

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65874; File No. SR-C2-2011-037]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

December 2, 2011.

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 November 23, 2011, the Chicago Board Options Exchange, Incorporated [sic] (the "Exchange" or "C2") 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On September 2, 2011, the Commission approved a proposed rule change filed by the Exchange to permit on a pilot basis the listing and trading on C2 of Standard & Poor's 500 Index ("S&P 500") options with third-Friday-of-the-month ("Expiration Friday") expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities ("SPXPM").<sup>3</sup> On September 28, 2011, the Exchange filed an immediately-effective rule change to adopt fees associated with the anticipated trading of SPXPM (the "Initial SPXPM Fees Filing").<sup>4</sup> The Exchange now proposes to amend those fees associated with the trading of SPXPM.

In the Initial SPXPM Fees Filing, the Exchange adopted an SPXPM Tier Appointment Fee of \$4,000 which would be charged to any Market-Maker Permit holder that has an appointment (registration) in SPXPM at any time during a calendar month, but the Exchange also waived that fee through November 30, 2011. The Exchange hereby proposes continuing that waiver for the month of December 2011. The purpose of this waiver extension is to allow more time for the SPXPM market to develop and allow and encourage Market-Makers to join in and elect for an SPXPM Tier Appointment.

The Exchange also proposes to cease charging no transaction fee for SPXPM Trades on the Open (trades which occur upon the opening of trading). The Exchange did not intend to waive transaction fees for SPXPM Trades on the Open, and such waiver was unintentionally included in the Initial SPXPM Fees Filing. While the Exchange waives transaction fees for Trades on the Open in multiply-listed classes, the rationale for such a waiver does not apply to SPXPM Trades on the Open. C2 multiply-listed options classes are traded using a Maker-Taker pricing model in which orders that take liquidity from the marketplace are charged a transaction fee and orders that provide liquidity to the market place receive a rebate. For this model, C2 is unable to charge for Trades on the Open because it is not possible to identify

who is the Maker and who is the Taker. SPXPM utilizes a pricing model in which transactions fees are charged to Market-Makers, Professionals and customers, so differentiating Trades on the Open is not an issue and therefore such trades should be treated similarly to all other SPXPM transactions. Henceforth, transaction fees for SPXPM Trades on the Open will be assessed in the same manner as they are assessed for normal SPXPM transactions.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the 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 C2 Trading Permit Holders and other persons using Exchange facilities. Continuing the waiver of the SPXPM Tier Appointment Fee is reasonable because it will allow Market-Makers with an SPXPM Tier Appointment to avoid paying the Tier Appointment Fee for another month, and is equitable and not unfairly discriminatory because all Market-Makers with an SPXPM Tier Appointment will be able to avoid paying the SPXPM Tier Appointment Fee for December 2011. Assessing transaction fees for SPXPM Trades on the Open is reasonable because the amount of the transaction fees will be the same as the amount of SPXPM transaction fees assessed during the rest of the trading day. Assessing transaction fees for SPXPM Trades on the Open is equitable and not unfairly discriminatory because the fees will be assessed equally to all parties within each class who qualify for the fees, just as they are during the rest of the trading day.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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.

<sup>16</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. 34-65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008).

<sup>4</sup> See Securities Exchange Act Release No. 34-65471 (October 3, 2011), 76 FR 62491 (October 7, 2011) (SR-C2-2011-026).

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

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

### 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 subparagraph (f)(2) of Rule 19b-4<sup>8</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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2011-037 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-C2-2011-037. This file number should be included on the subject line if email 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 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-C2-2011-037 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65873; File No. SR-NASDAQ-2011-164]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct NOM Rules

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 29, 2011, The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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

NASDAQ is filing with the Securities and Exchange Commission ("Commission") a proposal for the NASDAQ Options Market ("NOM") to eliminate from its rules two order types and two data feeds that are not in place. Specifically, NASDAQ proposes to delete Chapter VI, Sections 1(e)(1) and

(4), 7(b)(3)(A), and 10(1)(B) and (C) to delete Reserve Orders and Discretionary Orders from its rules. Secondly, NASDAQ proposes to amend Chapter VI, Trading Systems, Section 1(a)(3), in order to eliminate from its rules NASDAQ Options Depth at Price and NASDAQ Options Net Order Imbalance, two data feeds.<sup>3</sup>

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ's principal office, 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.

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

###### 1. Purpose

The purpose of the proposed rule change is to make corrections to NOM rules that are needed as a result of transitioning to a new system. NOM recently completed the rollout of enhancements to its trading system; the deletions proposed herein have already been implemented.

First, NASDAQ proposes to eliminate two order types from its rules. Specifically, NASDAQ proposes to amend Chapter VI, Section 1(e)(1) and (4), to delete Reserve Orders and Discretionary Orders from its rules. These order types are also proposed to be deleted from Chapter VI, Section 6(a)(2), Section 7(b)(3)(A), and Section 10(1)(B) and (C).<sup>4</sup> Reserve Orders are limit orders that have both a displayed

<sup>3</sup> See <http://www.nasdaqtrader.com/TraderNews.aspx?id=dtm2011-002>.

<sup>4</sup> Because the deletion of subparagraphs (B) and (C) would leave the last sentence in paragraph (1) with a list consisting of one item (that is, subparagraph (A)), NASDAQ proposes to finish that sentence by stating that within each price level, trading interest will be executed in time priority; this is not a change to the system but rather a clarification of that sentence. The words "orders that are displayed within the System" in paragraph (A) are no longer needed because all orders are displayed now that NASDAQ will no longer have Reserve and Discretionary Orders.

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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.