SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66054; File No. SR–CBOE–2011–120]

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

December 23, 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 December 12, 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 substantially 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. 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 the 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

The Exchange proposes to implement a Volume Incentive Program (the ''Program''). Under the Program, the Exchange shall credit each Trading Permit Holder (''TPH'') the per contract amount set forth in the table below resulting from each public customer (''C'' origin code or ''C'') order transmitted by that TPH which is executed electronically on the Exchange in all multiply-listed option classes (excluding qualified contingent cross (''QCC'') trades), provided the TPH meets certain volume thresholds in a month as described below. The volume thresholds are calculated based on the customer average daily volume over the course of the month. Volume will be recorded for and credits will be delivered to the TPH Firm that enters the order into CBOE*direct.*

Customer contracts per day (''CPD'') threshold per month in multiply-listed option classes	Per contract credit at each tier per trading day
Contracts 0–100,000 Customer CPD	$.00 per contract.
Contracts 100,001–250,000 Customer CPD	$.05 per contract.
Contracts 250,001–375,000 Customer CPD	$.12 per contract.
Contracts 375,001 + Customer CPD	$.20 per contract.

The Exchange will aggregate the contracts resulting from customer orders transmitted and executed electronically on the Exchange from affiliated TPHs for purposes of the thresholds below, provided there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. Additionally, the Exchange will aggregate all the contracts contained in any complex order (*e.g.,* a 10-lot butterfly spread will count as 40 contracts).

By way of example, Electronic Access Permit (''EAP'') TPH Firm XYZ, Inc. (''XYZ'') electronically executes 3,000,000 customer (C) multiply-listed option contracts during the month of January. XYZ, also executes 1,000,000 customer (C) multiply-listed option contracts in open outcry, and 800,000 customer (C) SPX and VIX option contracts both electronically and in open outcry during the month of January, for a total of 4,800,000 customer contracts. The 1,000,000 customer (C) multiply-listed option contracts executed in open outcry would not count towards the Program, because they were not executed electronically. The 800,000 SPX and VIX option contracts would also not count towards the Program because those are not multiply-listed products. Assume for the sake of these examples that there are 20 trading days in the month. The 3,000,000 customer (C) multiply-listed option contracts executed during the month by XYZ, divided by the 20 trading days in the month, yields an average of 150,000 contracts per day (''CPD''). Per the Program, XYZ would receive a $0.00 credit for the first 100,000 CPD, and a $.05/contract credit for the 50,000 CPD above the first 100,000 CPD. Therefore, XYZ would receive a credit of $2,500 per day, multiplied by the 20 trading days in the month, for a total credit of $50,000 for the month.

For another example, EAP TPH Firm ABC, Inc. (''ABC'') electronically executes 6,000,000 customer (C) multiply-listed option contracts during the month of January. The 6,000,000 customer (C) multiply-listed option contracts executed during the month by ABC, divided by the 20 trading days in the month, yields an average of 300,000 CPD. Per the Program, XYZ would receive a $0.00 credit for the first 100,000 CPD, and a $.05/contract credit for the next 150,000 CPD (100,001 CPD–250,000 CPD), and then a credit of $0.12/contract for the last 50,000 CPD (250,001–300,000 CPD). Therefore, ABC would receive a credit of $13,500 per day, multiplied by the 20 trading days in the month, for a total credit of $270,000 for the month.

The purpose of the Program is to encourage TPHs to direct greater customer trade volume to the Exchange. Increased customer volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased retail customer order flow in order to attract professional liquidity providers (Market-Makers) is, and has been, commonly practiced in the options markets. As such, marketing fee programs,[3] customer posting incentive

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

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Footnote 6

programs,[4] and equity sharing arrangements,[5] are based on attracting public customer order flow. The Program similarly intends to attract customer order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume thresholds of the Program's tiers were set based upon business determinations and an analysis of current volume levels. The volume thresholds are intended to incentivize firms that route some customer orders to the Exchange to increase the number of orders that are sent to the Exchange to achieve the next threshold. Increasing the number of orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing ''rewards'' for increasing the volume of trades sent to the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of customer order flow to reach for higher tiers.

The Exchange proposes limiting the Program to multiply-listed options classes because CBOE does not compete with other exchanges for order flow in the Exchange's proprietary, singly-listed products. Further, the Exchange devoted a lot of resources to developing the Exchange's proprietary products, and desires to retain funds collected in order to recoup those expenditures.

The Exchange also proposes limiting the Program to electronic orders because the vast majority of TPHs that transmit customer orders in multiply-listed options to the Exchange do so electronically. Moreover, the competitive pressures from other exchanges in electronic orders and different business model for electronic orders as opposed to open outcry orders leads the Exchange to offer a rebate in order to compete with other exchanges for electronic orders.

The Exchange proposes excluding QCC trades from the Program because the vast majority of QCC trades in multiply-listed classes are facilitation trades on which the Exchange does not collect revenue. As such, it would not be viable for the Exchange to pay credits for QCC trades that do not create revenue for the Exchange.

The credits paid out as part of the program will be drawn from the general revenues of the Exchange.[6] The Exchange calculates volume thresholds on a daily basis over the course of a month instead of a flat monthly basis because some months contain more trading days than others. The proposed rule change is to take effect January 1, 2011 [sic].[7]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4)[9] 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 Program is reasonable because it will allow providers of customer order flow to receive a credit for such activity. The Program is equitable and not unfairly discriminatory because, while only customer order flow qualifies for the Program, an increase in customer order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. Similarly, offering increasing credits for executing higher numbers of customer contracts (increased credit rates at increased volume tiers) is equitable and not unfairly discriminatory because such increased rates and tiers encourage TPHs to direct increased amounts of customer contracts to the Exchange. The resulting increased volume and liquidity will benefit those TPHs who receive the lower tier levels, or do not qualify for the Program at all, by providing more trading opportunities and tighter spreads.

Limiting the Program to multiply-listed options classes is reasonable because those parties trading heavily in multiply-listed classes will now begin to receive a credit for such trading, and is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop its proprietary singly-listed options classes, and therefore needs to retain funds collected in order to recoup those expenditures.

The Exchange believes that it is reasonable to offer a rebate only for order entered electronically in an attempt to attract greater electronic business and compete with other exchanges for such business. The business models surrounding electronic orders and open outcry orders are different, and as such, the Exchange offers different incentives to encourage the entry of electronic and open outcry orders. For example, the Exchange waives the transaction fee for public customer orders in SPY and XLF options that are executed in open outcry.[10] Furthermore, in assessing whether to offer rebates, the Exchange experiences different competitive pressures from other exchanges with respect to electronic orders than it does with respect to open outcry orders. The Exchange also believes that paying a different rebate for electronic orders than it does for open outcry orders is equitable and not unfairly discriminatory because other exchanges distinguish between delivery methods for certain market participants and pay different rebates depending on the method of delivery. This type of distinction is not novel and has long existed within the industry.

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

[4] *See* NYSE Arca, Inc. Fees Schedule, page 3 (section titled ''Customer Monthly Posting Thresholds in Post/Take Executions in Penny Pilot Issues'').

[5] *See* the NYSE Amex, LLC's ''Volume-Based Equity Plan'', Securities Exchange Act Release No. 64742 (June 24, 2011) (SR–NYSEAmex–2011–18).

[6] Despite providing credits under the Program, the Exchange represents that it will continue to have adequate resources to fund its regulatory program and fulfill its responsibilities as a self-regulatory organization. *See* email from Jeff Dritz, Attorney, CBOE, to Sara Hawkins, Special Counsel, and Adam Moore, Attorney Advisor, Division of Trading and Markets, Commission, dated December 20, 2011.

[7] The Commission notes that CBOE intends the proposed rule change to be effective on January 1, 2012, not 2011, as stated in the Form 19b–4.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] *See* Exchange Fees Schedule, footnote 8.

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

[12] 17 CFR 240.19b–4(f)(2).

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.* Please include File Number SR–CBOE–2011–120 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–2011–120. 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 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–2011–120, and should be submitted on or before January 20, 2012.

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

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66050; File No. SR–FINRA–2011–071]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Increase the Trading Activity Fee Rate for Transactions in Covered Equity Securities

December 23, 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 December 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. 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

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee (''TAF'') for transactions in covered equity securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA's primary member regulatory pricing structure consists of the following fees: the Personnel Assessment (PA); the Gross Income Assessment (GIA); and the Trading Activity Fee (TAF). These fees are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[3] Because the proceeds from these fees are used to fund FINRA's regulatory mandate, Section 1 of Schedule A to FINRA's By-Laws notes that ''FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate.''[4]

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.[5] Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-Eligible Securities), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board (''MSRB'') reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[6]

The current TAF rate for covered equity securities is $0.000090 per share for each sale of a covered equity security, with a maximum charge of $4.50 per trade. This rate has been in place for trades occurring on or after July 1, 2011, and was based on estimated trading volumes for the remainder of 2011.[7] In addition, if the execution price for a covered equity security is less than the TAF rate on a per share basis, then no TAF is assessed.

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* FINRA By-Laws, Schedule A, § 1(a).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[7] *See* Securities Exchange Act Release No. 64590 (June 2, 2011), 76 FR 33388 (June 8, 2011); *Regulatory Notice* 11–27 (June 2011).