

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2014-025 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2014-025. 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 10:00 a.m. and 3:00 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-NASDAQ-2014-025, and should be submitted on or before April 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71789; File No. SR-CBOE-2014-023]

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

March 25, 2014.

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 March 12, 2014, 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 Web site (<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, 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 amend its Fees Schedule, specifically regarding the CBOE Command Connectivity Charges. Currently, for every 15 Trading Permits that a Trading Permit Holder ("TPH") that access CBOE Command via CMI holds, that TPH receives one CAS Server (plus one total backup CAS Server regardless of the number of Trading Permits that the TPH holds). This would mean that a TPH who had, say, 29 Trading Permits would only receive one CAS Server (plus the backup). The Exchange proposes to instead add a chart listing the amounts of Trading Permits and corresponding CAS Servers:<sup>3</sup>

Trading Permits	CAS Servers	Total CAS Servers
1-15	1 + 1 backup	2
16-30	2 + 1 backup	3
31-45	3 + 1 backup	4
46-60	4 + 1 backup	5
61-75	5 + 1 backup	6
76-90	6 + 1 backup	7
91+	7 + 1 backup	8

The effect of this change would be to increase the number of CAS Servers that many TPHs receive (for example, a TPH that has 29 permits would now receive two CAS Servers (plus a backup) before having to pay for an extra CAS Server (which costs \$10,000 per month), so TPHs may be able to save \$10,000.

The Exchange also proposes to change its calculation of the volume thresholds for its Liquidity Provider Sliding Scale, which provides for reduced transaction fees for Market-Makers that reach certain volume thresholds.<sup>4</sup> Currently, the volume thresholds are based on total national Market-Maker multiply-listed options volume. However, this does not account for products traded solely on

<sup>3</sup> Corresponding to this change, the Exchange proposes to delete from the "Notes" section regarding this fee the language "For every 15 Trading Permits that a TPH that accesses CBOE Command via CMI holds, that TPH receives one CAS Server (plus one total backup CAS Server regardless of the number of Trading Permits that the TPH holds)." That language will be replaced with the statement: "TPHs will receive CAS Servers based on the number of trading permits a TPH holds."

<sup>4</sup> The Liquidity Provider Sliding Scale applies in all products except mini-options, SPX, SPXpm, SRO, VIX or other VOLATILITY INDEXES, OEX or XEO (the "Excluded Products"). For more information regarding the Liquidity Provider Sliding Scale, see the CBOE Fees Schedule.

<sup>23</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.

CBOE (except the Excluded Products), but it does include volume from multiply-listed options that may not be traded on CBOE. Because the Liquidity Provider Sliding Scale provides for transaction fees for transactions that occur on CBOE, the Exchange believes that it makes sense to include towards the volume thresholds transaction volume that occurs on CBOE (even if it is in products traded only on CBOE) and not include towards the volume thresholds transaction volume in products that may not be listed on CBOE. As such, the Exchange proposes to state that, for the Liquidity Provider Sliding Scale, volume thresholds are based on total national Market-Maker volume of any options classes listed on CBOE with traded volume on CBOE during the calendar month. This will continue to exclude the Excluded Products.

The Exchange always strives for clarity in its rules and Fees Schedule, so that market participants may best understand how rules and fees apply. As such, the Exchange proposes a number of changes to clarify its Fees Schedule.

Footnote 22 of the Exchange Fees Schedule states that “For all non-facilitation business executed in AIM or open outcry, or as a QCC or FLEX transaction, transaction fees for Clearing Trading Permit Holder Proprietary and/or their Non-Trading Permit Holder Affiliates (as defined in footnote 11) in all products except SPX, SPXpm, VIX or other volatility indexes, OEX or XEO, in the aggregate, are capped at \$75,000 per month per Clearing Trading Permit Holder.” The Exchange has never considered surcharges to be “transaction fees”, as surcharges are assessed on top of transaction fees and often are adopted to offset the costs of licensing and/or developing specific Exchange products and systems. Additionally, surcharges appear separately on the invoices the Exchange provides to TPHs. As such, the Exchange proposes to explicitly state in Footnote 22 that “Surcharge fees do not count towards the cap.”

The Exchange also proposes to clarify its CBOE Proprietary Products Sliding Scale (the “Sliding Scale”), pursuant to which Clearing Trading Permit Holder Proprietary transaction fees and transaction fees for Non-Trading Permit Holder Affiliates in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES in a month will be reduced provided a Clearing Trading Permit Holder reaches certain ADV thresholds in multiply-listed options on the Exchange in a month. Effective January 2, 2014, the Exchange amended the Sliding Scale to change the different tier

thresholds from nominal contracts per month thresholds to relative contracts per month thresholds.<sup>5</sup> Indeed, the Exchange added to the “Notes” section of the Sliding Scale table the following language: “Transaction fees in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES will be reduced based on reaching the percentage thresholds in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES listed in the table.” However, the Exchange feels that more clarity can be achieved by more accurately describing what those percentages are of (the denominator in the percentage calculation). As such, the Exchange proposes to add the following language: “Percentages are calculated by accounting for all volume in OEX, XEO, SPX, SPXpm, VIX and VOLATILITY INDEXES executed with an “F” or “L” Origin Code.”

The Exchange also proposes to clarify a statement in Footnote 11. The end of Footnote 11 reads: “For facilitation orders (other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO) (“facilitation orders” for this purpose to be defined as any paired order in which a Clearing Trading Permit Holder (F) origin code or Non-Trading Permit Holder Affiliate (“L” origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order) executed electronically (including in AIM), open outcry, or as a QCC or FLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees.” However, there are a number of clarifications necessary to that statement. First, there is no way, systematically, for orders that are executed in open outcry to be identified as being “paired”. The only way to identify an open outcry order as being “facilitated” is for it to have the same executing broker and clearing firm on both sides. However, it is inaccurate to say “both sides of the order” when referring to open outcry, as, since they are not paired, they come in separately and therefore the word “order” should be replaced with the word “transaction”.

Further, the only way for a non-FLEX, non-QCC paired facilitation order to be executed electronically is via AIM. The current language could be read to indicate that there are other manners to electronically execute a paired facilitation order. Similarly, the only way for a FLEX paired order to be

executed electronically is via the Exchange’s CFLEX system. As such, the Exchange proposes to amend the statement at the end of Footnote 11 to read: “For facilitation orders (other than SPX, SPXpm, SRO, VIX or other volatility indexes, OEX or XEO) executed in open outcry, or electronically via AIM or as a QCC or CFLEX transaction, CBOE will assess no Clearing Trading Permit Holder Proprietary transaction fees. “Facilitation orders” for this purpose to be defined as any order in which a Clearing Trading Permit Holder (F) origin code or Non-Trading Permit Holder Affiliate (“L” origin code) is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the transaction (for open outcry) or both sides of a paired order (for orders executed electronically).”

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>9</sup> which requires that Exchange rules 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 that the proposed change regarding CAS Servers is reasonable because it will not cause

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> See Securities Exchange Act Release No. 71295 (January 14, 2014), 79 FR 3443 (January 21, 2014) (SR-CBOE-2013-129).

any TPHs to be assessed a greater fee than they currently are, and will allow some TPHs to pay lower fees by avoiding having to purchase an extra CAS Server. The Exchange believes that this change is equitable and not unfairly discriminatory because it will apply to all TPHs equally. The reason that a TPH that has more Trading Permits is provided more CAS Servers is to better distribute and manage bandwidth capacity (as each Trading Permit affords a TPH more bandwidth) in order to ensure better CAS Server performance.

The Exchange believes that the change to the calculation of the volume thresholds for the Liquidity Provider Sliding Scale is reasonable because the current calculation does not account for products traded solely on CBOE (except the Excluded Products), but it does include volume from multiply-listed options that may not be traded on CBOE. Because the Liquidity Provider Sliding Scale provides for transaction fees for transactions that occur on CBOE, the Exchange believes that it is reasonable and makes sense to include towards the volume thresholds transaction volume that occurs on CBOE (even if it is in products traded only on CBOE) and not include towards the volume thresholds transaction volume in products that may not be listed on CBOE. The Exchange believes that this change is equitable and not unfairly discriminatory because it will apply to all market participants who qualify for the Liquidity Provider Sliding Scale. The Exchange believes that it is equitable and not unfairly discriminatory to offer the Liquidity Provider Sliding Scale to Market-Makers only because Market-Makers take on obligations, such as quoting obligations, that other market participants do not have.

The Exchange believes that the proposed changes to clarify the Fees Schedule will serve to eliminate potential confusion regarding the fee programs described. This, in turn, will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

#### *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. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance

of the purposes of the Act because the proposed changes apply to all CBOE market participants equally. To the extent that the Liquidity Provider Sliding Scale is offered only to Market-Makers, the Exchange believes that this does not impose a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because Market-Makers take on obligations, such as quoting obligations, that other market participants do not have. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only apply to CBOE. Further, many of the proposed changes are being made not for competitive purposes, but in order to clarify the Fees Schedule. To the extent that the proposed changes may make CBOE a more attractive marketplace for market participants at other exchanges, such market participants may elect to become CBOE market participants.

#### *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>10</sup> and paragraph (f) of Rule 19b-4<sup>11</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. 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2014-023 on the subject line.

#### *Paper Comments*

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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

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