 1, 2011.

Like QCC, AIM involves the crossing of paired orders. AIM can be used to cross options orders through an exposed auction process. QCC can be used to cross options orders in an unexposed procedure, as long as the orders are tied to stock in a manner consistent with

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange proposes to add footnote 19 to the Fees Schedule to define the AIM Agency/Primary Fee as applying to all broker-dealer orders in all products, except volatility indexes, executed in AIM that were initially entered into AIM as a Primary/Agency Order (*i.e.,* the ''AIM Agency/Primary'' fee applies to the original order submitted to AIM that is being facilitated if such order is for a broker-dealer and does not involve a volatility index). The AIM Agency/Primary Fee will apply to such executions instead of the applicable standard transaction fee except in volatility indexes where standard transaction fees will apply. As discussed below, the ''AIM contra execution fee'' applies to the contra party's side of the trade (*i.e.,* the contracts submitted by the participant that is facilitating the order). *See* email from Jeff Dritz, Attorney, CBOE to Arisa Tinaves, Special Counsel, Division of Trading and Markets, dated July 7, 2011.

[4] *See* Securities Exchange Act Release No. 64653 (June 13, 2011), 76 FR 35491 (June 17, 2011) (SR–CBOE–2011–041) and CBOE Rule 6.53(u).

[5] *See* SR–CBOE–2011–058.