

of the Act,<sup>63</sup> for approving the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice in the **Federal Register**.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>64</sup> that the proposed rule change (SR-BX-2011-046), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>65</sup>

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

[FR Doc. 2012-2395 Filed 2-2-12; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66277; File No. SR-CBOE-2012-008]

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

January 30, 2012.

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 January 17, 2012, the Chicago Board Options Exchange, Incorporated (the "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 the 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'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 make a series of amendments to its Fees Schedule for 2012. First, the Exchange proposes to eliminate the waiver for customer fees for transactions in options on the Nasdaq 100 Index Tracking Stock ("QQQQ"). Such transactions will now be assessed a fee of \$0.18 per contract, equivalent to the fee assessed for customer transactions in options on other exchange-traded funds ("ETFs"), exchange-traded notes ("ETNs") and HOLDRs. The purpose of this proposed change is to make the fees for QQQQ options transactions equivalent to the fees for transactions on other ETFs.

The Exchange also proposes to modify the Liquidity Provider Sliding Scale to exclude SPX, VIX or other volatility indexes, OEX and XEO. This scale offers consistently-lowering fees for market participants who provide increasing liquidity. The Exchange would have preferred to modify the Liquidity Provider Sliding Scale to include only multiply-listed products because the Exchange has expended considerable resources in developing its proprietary, singly-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (for example, the singly-listed XSP options compete with the multiply-listed SPY options, both of which approximate 1/10 of the S&P 500 Index, and the singly-listed DJX options compete with the multiply-listed DIA options, both of which are based on 1/100 of the value of the Dow Jones Industrial Average). Including the multiply-listed products for qualification towards the Liquidity Provider Sliding Scale while excluding their singly-listed competitors might create a pricing advantage that might discourage trading in some of the singly-

listed products that the Exchange expended resources to develop. As such, the Exchange now proposes to include the singly-listed products for qualification towards the Liquidity Provider Sliding Scale along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the Liquidity Provider Sliding Scale. The Exchange also proposes lowering the tier levels in the Liquidity Provider Sliding Scale to reflect the exclusion of SPX, VIX or other volatility indexes, OEX and XEO. The Exchange also proposes amending the prepay amounts relating to the Liquidity Provider Sliding Scale that are listed in Footnote 10 to reflect the changed tier levels.

The Exchange proposes changing the name of the "Multiply-Listed Options Fee Cap" to the "Clearing Trading Permit Holder Fee Cap in All Products Except SPX, VIX or other Volatility Indexes, OEX or XEO." In actuality, the Multiply-Listed Options Fee Cap has always applied to some singly-listed products, and only excluded the products listed above. As such, the name has been somewhat inaccurate, and the Exchange hereby proposes to fix this issue in order to clear up any confusion.

The Exchange also proposes, for competitive reasons, to limit the Clearing Trading Permit Holder ("CTPH") Fee Cap in All Products Except SPX, VIX or other Volatility Indexes, OEX or XEO (the "Cap") to include only orders executed in open outcry or the Exchange's Automated Improvement Mechanism ("AIM"), or as qualified contingent cross ("QCC") or FLEXible Options ("FLEX Options") transactions. NASDAQ OMX PHLX LLC ("PHLX") provides for a similar \$75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.<sup>3</sup> The Exchange also proposes to include fees from QCCs and FLEX Options transactions towards the Cap to attract such orders to the Exchange. Limiting the Cap to include only orders executed in open outcry or AIM or as QCC or FLEX Options transactions allows CBOE to compete with PHLX while not foregoing collecting the necessary fees to continue to operate the Exchange.

Correspondingly, the Exchange also proposes to cease excluding AIM Contra Execution Fees from counting towards the Cap. Going forward, AIM Contra

<sup>3</sup> See PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7).

<sup>63</sup> 15 U.S.C. 78s(b)(2).

<sup>64</sup> 15 U.S.C. 78s(b)(2).

<sup>65</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.

Execution Fees will be considered in helping a CTPH reach the Cap (though CTPHs will still continue to pay the AIM Contra Execution Fees after reaching the Cap). The purpose of this change is to align and improve the Exchange's competitive position in relation to other exchanges. PHLX, as previously stated, has a similar \$75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.<sup>4</sup> By including AIM Contra Execution Fees towards the Cap, and at a lower rate than that which PHLX charges in its PIXL mechanism, the Exchange is providing a demonstrably advantageous pricing schedule for this business.<sup>5</sup> Additionally, as at PHLX, electronic fees in the busiest options classes are not counted towards the Cap. As such, the Exchange proposes to include all AIM transaction fees, including the AIM Contra Execution Fees, towards reaching the Cap (when they apply) to improve our competitive position. The Exchange would also like to encourage the use of AIM, which is a price improvement mechanism. Finally, it should be clarified that while a responder to an AIM auction pays a fee that is not counted towards the Cap, this is because only Market-Makers can respond to an AIM auction, and the Cap only applies to CTPHs (and not Market-Makers). The Cap will remain limited to CTPHs, as they contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

Similarly, PHLX waives its equity options transaction fees for firms executing facilitation orders when the firms are trading in their own proprietary accounts.<sup>6</sup> As such, the Exchange, for competitive reasons, proposes to waive the transaction fees for CTPH Proprietary facilitation orders (other than SPX, VIX or other volatility indexes, OEX or XEO) executed in AIM or open outcry, or as a QCC or FLEX Options transaction (the "CTPH Proprietary Facilitation Waiver") in order to align our competitive position and even improve upon it (as PHLX does not waive such a fee for orders executed in its PIXL mechanism, in the select symbols). The Exchange would have preferred to include only multiply-listed products in the CTPH Proprietary

Facilitation Waiver because those are the only products in which the Exchange faces competitive pricing pressures, and the Exchange has expended considerable resources in developing its proprietary, singly-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as explained above). Including the multiply-listed products in the CTPH Proprietary Facilitation Waiver while excluding their singly-listed competitors might create a pricing advantage that might discourage trading in some of the singly-listed products that the Exchange expended resources to develop. As such, the Exchange proposes to include the singly-listed products in the CTPH Proprietary Facilitation Waiver along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the CTPH Proprietary Facilitation Waiver. The CTPH Proprietary Facilitation Waiver is limited to executions in AIM or open outcry, or as a QCC or FLEX Options transaction, because those are the only ways to execute a facilitation trade on the Exchange.

It should be noted that, for the purposes of the CTPH Proprietary Facilitation Waiver, the Exchange is defining "facilitation order" as any paired order in which a CTPH ("F") origin code is contra to any other origin code, provided the same executing broker and clearing firm are on both sides of the order. The reason only CTPH orders can qualify as "facilitation orders" is that the Exchange's systems cannot determine whether or not an order is a facilitation order unless such order comes in with the "F" origin code, and only CTPH orders come in with the "F" origin code. As such, the Exchange's systems would be unable to determine whether or not an order from any other market participant is a facilitation order. Further, PHLX only waives fees on facilitation orders for firms (which are similar to CTPHs).<sup>7</sup>

Along with ceasing excluding AIM Contra Execution Fees from counting towards the Cap, the Exchange also proposes ceasing excluding contracts executed in AIM that incur the AIM Contra Execution Fee from counting towards the CBOE Proprietary Products Sliding Scale. Going forward, contracts executed in AIM that incur the AIM Contra Execution Fee will count towards helping a CTPH reach a higher tier in the CBOE Proprietary Products Sliding Scale, and thereby pay lower fees for executions in CBOE proprietary

products. The purpose of this change is to improve the Exchange's competitive position. The Exchange would also like to encourage the use of AIM, which is a price improvement mechanism. The purpose of these changes is to lower fees for CTPHs and thereby encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity.

Currently, the Exchange does not assess the marketing fee on transactions in a number of securities. The Exchange now proposes to remove the ETFs EWC, EWT, MNX, MVR, QQQQ, RSP, VPL, VWO and XBI (the "New Marketing Fee Options") from the list of securities that are not assessed the marketing fee, and begin assessing the marketing fee on qualifying transactions in those securities. Going forward, transactions in the New Marketing Fee Options will be assessed a marketing fee of \$0.25 per contract, like nearly all other ETFs. The purpose of this change is to increase volume on the New Marketing Fee Options. By assessing a marketing fee on the New Marketing Fee Options transactions, the Exchange will be able to use the money collected to attract volume, pursuant to the Exchange's marketing fee plan. The Exchange believes that the demographics of the New Marketing Fee Options order flow is inclined to seek economic considerations such as payment for order flow, so a marketing fee for the New Marketing Fee Options trades is necessary to attract volume and liquidity in the New Marketing Fee Options.

CBOE implemented on December 1, 2010,<sup>8</sup> and extended on April 1, 2011,<sup>9</sup> July 1, 2011,<sup>10</sup> and October 1, 2011<sup>11</sup> a pilot program relating to the assessment of the marketing fee in the SPY option class. Specifically, CBOE previously determined not to assess the marketing fee on electronic transactions in options on Standard & Poor's Depository Receipts ("SPY options") (a unique and active class), except that it would continue to assess the marketing fee on electronic transactions resulting from AIM pursuant to CBOE Rule 6.74A and transactions in open outcry (the "SPY Marketing Fee Waiver"). The SPY Marketing Fee Waiver is intended to

<sup>8</sup> See Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR-CBOE-2010-108).

<sup>9</sup> See Securities Exchange Act Release No. 64212 (April 6, 2011), 76 FR 20411 (April 12, 2011) (SR-CBOE-2011-033).

<sup>10</sup> See Securities Exchange Act Release No. 64818 (July 6, 2011), 76 FR 40978 (July 12, 2011) (SR-CBOE-2011-060).

<sup>11</sup> See Securities Exchange Act Release No. 65517 (October 7, 2011), 76 FR 63976 (October 14, 2011) (SR-CBOE-2011-097).

<sup>4</sup> See PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7).

<sup>5</sup> See PHLX Fee Schedule, Section IV (page 10).

<sup>6</sup> See PHLX Fee Schedule, Section II (pages 7-8).

<sup>7</sup> See PHLX Fee Schedule Section II (pages 7-8).

attract more SPY customer volume and allow CBOE market-makers to better compete for order flow. The Exchange hereby proposes to extend the SPY Marketing Fee Waiver to also include qualifying transactions in QQQQ under the same terms as those that now apply to SPY (the "SPY and QQQQ Marketing Fee Waiver") (previously, transactions in QQQQ were not subject to the marketing fee, but as QQQQ is one of the New Marketing Fee Options, the Exchange above proposes to make QQQQ transactions subject to the marketing fee). Designated Primary Market-Makers and Preferred Market-Makers can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. The marketing fee funds received by payment-accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY and QQQQ option classes. CBOE believes that the current demographics of electronic, non-AIM SPY and QQQQ option order flow is more driven by the displayed best bid or offer ("BBO") and size than payment for order flow considerations, and thus assessment of the marketing fee for those transactions is not a differentiator at this time. Going forward, the marketing fee will continue to be assessed on open outcry transactions in SPY and be assessed on open outcry transactions in QQQQ (as QQQQ is one of the New Marketing Fee Options).

This SPY Marketing Fee Waiver pilot program is scheduled to terminate on December 31, 2011. The Exchange has periodically continued to extend the SPY Marketing Fee Waiver for successive three-month periods so that the Exchange could simply allow the SPY Marketing Fee Waiver to expire should the Exchange desire that the SPY Marketing Fee Waiver would no longer apply. The Exchange now proposes to cease extending the SPY Marketing Fee Waiver for three-month periods and simply leave the SPY and QQQQ Marketing Fee Waiver in the Fees Schedule. If the Exchange later determines that the SPY and QQQQ Marketing Fee Waiver should no longer apply, the Exchange would have to file to remove the SPY and QQQQ Marketing Fee Waiver from the Fees Schedule, just like any other non-temporary provision in the Fees Schedule.

As reflected in Footnote 8 of the Fees Schedule, the Exchange currently waives the \$.18 per contract transaction fee for public customer ("C" origin code) orders in SPY and XLF options

that are executed in open outcry or AIM (the "C Waiver").<sup>12</sup> This fee waiver is due to expire on December 31, 2011. The Exchange has periodically continued to extend the C Waiver for successive three-month periods so that the Exchange could simply allow the C Waiver to expire should the Exchange desire that the C Waiver would no longer apply. The Exchange now proposes to cease extending the C Waiver for three-month periods and simply leave the C Waiver in the Fees Schedule. If the Exchange later determines that the C Waiver should no longer apply, the Exchange would have to file to remove the C Waiver from the Fees Schedule, just like any other non-temporary provision in the Fees Schedule.

The Exchange also proposes to extend the C Waiver to all ETF, ETN and HOLDRs options (the "C Waiver for Index Options"). The C Waiver for Index Options is intended to attract more customer volume on the Exchange in these products. For competitive reasons, the customer base for open outcry and AIM trading in ETF, ETN and HOLDRs options appears more sensitive to fees than the customer base for such trading in other products. Moreover, CBOE proposes the C Waiver to compete with other exchanges. For example, NYSE Arca, Inc. ("Arca") does not charge customer transaction fees for customer transactions in ETF, ETN and HOLDRs options.<sup>13</sup> As such, the Exchange desires to waive customer transaction fees for ETF, ETN and HOLDRs options executed in open outcry or via AIM in order to better compete (while Arca does not have a price improvement mechanism comparable to AIM, the Exchange desires to include AIM in the C Waiver to encourage the use of this price improvement mechanism). The Exchange also desires to apply the C Waiver for Index Options to QCC trades because a QCC trade is a paired order, and the only ways to execute paired orders are via AIM and open outcry, so QCC trades should then be included in the C Waiver for Index Options, too. The Exchange also believes that waiving the transaction fee for such customer trades in ETF, ETN and HOLDRs options will

<sup>12</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), Securities Exchange Act Release No. 34-64197 (April 6, 2011), 76 FR 20390 (April 12, 2011), Securities Exchange Act Release No. 34-64817 (July 6, 2011), 76 FR 40948 (July 12, 2011), Securities Exchange Act Release No. 34-65518 (October 7, 2011), 76 FR 63971 (October 14, 2011) and CBOE Fees Schedule, footnote 8.

<sup>13</sup> See Arca Options Fee Schedule, page 3.

encourage greater customer trading in these products. The increased volume and liquidity resulting from greater customer trading in those products will benefit all market participants trading in these products. The Exchange also proposes adding trades executed as a FLEX Options transaction to the C Waiver for Index Options for competitive reasons. A number of other exchanges do not charge for public customer FLEX Options transactions in ETF, ETN and HOLDRs options.<sup>14</sup>

The Exchange proposes raising the Floor Broker Workstation ("FBW") fee from \$225 per month (per login ID) to \$350 per month (per login ID). The Exchange's vendor that provides the FBW charges the Exchange more than \$225 per month (per login ID) for the FBW (actually, more than \$350 per month (per login ID)), and the Exchange had been subsidizing those costs for FBW users. However, it is no longer economically feasible to subsidize those costs to that great an extent. As such, the Exchange proposes increasing the FBW fee to \$350 per month (per login ID), which still includes a subsidy for FBW users (though smaller).

The Exchange also proposes raising the PULSe On-Floor Workstation ("PULSe") fee from \$225 per month (per login ID) to \$350 per month (per login ID). The Exchange expended significant resources developing PULSe, and intends to recoup some of those costs. Further, because PULSe and FBW serve similar functions, the Exchange desires to assess equivalent fees for each so as not to offer a pricing advantage for one over the other.

The Exchange also proposes to reduce Market-Maker Trading Permit monthly costs from \$6,000 per permit to \$5,500 per permit. Furthermore, for those who commit to the Market-Maker Trading Permit Holder Sliding Scale, which is available for all Market-Maker Trading Permits held by affiliated Trading Permit Holders and Trading Permit Holder ("TPH") organizations that are used for appointments in any options classes other than SPX, VIX, OEX and XEO, the Exchange proposes to reduce the monthly cost from \$6,000 per permit to \$5,500 per permit for the first 10 permits, from \$4,800 to \$4,000 per permit for permits 11-20, and from \$3,000 to \$2,500 per permit for permits 21 and greater. The purpose of this change is to reduce access costs and thereby encourage greater Market-Maker access, which thereby brings greater

<sup>14</sup> See NYSE Amex Options Fee Schedule, page 3, which shows Non BD Customer Manual transactions (the manner by which FLEX Options are traded on the NYSE Amex Options market) to be assessed a \$0.00 transaction fee.

trading activity, volume and liquidity, benefitting all market participants.

The Exchange would also like to amend the date by which a Market-Maker TPH (“MMTPH”) must commit to the Market-Maker Trading Permit Sliding Scale. The Market-Maker Trading Permit Holder Sliding Scale was instituted in SR-CBOE-2011-004, which was filed on January 3, 2011. As such, the text of the Market-Maker Trading Permit Sliding Scale was drafted to allow MMTPHs to notify the Registration Services Department of their commitments to the Market-Maker Trading Permit Sliding Scale for a year as late as January 25 of that year. However, since the rule is now in place, and the Exchange notified MMTPHs of this proposed change on December 8, 2011,<sup>15</sup> giving them ample time to commit, the Exchange proposes to amend the language to require that a MMTPH notify the Registration Services Department of such a commitment by December 25th (or the preceding business day if the 25th is not a business day) of the year prior to each year in which the MMTPH would like to commit to the Market-Maker Trading Permit Sliding Scale.

The Exchange also proposes to raise the VIX Tier Appointment fee from \$1,000 per month to \$2,000 per month. “VIX” stands for CBOE Market Volatility Index, and VIX options are a proprietary product developed by the Exchange. In order for a Market-Maker Trading Permit to be used to act as a Market-Maker in VIX options, the TPH must obtain a VIX Tier Appointment for that Market-Maker Trading Permit. Each VIX Tier Appointment may only be used with one designated Market-Maker Trading Permit. The VIX Tier Appointment fee is currently assessed to any Market-Maker Trading Permit Holder that either (a) has a VIX Tier Appointment at any time during a calendar month; or (b) trades at least 1,000 VIX options contracts in open outcry during a calendar month. VIX trading volume has increased recently, and due to increased demand, the Exchange proposes to raise the VIX Tier Appointment fee in order to recoup costs from developing VIX options, as well as other administrative costs. In a related change, the Exchange also proposes to raise the amount of the fee assessed to any Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts during a month from \$1,000 to \$2,000 in order to remain consistent with the amount of the VIX Tier Appointment fee assessed to Market-Makers. If and to the extent that

a TPH or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute VIX options transactions, the VIX options executions of that TPH or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$2,000 fee for the combined VIX options executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month.

Also, the Exchange proposes to remove from the regulatory circular regarding Trading Permit Holder Application and Other Fees language that would apply this fee to any Floor Broker Trading Permit Holder whose aggregate VIX options executed contracts during the month comprise more than 30% of the Floor Broker Trading Permit Holder’s exchange-wide total executed contracts. This language was to have been removed in SR-CBOE-2011-073, and indeed was removed from one section of the regulatory circular, as well as the Fees Schedule, but was inadvertently left in another section of the regulatory circular.<sup>16</sup> Removing this language will alleviate any confusion.

The Exchange also proposes to amend the qualification for the VIX Tier Appointment fee to state that a Market-Maker TPH that has a VIX Tier Appointment during a given month will not be assessed the VIX Tier Appointment fee unless that Market-Maker TPH trades at least 100 VIX options contracts electronically while that appointment is active. Occasionally, a Market-Maker accidentally elects for a VIX Tier Appointment, or elects for a VIX Tier Appointment and for some reason does not end up trading VIX options. Under the current language of the Fees Schedule, such a Market-Maker would still be assessed the VIX Tier Appointment fee, despite not actually trading in VIX options. The VIX Tier Appointment fee is intended to be assessed only to those Market-Makers that actually trade in VIX options. As such, the proposed change would ensure that only those Market-Makers that actually do trade in VIX options are assessed the VIX Tier Appointment fee.

The Exchange proposes to institute a Floor Broker Trading Permit Sliding Scale, which will be available for all Floor Broker Trading Permits held by affiliated TPHs and TPH organizations. Most floor broker firms have, and need,

at least two floor brokers: One to answer the phones and receive trade and order information, and another to execute trades. However, for floor broker “firms” that only have one floor broker, that broker answers the phones and the Exchange often ends up executing the trades for the floor broker. As such, in order to recoup the costs involved for the Exchange, as well as normalize base business costs across Floor Broker Trading Permit Holder operations to ensure that the Exchange is not unduly subsidizing one operation over another, the base rate for Floor Broker Trading Permits will be \$9,000 per month. However, the Exchange will also institute a sliding scale for Floor Broker Trading Permit Holders that commit to a minimum number of Floor Broker Trading Permits for the calendar year. For those who do, the TPH’s first Floor Broker Trading Permit will cost \$9,000 per month. Permits 2 through 7 will cost \$6,000 per month per permit (Tier 1), and any permits above 7 will cost a TPH \$3,000 per permit per month (Tier 2). The purpose of the Floor Broker Trading Permit Sliding Scale is to encourage floor broker firms to increase their scale and commitment to the Exchange, thereby bringing more business to the Exchange, resulting in greater trading volume and liquidity, which benefits all market participants.

To qualify for the rates set forth in Tiers 1 and 2 in the Floor Broker Trading Permit Sliding Scale, the applicable Trading Permit Holder(s) and/or TPH organization(s) must commit in advance to a specific tier that includes a minimum number of eligible Floor Broker Trading Permits for each calendar year. To do so, a Floor Broker Trading Permit Holder must notify the Exchange’s Registration Services Department by December 25th (or the preceding business day if the 25th is not a business day) of the year prior to each year in which the Floor Broker Trading Permit Holder would like to commit to this sliding scale of the tier of eligible Floor Broker Trading Permits committed to by that Floor Broker Trading Permit Holder for that year (Floor Brokers were notified of this on December 8, 2011<sup>17</sup>). Floor Brokers are not obligated to commit to either tier. However, the discounts will apply only to those that do commit to Tier 1 or Tier 2 for the calendar year. Trading Permit Holders that are not eligible for and/or do not commit to Tier 1 or Tier 2 will pay the standard rate of \$9,000 for each Floor Broker Trading Permit, regardless of the total number of Floor Broker Trading Permits used. If a TPH chooses to

<sup>16</sup> See Securities Exchange Act Release No. 65019 (August 3, 2011), 76 FR 48931 (August 9, 2011) (SR-CBOE-2011-073).

<sup>17</sup> See Exchange Regulatory Circular RG11-158.

<sup>15</sup> See Exchange Regulatory Circular RG11-158.

commit to either Tier 1 or Tier 2, that TPH will be responsible for the minimum number of permits in the commitment tier for the remainder of the calendar year. Even if a TPH does not maintain the minimum level of eligible Trading Permits in the tier, that TPH is still responsible for the minimum payment for that commitment tier for the remainder of the calendar year. For example, a TPH that commits to eight eligible permits per month will be subject to a minimum monthly access fee of \$48,000 (1 at \$9,000 plus 6 at \$6,000 plus 1 at \$3,000 = \$48,000) for that calendar year. Any additional Permits will increase the fee by the applicable amount.

A TPH will be able to commit to a higher tier of the sliding scale for the remainder of a calendar year, during a commitment year, if the TPH obtains enough eligible Floor Broker Trading Permits and provides written notification to the Registration Services Department by the 25th day of the month preceding the month in which the higher tier will be effective (or the preceding business day if the 25th is not a business day). For example, a TPH may provide written notice to commit to Tier 1 effective July 1 for the remainder of the calendar year as long as the TPH obtains enough eligible Trading Permits and provides written notice by June 25th that the TPH would like to participate in the sliding scale starting in July for the remainder of that calendar year. Even if that TPH subsequently falls below the minimum number of eligible Floor Broker Trading Permits (in the committed calendar

year), for the committed tier, the TPH will remain responsible for paying for the tier minimum for the remainder of the calendar year.

TPHs will be responsible to pay for at least the minimum amount of eligible Floor Broker Trading Permits in the committed tier for the calendar year on a monthly basis unless the TPH entirely terminates as a TPH during the year. If a TPH combines, merges, or is acquired during the course of the calendar year, the surviving TPH will maintain responsibility for the committed number of eligible Floor Broker Trading Permits.

The proposed Floor Broker Trading Permit Sliding Scale is available to all floor brokers. In essence, CBOE is offering a discounted fee in return for a commitment for a designated period of time. Trading Permit Holders are not precluded from providing notice that they wish to participate in the Floor Broker Trading Permit Sliding Scale throughout a calendar year as long as such notice is provided by the 25th day of the preceding month of effectiveness. CBOE is proposing to offer the Floor Broker Trading Permit Sliding Scale as a benefit to those Trading Permit Holders that commit in advance. There is no obligation to commit to either Tier 1 or Tier 2 of the Floor Broker Trading Permit Sliding Scale.

The Exchange also proposes to assess an additional monthly fee of \$3,000 per month to any Floor Broker Trading Permit Holder that executes more than 20,000 SPX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading

Permit that is utilized to execute SPX options transactions, the SPX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single \$3,000 fee for the combined SPX executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month. The Exchange already assesses a similar fee to Floor Broker Trading Permit Holders that execute more than 20,000 VIX transactions during a month. The purpose of this change is to reflect the opportunity provided to agents servicing customers in such a high-volume product. Further, this fee will equalize the opportunity between Market-Makers and Floor Brokers in SPX options. Also, the Exchange expended considerable resources developing SPX options and desires to recoup such expenses and other administrative costs.

The Exchange also proposes to lower the fee for the Quoting and Order Entry Bandwidth Packet (the "Packet") from \$3,000 per month to \$2,750 per month. The amount of the fee for the Packet has always been set at half the price of the base rate for a Market-Maker Trading Permit. Since the Exchange proposes to lower that amount from \$6,000 to \$5,500, the Exchange correspondingly proposes to lower the amount of the fee for the Packet to \$2,750.

The Exchange proposes amending a number of the TPH Application fees, as listed below:

Fee	Current fee amount	Proposed new fee amount
Individual .....	\$2,500	\$3,000
Non-Trading Permit Holder Customer Business .....	2,500	3,000
Associated Person .....	350	500
TPH Organization Application .....	4,000	5,000
Subject to Statutory Disqualification .....	2,750	5,000
Inactive Nominee Status Change (Trading Permit Swap).		
a. Submission before 4pm (day prior to effective date) .....	50	55
b. Submission after 4pm (day prior to effective date) .....	100	110
c. Submission after effective date .....	200	220
TPH Organization Renewal Fee .....	2,000	2,500

As before, application fees related to a TPH organization's structural change are capped at \$10,000 (e.g. change from a limited partnership to a limited liability corporation). The Trading Permit Transfer Fee is capped at \$2,000 for a Trading Permit transfer request covering multiple Trading Permits. The costs of processing of these applications and activities have increased, and the Exchange therefore proposes increasing

the fees in order to recoup such increased costs.

The Exchange proposes to adopt an Initial Proprietary Registration fee of \$50 and an Annual Proprietary Registration fee of \$25. During 2011 CBOE implemented a new proprietary trading registration requirement (the "Proprietary Trading Registration Program"), primarily at the direction of the Commission. The Proprietary

Trading Registration Program, which is operated through WebCRD, caused a significant workload increase in the Exchange's Registration Department. Over the course of the year, CBOE processed over 4,000 registrations via Web-CRD under this new requirement, of which about 2,500 required further consideration of a waiver request. The Proprietary Trading Registration Program involved significant work in

implementing the registrations, examining waiver requests and answering testing related questions. Due to the Proprietary Trading Registration Program, the Exchange hired an extra staff member to address this increased workload, as well as paid a sizable set-up fee to FINRA and incurred significant testing costs. The Proprietary Trading Registration Program will continue to require on-going work and testing and monitoring of the Web-CRD system, as well as consideration of new applicants and waiver requests. In order to offset these costs, the Exchange proposes the Initial Proprietary Registration fee and the Annual Proprietary Registration fee. The Initial Proprietary Registration fee will be payable by any TPH organization for the registration of any associated person on WebCRD with the Proprietary Trader registration. The Annual Proprietary Registration fee will be payable annually by any TPH organization for each associated person that the TPH organization maintains registered on WebCRD with the Proprietary Trader registration.

The Exchange also proposes to increase the fees charged for access to a Network Access Port (1 Gigabyte) to \$500 per month for regular access and \$1000 per month for Sponsored User access. The Exchange recently made a sizable investment to upgrade the equipment involved in the Network Access Port, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion. Moreover, this change in Network Access Port fees is in line with the amounts assessed for similar access at other exchanges. The International Securities Exchange, Inc. ("ISE") assesses a fee of \$500 for network access up to and including 1 gigabyte.<sup>18</sup>

The Exchange also proposes to increase the fees charged for a CMI Login ID and FIX Login ID to \$500 per month for regular access and \$1000 per month for Sponsored User access. Firms may access CBOEdirect via either a CMI Client Application Server or a FIX Port, depending on how their systems are configured. As with the Network Access Port, the Exchange recently made a sizable investment to upgrade the equipment involved in the CMI Client Application Servers and FIX Ports, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. Moreover,

these changes are in line with amounts assessed for connectivity at other exchanges. ISE assesses a FIX fee of \$1000 for a minimum of two monthly login IDs (so, \$500 for one).<sup>19</sup> The NASDAQ Stock Market LLC's Options Market ("NOM") assesses a fee of \$500 per FIX port per month, as well.<sup>20</sup> Regarding the Sponsored User fees, the Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion.

These proposed changes to the Fees Schedule took effect on January 1, 2012, per SR-CBOE-2011-121, which was withdrawn on January 17, 2012, the same day that this rule filing is being submitted.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>22</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. Amending the fee for customer QQQQ transactions is reasonable because the amount of the fee is equivalent for customer transactions on all other ETF options, and is equitable and not unfairly discriminatory because the same fee will be assessed for all customer transactions in QQQQ options. The amount being charged to customers, less than that assessed to other market participants for similar transactions, recognizes a historical preference towards encouraging customer transactions. Further, offering lower transaction fees for customer transactions incentivizes customers to execute trades on the Exchange, and this increased customer activity provides greater market volume and liquidity, which benefit all market participants.

Excluding SPX, VIX or other volatility indexes, OEX or XEO from the Liquidity Provider Sliding Scale is reasonable because market participants trading in those products will simply pay the normal execution fees for trading in such products, fees which have been and currently are accepted fee levels. Excluding SPX, VIX or other volatility indexes, OEX or XEO from the Liquidity Provider Sliding Scale is equitable and not unfairly discriminatory because all similarly-situated market participants

trading in those products will be charged the same fees for such transactions, and because the Exchange expended significant resources in developing those products. The Exchange would have preferred to modify the Liquidity Provider Sliding Scale to include only multiply-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as explained above). Therefore, the Exchange proposes to include the singly-listed products for qualification towards the Liquidity Provider Sliding Scale along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the Liquidity Provider Sliding Scale. Finally, lowering the tier levels in the Liquidity Provider Sliding Scale is reasonable because these lowered amounts reflect the subtraction of trades in the products that are being excluded, and because this will allow market participants to more easily reach those tiers and pay lower fees, and is equitable and not unfairly discriminatory because the same tier amounts are applicable to all market participants that qualify for the Liquidity Provider Sliding Scale.

Limiting the Cap to include only orders executed in open outcry and AIM or as a QCC or FLEX Options transaction, and thereby excluding regular non-AIM electronic orders, is reasonable because the execution of regular non-AIM electronic orders will merely continue to incur the same transaction fees they normally would; the only change is that they will no longer be cut off at the amount of the Cap. Further, other exchanges also limit similar firm fee caps in a similar, and even less-inclusive, manner.<sup>23</sup> Limiting the Cap in this fashion is equitable and not unfairly discriminatory because AIM and open outcry, as auction mechanisms, are used by CTPHs to bring liquidity to the Exchange, which benefits all market participants, while regular electronic transactions are used by CTPHs to take liquidity (since only Market-Makers can send quotes through the regular electronic system, while CTPHs can only send orders, which take liquidity) (QCC transactions can only be executed via AIM, and FLEX Options transactions can only be executed via the auction mechanisms of open outcry

<sup>23</sup> See PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7), provides for a similar \$75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.

<sup>18</sup> See ISE Schedule of Fees, page 9.

<sup>19</sup> See ISE Schedule of Fees, page 8.

<sup>20</sup> See NOM Rule 7053.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(4).

and CFLEX (which is a FLEX Options auction platform similar to AIM)). Moreover, limiting the Cap in this fashion is equitable and not unfairly discriminatory because other exchanges also limit similar firm fee caps in a similar, and even less-inclusive, manner,<sup>24</sup> and because these limits apply to all CTPHs equally. Further, while a responder to an AIM auction pays a transaction fee that is not counted towards the Cap, this is equitable and not unfairly discriminatory because only Market-Makers can respond to an AIM auction, and the Cap only applies to CTPHs, and not Market-Makers. This situation is the same for open outcry. The Cap is limited to CTPHs because they contribute capital to facilitate execution of customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

Assessing no transaction fees for CTPH Proprietary facilitation orders (other than SPX, VIX or other volatility indexes, OEX or XEO) executed in open outcry or AIM or as a QCC or FLEX Options transaction is reasonable because other exchanges also waive equity options transaction fees for firms executing facilitation orders when the firms are trading in their own proprietary account.<sup>25</sup> This change is equitable and not unfairly discriminatory because it will encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity, which will benefit all market participants, and also because it will apply to all firms equally. The CTPH Proprietary Facilitation Waiver is limited to executions in AIM or open outcry, or as a QCC or FLEX Options transaction, because those are the only ways to execute a facilitation trade on the Exchange.

Excluding SPX, VIX or other volatility indexes, OEX or XEO from the CTPH Proprietary Facilitation Waiver is equitable and not unfairly discriminatory because all similarly-situated market participants trading in those products will be charged the same fees for such transactions, and because the Exchange expended significant resources in developing those products. The Exchange would have preferred to modify the CTPH Proprietary Facilitation Waiver to include only

multiply-listed products. However, some CBOE singly-listed products are used to compete with multi-listed products that are also listed on CBOE (as described above). Therefore, the Exchange proposes to include the singly-listed products for qualification towards the CTPH Proprietary Facilitation Waiver along with their multiply-listed competitors, and only exclude SPX, VIX or other volatility indexes, OEX and XEO from the CTPH Proprietary Facilitation Waiver. Limiting the CTPH Proprietary Facilitation Waiver to orders executed via AIM or open outcry or as a QCC or FLEX Options transaction is equitable and not unfairly discriminatory because these limits apply to all CTPHs equally, and because these are the only manners in which facilitation trades can be effected.

Ceasing excluding AIM Contra Execution Fees from counting towards the Cap as well as ceasing excluding contracts executed in AIM that incur the AIM Contra Execution Fee from counting towards the CBOE Proprietary Products Sliding Scale is reasonable because it will allow for CTPHs to pay lower regular transaction fees than they currently do (though the AIM Contra Execution Fee will still be assessed). These changes are equitable and not unfairly discriminatory because they apply equally to all CTPHs, just as the Cap and the CBOE Proprietary Products Sliding Scale had prior to these changes. Additionally, these changes will encourage CTPHs to transact more business on the Exchange, thereby increasing volume and liquidity, which will benefit all market participants.

Removing the New Marketing Fee Options from the list of securities that are not assessed the marketing fee, and beginning to assess a \$0.25 per contract marketing fee on qualifying transactions in those securities, is reasonable because it is the same amount as is charged for transactions in other ETFs. This proposed change is equitable and not unfairly discriminatory because it is designed and intended to attract additional order flow in the New Marketing Fee Options to the Exchange, which would increase liquidity and benefit all market participants, and because the same fee is assessed similar [sic] transactions in nearly all other the [sic] New Marketing Fee Options.

The SPY and QQQQ Marketing Fee Waiver is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY and QQQQ options. The SPY and QQQQ options classes are

among the most active and liquid classes and trade with significant electronic trading volume. Because of their current trading profiles, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY and QQQQ transactions and therefore proposes to make permanent the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from Market-Makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY and QQQQ to the floor and AIM mechanism, respectively. Brokers take payment for order flow (the payments received from the collection of the marketing fee) into their decision-making equations regarding AIM and open outcry when deciding where to send orders in SPY and QQQQ. Accordingly, CBOE believes making permanent the waiver is equitable and not unfairly discriminatory because it reflects the trading profiles of SPY and QQQQ and is designed and intended to attract additional order flow in SPY and QQQQ to the Exchange, which would benefit all market participants.

The Exchange believes the proposed extension of the C Waiver for Index Options is equitable and not unfairly discriminatory because it would apply uniformly to all public customers trading ETF, ETN and HOLDRs options in open outcry and AIM, and because waiving the transaction fee for such customer trades is designed to attract new order flow to the Exchange. The resulting increased volume and liquidity will benefit all market participants trading in these products. The Exchange believes the proposed extension of the C Waiver for Index Options is reasonable because it would continue to provide cost savings during the extended waiver period for public customers trading SPY and XLF options and begin to provide such savings to public customers trading all other ETF, ETN and HOLDRs. Further, the Exchange believes the proposed C Waiver for Index Options 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>26</sup> Other exchange fee schedules also distinguish between electronically and non-electronically

<sup>24</sup> See PHLX Fee Schedule, Section I, Part C (page 5) and Section II (page 7), provides for a similar \$75,000 cap which also applies to firm open outcry business, but does not apply to their PIXL mechanism, which, like AIM, is a price improvement mechanism, and does not apply to electronic transactions in select symbols.

<sup>25</sup> See PHLX Fee Schedule, Section II (pages 7–8).

<sup>26</sup> See CBOE Fees Schedule, Section 1.

executed orders.<sup>27</sup> Finally, Arca does not charge customer transaction fees for customer transactions in ETF, ETN and HOLDRs options.<sup>28</sup> Adding FLEX Options to the C Waiver for Index Options is reasonable because it will allow customer FLEX Options transactions in ETF, ETN and HOLDRs options to no longer be assessed a fee, thereby saving such customers money. This addition is equitable and not unfairly discriminatory because waiving the fee for such trades is designed to attract new order flow to the Exchange. The resulting increased volume and liquidity will benefit all market participants trading in these products. Moreover, other exchanges do not charge for public customer FLEX Options transactions in ETF, ETN and HOLDRs options.<sup>29</sup> The C Waiver for Index Options is limited to AIM and open outcry executions in order to encourage use of these price improvement mechanisms, and QCC trades are included in the C Waiver for Index Options as well because QCC trades can only be executed via AIM and open outcry.

Increasing the FBW fee from \$225 per month (per login ID) to \$350 per month (per login ID) is reasonable because the Exchange is charged by the vendor that provides the FBW more than \$225 per month (per login ID) (actually, more than \$350 per month (per login ID)) and simply wants to reduce the extent to which the Exchange subsidizes such costs. This change is equitable and not unfairly discriminatory because all market participants who desire to use the FBW will be assessed the same fee.

Increasing the PULSe fee from \$225 per month (per login ID) to \$350 per month (per login ID) is reasonable because the Exchange expended significant resources developing PULSe and desires to recoup some of those costs. Moreover, the Exchange will be assessing the same amount for the FBW, which is a similar product. This change

is equitable and not unfairly discriminatory because all market participants who desire to use PULSe will be assessed the same fee, and because the same amount is being assessed for use of a similar product, the FBW.

The lowered costs for Market-Maker Trading Permits is reasonable because the fees will be lower than previously, and are equitable and not unfairly discriminatory because, as before, the tiers are available to all TPHs. Lower Market-Maker Trading Permit fees encourage more Market-Makers to access the Exchange, and more Market-Makers gives market participants more trading options and increased trading activity, volume and liquidity, which benefit all market participants. Amending the date by which MMTPHs must commit to the Market-Maker Trading Permit Holder Sliding Scale is reasonable because a commitment by December 25th of the preceding year still gives MMTPHs plenty of time to determine whether or not to commit to the Market-Maker Trading Permit Holder Sliding Scale, and is equitable and not unfairly discriminatory because all MMTPHs will be subject to that same deadline.

Amending the qualification for the VIX Tier Appointment fee to state that a Market-Maker TPH that has a VIX Tier Appointment during a given month will not be assessed the VIX Tier Appointment fee unless said Market-Maker TPH trades at least 100 VIX contracts electronically while that appointment is active is reasonable because the change will prevent those that do not at least somewhat regularly trade in VIX from being assessed the VIX Tier Appointment fee. This change is equitable and not unfairly discriminatory because it ensures that the VIX Tier Appointment fee is not assessed to those Market-Makers who are not trading in VIX. The 100-contract threshold achieves this purpose because it is a sufficiently small number of contracts and yet leaves some small room for an accidental or minor VIX trade.

Increasing the VIX Tier Appointment fee is reasonable because the amount, \$2,000, is within the range of other tier appointment fees assessed by the Exchange (for example, the SPX Tier Appointment fee is \$3,000)<sup>30</sup>, and because market demand will sustain such a fee. This proposed change is also equitable and not unfairly discriminatory because it will be assessed to all MMTPHs that either (a) have a VIX Tier Appointment at any

time during a calendar month and trade at least 100 VIX contracts electronically while that appointment is active; or (b) trade at least 1,000 VIX options contracts in open outcry during a calendar month. Increasing the monthly fee for a Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts in a month is reasonable because this amount is equal to the amount of the VIX Tier Appointment fee (as they were equal prior to these changes), and is equitable and not unfairly discriminatory because the fee will be assessed to any and all Floor Broker Trading Permit Holders that qualify for the fee.

The proposed increase in the fee assessed for one Floor Broker Trading Permit is reasonable because lone floor brokers almost always require the Exchange to do extra work for the floor broker, while floor brokers with two or more trading permits never do, and the Exchange must recoup related costs. This increase is equitable and not unfairly discriminatory because the same amount will be assessed to all lone floor brokers. The Floor Broker Trading Permit Sliding Scale is reasonable because the amounts for Tier 1 are the same on a per permit basis as they currently are, and the amounts for Tier 2 are lower than the current amounts. The Floor Broker Trading Permit Sliding scale is equitable and not unfairly discriminatory because offering lower costs to TPHs that get more permits will encourage floor broker firms to bring more floor brokers to the Exchange, thereby bringing more business to the Exchange, resulting in greater trading volume and liquidity, which benefits all market participants.

The proposed monthly fee of \$3,000 per month to any Floor Broker Trading Permit Holder that executes more than 20,000 SPX contracts during the month is reasonable because the same amount is assessed to Market-Makers for an SPX tier appointment. This fee is equitable and not unfairly discriminatory because it will equalize opportunity between Market-Makers and Floor Brokers trading in SPX options, because it reflects the opportunity provided to agents servicing customers in such a high-volume product, and because the Exchange expended considerable resources in developing SPX and desires to recoup such expenses and other administrative costs.

The lowered fee for the Packet is reasonable because the fee will be lower than previously, and is equitable and not unfairly discriminatory because, as before, the fee will be applied to all parties who desire the Packet. Lower Packet fees encourage more Market-

<sup>27</sup> PHLX categorizes its equity options transaction fees for Specialists, ROTs, SQTs, RSQTs and Broker-Dealers as either electronic or non-electronic. See 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. Arca categorizes its options transaction fees for Customers, Firms and Broker-Dealers as either electronic or manual. See Arca Options Fees Schedule, Trade Related Charges.

<sup>28</sup> See Arca Options Fee Schedule, page 3.

<sup>29</sup> See NYSE Amex Options Fee Schedule, page 3, which shows Non BD Customer Manual transactions (the manner by which FLEX Options are traded on the NYSE Amex Options market) to be assessed a \$0.00 transaction fee.

<sup>30</sup> See Exchange Fees Schedule, Section 10(A)(ii).

Makers to access the Exchange, and more Market-Makers gives market participants more trading options and increased trading activity, volume and liquidity, which benefit all market participants.

The proposed increases in TPH Application fees are reasonable because such increases are necessary to cover the increased costs of processing such applications and activities. The proposed increases in TPH Application fees are equitable and not unfairly discriminatory because they apply equally to all qualifying market participants.

The proposed adoption of the Initial Proprietary Registration fee and the Annual Proprietary Registration fee is reasonable because both fees are necessary to offset the costs of the Proprietary Trading Registration Program, and because the amount of the fees are minimal. The adoption of these fees is equitable and not unfairly discriminatory because they will be assessed equally to all market participants that qualify for the fees.

The proposed change to increase the Network Access Port fees is reasonable because the fees are within the same range as those assessed on other exchanges,<sup>31</sup> and because such increase will assist in recouping expenditures recently made by the Exchange to upgrade the CBOEdirect connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. The proposed changes to increase the fees assessed for CMI Login IDs and FIX Login IDs are also reasonable because such fees are within the same range as those assessed on other exchanges<sup>32</sup>, and because such increases will assist in recouping expenditures recently made by the Exchange to upgrade the CBOEdirect connectivity equipment. This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants. Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users. Finally, these

increases maintain the same proportionate amounts that are paid by regular users relative to Sponsored Users.

Changing the name of the Cap to more accurately reflect its nature furthers the objectives of Section 6(b)(5)<sup>33</sup> of the Act in particular in that it is designed to clear up any potential confusion, which serves 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.

#### *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>34</sup> and subparagraph (f)(2) of Rule 19b-4<sup>35</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-CBOE-2012-008 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-2012-008. 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-CBOE-2012-008 and should be submitted on or before February 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

[FR Doc. 2012-2409 Filed 2-2-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>31</sup> See ISE Schedule of Fees, page 9.

<sup>32</sup> See ISE Schedule of Fees, page 8 and NOM Rule 7053.

<sup>33</sup> 15 U.S.C. 78f(b)(5).

<sup>34</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>35</sup> 17 C.F.R. 240.19b-4(f)(2).

<sup>36</sup> 17 CFR 200.30-3(a)(12).