

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68702; File No. SR-CBOE-2013-002]

### 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 18, 2013.

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 7, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. 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.

#### 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 make a number of amendments to its Fees Schedule. First, the Exchange proposes to amend the fees applicable to orders for a joint back office ("JBO") account to be cleared into the Firm range at the Options Clearing Corporation ("JBO Orders"). Until November 1, such orders were marked with the "F" origin code and were included within the category of Clearing Trading Permit Holder Proprietary orders (and assessed fees as if they were Clearing Trading Permit Holder Proprietary orders). As of November 1, the Exchange assigned a new origin code ("J") to JBO Orders,<sup>3</sup> but continued to assess the same fees for JBO Orders as if they were Clearing Trading Permit Holder Proprietary orders.<sup>4</sup>

The Exchange now proposes to increase the fees for JBO Orders to the same amounts as are assessed to Professional and Voluntary Professional orders (except for SPX trades).<sup>5</sup> This would involve increasing the following fees for JBO Orders (fee amounts are per-contract):

Product	Execution type	Previous fee	New fee
Equity, ETF, ETN, HOLDRs and Index Options <sup>6</sup> .....	Manual (Penny and Non-Penny Classes) .....	\$0.20	\$0.25
Equity, ETF, ETN, HOLDRs and Index Options <sup>7</sup> .....	Electronic (Penny and Non-Penny Classes) <sup>8</sup> .....	<sup>9</sup> 0.20	0.30
Proprietary Index Options <sup>10</sup> .....	All .....	0.25	0.40
SPX Range Options (SRO) .....	All .....	0.50	0.80
Credit Default Options and Credit Default Basket Options.	All .....	0.20	0.85

The Exchange proposes assessing JBO Orders these increased fee amounts because JBOs do not have the obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, or financial obligations, that Clearing Trading Permit Holders must take on. Further, unlike Clearing Trading Permit Holders, JBOs do not need to be Exchange Trading Permit Holders. Instead, JBOs are able to effect

transactions on the Exchange through a Clearing Trading Permit Holder. As such, JBOs operate more like Professional customers, in that they do not possess these obligations and are merely trading for themselves.

The acts of assigning JBO Orders their own origin code and assessing them different fee amounts from Clearing Trading Permit Holder Proprietary orders (and thereby listing JBO Orders separately from Clearing Trading Permit

Holder Proprietary orders) necessitate a number of other changes to the Fees Schedule. First, footnote 11 of the Fees Schedule states that the Clearing Trading Permit Holder Fee Cap in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO (the "Fee Cap") and CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the "Sliding Scale") applies to Clearing Trading Permit Holder

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See CBOE Regulatory Circulars RG12-118 (August 27, 2012) and RG12-136 (October 5, 2012).

<sup>4</sup> See Securities Exchange Act Release No. 68163 (November 6, 2012), 77 FR 67701 (November 13, 2012) (SR-CBOE-2012-098).

<sup>5</sup> SPX is traded on the Exchange's Hybrid 3.0 system, which does not recognize Professional and Voluntary Professional orders. As such, Professional and Voluntary Professional orders in

SPX are assessed the same fees as Customer SPX orders. The Exchange instead proposes to assess the same fees for JBO Orders in SPX that the Exchange proposes to assess for JBO Orders in other proprietary index options.

<sup>6</sup> Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

<sup>7</sup> Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

<sup>8</sup> Including CFLEX AIM executions ("AIM" stands for the Exchange's Automated Improvement Mechanism).

<sup>9</sup> This proposed rule change filing also proposes to increase the fee for Clearing Trading Permit Holder Proprietary electronic executions (including CFLEX AIM executions) in equity, ETF, ETN, HOLDRs and index options (excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES) from \$0.20 to \$0.25 per contract. As such, the fee for JBO Orders for such executions would only be \$0.05 more per contract than for similar Clearing Trading Permit Holder Proprietary executions.

<sup>10</sup> SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

Proprietary orders ("F" origin code), except for orders of joint back-office ("JBO") participants. Footnote 12 of the Fees Schedule also states that the Clearing Trading Permit Holder Proprietary Transaction Fee shall be waived for Clearing Trading Permit Holders, except JBO participants, executing facilitation orders in multiply-listed FLEX Options classes. Because JBO Orders are no longer included in or listed with Clearing Trading Permit Holder Proprietary orders on the Fees Schedule, there is no reason for them to be excepted out in this manner (and indeed, it would be confusing to do so). Therefore, the Exchange proposes to remove these references to JBOs from footnotes 11 and 12.

Similarly, footnote 13 caps transaction fees for a number of market participants (including Clearing Trading Permit Holders) at \$1,000 for all (i) merger strategies and (ii) short stock interest strategies executed on the same trading day in the same options class. Footnote 13 also caps transaction fees for a number of market participants (including initiating Clearing Trading Permit Holders) at \$25,000 per month for all merger strategies, short stock interest strategies, reversals, conversions and jelly roll strategies (together, the "Strategy Caps"). As both of these Strategy Caps apply to Clearing Trading Permit Holders, they also applied to JBO Orders. The Exchange wishes to continue to apply such Strategy Caps to JBO Orders. As such, the Exchange proposes to explicitly state that these Strategy Caps apply to JBO participants.

Footnote 14 states that the Surcharge Fees apply to all non-public customer transactions (*i.e.* CBOE and non-Trading Permit Holder market-maker, Clearing Trading Permit Holder and broker-dealer), including voluntary professionals, and professionals. Because JBOs are not currently stated explicitly in footnote 14 (as they were included within the category of Clearing Trading Permit Holder), the Exchange now proposes to add a reference in this footnote in order to clarify that the Surcharge Fees apply to JBO Orders.

Footnote 19 applies the AIM Agency/Primary Fee to a variety of market participants (including Professionals and Voluntary Professionals) for orders in all products, except volatility indexes, executed in AIM, SAM (the Exchange's Solicitation Auction Mechanism), FLEX AIM and FLEX SAM auctions, that were initially entered as an Agency/Primary Order. Because JBO Orders could be entered on the Agency/Primary side of AIM, SAM, FLEX AIM and FLEX SAM auctions, the Exchange proposes to add a reference to JBO participant orders to footnote 19 to state that such orders will be subject to the AIM Agency/Primary Fee.

The Exchange also proposes to amend its fees for customer transactions in VIX volatility index options ("VIX options"). Currently, all customer VIX options transactions incur a fee of \$0.40 per contract. The Exchange proposes to lower the fee for customer transactions in VIX options whose premium is less than \$1.00 to \$0.25 per contract, and raise the fee for customer transactions in VIX options whose premium is greater than or equal to \$1.00 to \$0.45 per contract. The purpose of these proposed changes is to provide greater incentives for customers to trade VIX options. Most of the VIX options currently trading are below a premium of \$1.00 (due to the low price of the underlying index), so the lowered fee will encourage more trading of such options. The increase of the fee for customer transactions in VIX options whose premium is greater than or equal to \$1.00 is being utilized in order to achieve some level of revenue balance in connection with the lowered fee for customer transactions in VIX options whose premium is less than \$1.00. On the whole, the Exchange expects the per-contract fee for all customer VIX options transactions to decrease due to these two changes.

The Exchange proposes to increase the SPX (including SPXW) Index License Surcharge Fee (the "SPX Surcharge") from \$0.10 per contract to \$0.13 per contract (and from \$0.20 per contract to \$0.26 per contract for SPX Range Options).<sup>11</sup> The Exchange licenses from Standard & Poor's the

right to offer an index option product based on the S&P 500 index (that product being SPX and other SPX-based index option products). In order to recoup the costs of the SPX license, the Exchange assesses the SPX Surcharge. However, the cost of that license works out to more than the current SPX Surcharge amount of \$0.10 per SPX contract traded (or even the proposed SPX Surcharge amount of \$0.13 per contract), so the Exchange ends up subsidizing that SPX license cost. The Exchange therefore proposes to increase the SPX Surcharge from \$0.10 per contract to \$0.13 per contract in order to recoup more of the costs associated with the SPX license. The Exchange will still be subsidizing the costs of the SPX license.

The Exchange also proposes increasing the fee assessed to Clearing Trading Permit Holder Proprietary orders for electronic executions (including CFLEX AIM and FLEX Options) in equity, ETF, ETN HOLDERS and index options<sup>12</sup> from \$0.20 per contract to \$0.25 per contract. This change is proposed due to competitive reasons and to better reflect the costs associated with supporting a larger number of option classes, option series, and overall transaction volumes that have grown over time. Further, this increased amount is within the range of fees assessed for similar transactions on other exchanges.<sup>13</sup>

The Exchange also proposes to amend its Liquidity Provider Sliding Scale, which applies to Liquidity Provider (CBOE Market-Maker, DPM, e-DPM and LMM) transaction fees in all products except SPX, SRO, VIX or other volatility indexes, OEX or XEO. A Liquidity Provider's standard per-contract transaction fee shall be reduced to the fees shown on the Liquidity Provider Sliding Scale as the Liquidity Provider reaches the contract volume thresholds shown on the Liquidity Provider Sliding Scale in a month. The Exchange proposes to amend the tier volume thresholds and fees for each tier as follows:

Tier	Current volume threshold (contracts per month)	Proposed volume threshold (contracts per month)	Current fee (per contract)	Proposed fee (per contract)
1	1–51,000	1–100,000	\$0.20	\$0.25
2	51,001–810,000	100,001–2,000,000	0.18	0.17

<sup>11</sup> The exposure provided by Range Options is equivalent to four option positions. As such, the Exchange determined to assess an SPX Range Options Surcharge Fee of twice the amount of the SPX Surcharge (*See* Securities Exchange Act Release No. 67777 (September 4, 2012), 77 FR 55515 (September 10, 2012) (SR-CBOE-2012-084)).

As the Exchange hereby proposes to increase the amount of the SPX Surcharge, the Exchange correspondingly proposes to increase the SPX Range Options Surcharge Fee by the same proportion.

<sup>12</sup> Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

<sup>13</sup> The International Securities Exchange, LLC ("ISE") assesses a Taker fee of \$0.33 per contract for firm proprietary orders in select symbol (*see* ISE Schedule of Fees, Section 1). The NASDAQ OMX PHLX LLC ("PHLX") assesses a Taker fee of \$0.45 per contract for firm orders (*see* PHLX Pricing Schedule, Section 1A).

Tier	Current volume threshold (contracts per month)	Proposed volume threshold (contracts per month)	Current fee (per contract)	Proposed fee (per contract)
3 .....	810,001–2,055,000 .....	2,000,001–4,000,000 .....	0.15	0.10
4 .....	2,055,001–3,285,000 .....	4,000,001–6,000,000 .....	0.10	0.05
5 .....	3,285,001–6,300,000 .....	6,000,001+ .....	0.03	0.03
6 .....	6,300,001+ .....	Tier 6 eliminated .....	0.01	Not applicable

The purpose of amending the tier volume thresholds and fees for such tiers is to adjust for current volume trends and demographics across the Liquidity Provider population and to rationalize fees across that population.

The Exchange also proposes to amend some of the language in footnote 10 of the Fees Schedule regarding prepayment for the Liquidity Provider Sliding Scale. First, the Exchange proposes to delete the prepayment amounts listed in footnote 10, as they will not be relevant due to the proposed changes to the tier volume thresholds and fees for each tier that are discussed above. Those prepayment amounts listed functionally required prepayment of annual fees for the first two tiers of the Liquidity Provider Sliding Scale in order to qualify for tiers 3 and above of the Liquidity Provider Sliding Scale. The Exchange proposes to delete the listed prepayment amounts and instead just list the tier numbers themselves. The Exchange also proposes to remove the requirement that a prepayment for the entire year be made for the first two tiers of the Liquidity Provider Sliding Scale in order for a Liquidity Provider to be eligible for the fees applicable to tiers 3–5 of the Liquidity Provider Sliding Scale. This means that a Liquidity Provider will no longer be prohibited from being eligible for the fees applicable to tiers 3–5 if the Liquidity Provider did not prepay for the first two tiers for the entire year. Instead, a prepayment can be made for the first two tiers of the Liquidity Provider Sliding Scale at any time during the year to be eligible for the fees applicable to tiers 3–5 for the remainder

of the year. The amended statement will read that “A Liquidity Provider can elect to prepay to be eligible for the fees applicable to tiers 3–5 of the sliding scale for the remainder of the year at any time during the year, but such prepayment (and eligibility) will only be applied prospectively for the remainder of the year.” The purpose of this proposed change is to make it easier for Liquidity Providers to qualify for the lower fees in tiers 3–5 without having to pre-commit to the entire year. The Exchange also proposes to delete the statement that “If a Liquidity Provider prepays annual fees for the first four tiers of the sliding scale, the Liquidity Provider will receive a \$410,960 prepayment discount (total amount of the prepayment will be \$5,067,840)”. The Exchange proposes deleting this prepayment discount for economic reasons and to allow the Exchange to retain fees in order to manage Exchange administrative and regulatory expenses.

The Exchange proposes to amend any references in the Fees Schedule to CBOE *direct* to refer to CBOE Command, as the manner through which Trading Permit Holders (“TPHs”) connect to the CBOE System is now called CBOE Command. Such references can be found in the title of the table describing Connectivity Charges, in the notes to the Volume Incentive Plan table, and in footnote 27. All will be updated to refer to CBOE Command instead of CBOE *direct*.

The Exchange also proposes to amend its connectivity fees. In order to connect to CBOE Command, which allows a TPH to trade on the CBOE System, a TPH must connect via either a CMI or

FIX interface (depending on the configuration of the TPH’s own systems). For TPHs that connect via a CMI interface, they must use CMI CAS Servers. The Exchange proposes to state that, 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). If a TPH elects to connect via an extra CMI CAS Server (in order to segregate TPH users for business or availability purposes) beyond the TPH’s allotted number of CMI CAS Servers (based on the number of Trading Permits the TPH holds), that TPH will be assessed a fee of \$10,000 per month for each extra CMI CAS Server. The Exchange will aggregate the Trading Permits from affiliated TPHs (TPHs with at least 75% common ownership between the firms as reflected on each firm’s Form BD, Schedule A) for purposes of determining the number of Trading Permits a TPH holds. The purpose of this proposed change is to manage the allotment of CMI CAS Servers in a fair manner and to prevent the Exchange from being required to expend large amounts of resources (the provision and management of the CMI CAS Servers can be costly) in order to provide TPHs with an unlimited amount of CMI CAS Servers. The purpose of the fee for extra CMI CAS Servers is to cover the costs related to the provision, management and upkeep of such CMI CAS Servers.

The Exchange also proposes to amend its Non-Standard Booth Rental Fees for booths on the trading floor as follows:

Length of lease	1 year (current)	1 year (proposed)	2 years (current)	2 years (proposed)	3 years (current)	3 years (proposed)
Booth Size	Per Sq. Ft.					
Extra-Large (1000 sq. ft. or greater) .....	\$5.50	2.83	5.34	2.75	5.23	2.69
Large (800–999 sq. ft.) .....	8.00	4.12	7.76	4.00	7.60	3.91
Medium (401–799 sq. ft.) .....	9.50	4.89	9.22	4.74	9.03	4.65
Small (400 sq. ft. or less) .....	15.00	7.72	14.55	7.49	14.25	7.33

As previously [sic], the fees for committing to a longer lease are lower than those for committing to a one-year lease (the fee for a two-year lease is 97% of the fee for a one-year lease, and the

fee for a three-year lease is 95% of the fee for a one-year lease; the proportions remain the same for the lowered proposed fees). The Exchange proposes lowering the Non-Standard Booth

Rental fees in order to encourage rental of booth space on and around the Exchange trading floor.

The Exchange also proposes to amend the WebCRD<sup>SM</sup> fees listed on its Fees

Schedule. Such fees are collected and retained by the Financial Industry Regulatory Authority, Inc. ("FINRA") via the WebCRD<sup>SM</sup> registration system for the registration of associated persons of Exchange TPHs and TPH organizations that are not also FINRA members. The Exchange merely lists such fees on its Fees Schedule. FINRA recently filed a proposed rule change to increase a number of these fees (the "FINRA Fee Change").<sup>14</sup> The FINRA Fee Change increases the FINRA Non-Member Processing Fee from \$85 to \$100, the FINRA Annual System Processing Fee Assessed only during Renewals from \$30 to \$45, and the FINRA Disclosure Processing Fee from \$95 to \$110. The FINRA Fee Change also applies the FINRA Disclosure Processing Fee (which already applied to Form U-4 and U-5 filings and their amendments) to Form BD filings and corresponding amendments.

The FINRA Fee Change also amended FINRA's Fingerprint Processing Fees. In 2012, FINRA only offered one set of fees (\$27.50 for the initial submission, \$13.00 for the second submission, and \$27.50 for the third submission). For 2013, FINRA is offering two sets of fees. For fingerprints submitted on paper card, the fees will be \$44.50 per initial submission, \$30.00 per second submission, and \$44.50 per third submission. For fingerprints submitted electronically, the fees will be \$29.50 per initial submission, \$15.00 per second submission, and \$29.50 per third submission. The FINRA Fee Change also increases from \$13.00 to \$30.00 the fingerprint processing fee for those submitted by TPHs or TPH organizations on behalf of their associated persons who had had their prints processed through a self-regulatory organization other than FINRA.

## 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>15</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

6(b)(5)<sup>16</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 facilitation 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. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>17</sup> which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Increasing the fee amounts for JBO Orders, as described in Item 3(a) above, is reasonable because the amounts of all such fees are within the range of fees assessed to other market participants for the same types of transactions. Specifically, the proposed amounts of the increased fees are equivalent to the amounts of such fees assessed to Professionals and Voluntary Professionals (except for SPX trades). Assessing JBO Orders the increased fee amounts (the same amounts as Professionals and Voluntary Professionals) is equitable and not unfairly discriminatory because JBOs do not have the obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, or financial obligations, that Clearing Trading Permit Holders must take on. Further, unlike Clearing Trading Permit Holders, JBOs do not need to be Exchange Trading Permit Holders. Instead, JBOs are able to effect transactions on the Exchange through a Clearing Trading Permit Holder. As such, JBOs operate more like Professional customers, in that they do not possess these obligations and are merely trading for themselves.

Removing references in footnotes 11 and 12 of the Fees Schedule that except JBO Orders out of Clearing Trading Permit Holder Proprietary orders for the sake of the Fee Cap and the Sliding Scale eliminates potential investor confusion, since JBO Orders no longer are marked with the "F" origin code, included within the category of Clearing Trading Permit Holder Proprietary orders, or assessed fees as if they were Clearing Trading Permit Holder Proprietary orders. This elimination of

investor confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest. Similarly, explicitly stating that JBO Orders (which, because they were marked with the "F" origin code and assessed fees as if they were Clearing Trading Permit Holder Proprietary orders, have been subject to the Strategy Caps and Surcharge Fees) will still be subject to the Strategy Caps and Surcharge Fees also prevents investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Applying the AIM Agency/Primary Fee to the orders of JBO participants (JBO Orders) is reasonable because the amount of the AIM Agency/Primary Fee will be the same for JBO Orders as it is for the orders of other market participants to whom the AIM Agency/Primary Fee applies. Applying the AIM Agency/Primary Fee to the orders of JBO participants is equitable and not unfairly discriminatory because the AIM Agency/Primary Fee applies to other market participants who reasonably could be foreseen as entering an order on the Agency/Primary side of AIM, SAM, FLEX AIM and FLEX SAM auctions.

The proposed changes to the customer VIX options transaction fees are reasonable because the amounts of the new fees are within the range of fees assessed for customer transactions in other CBOE proprietary products. Indeed, the fee for customer transactions in SPX options whose premium is less than \$1.00 is \$0.35 per contract, and the fee for customer transactions in SPX options whose premium is greater than or equal to \$1.00 is \$0.44 per contract. The proposed changes to the customer VIX options transaction fees are equitable and not unfairly discriminatory because they are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. Customer fees for VIX options will still be below than those assessed to broker-dealers and non-Trading Permit Holder Market-Makers (among other market participants) because customers are not assessed a Surcharge Fee for VIX options transactions.

Assessing a higher fee for customer transactions in VIX options whose premium is greater than or equal to \$1.00 than for customer transactions in VIX options whose premium is less than

<sup>14</sup> See Securities Exchange Act Release No. 67247 (June 25, 2012) 77 FR 38866 (June 29, 2012) (SR-FINRA-2012-030). These new fees and fee amounts are discussed in FINRA Regulatory Notice 12-32, available at <http://www.finra.org/Industry/Regulation/Notices/2012/P127240>, and are listed in the listing of FINRA's 2013 Regulatory Fees, available on the FINRA Web site at <http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/P197266>.

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78f(b)(4).

\$1.00 is equitable and not unfairly discriminatory because the Exchange expects the per-contract fee for all customer VIX options transactions to decrease due to these two changes. Most VIX options have a premium below \$1.00, so the lowered fee will encourage more trading of such options. The increase of the fee for customer transactions in VIX options whose premium is greater than or equal to \$1.00 is being utilized in order to achieve some level of revenue balance in connection with the lowered fee for customer transactions in VIX options whose premium is less than \$1.00. Further, the Exchange currently offers different fees depending on the premium for customer transactions in SPX options (as described in the previous paragraph).

Increasing the SPX Surcharge (and SPX Range Options Surcharge Fee) is reasonable because the Exchange still pays more for the SPX license than the amount of the proposed SPX Surcharge (meaning that the Exchange is, and will still be, subsidizing the costs of the SPX license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the SPX Surcharge applies. Also, in proposing to increase the SPX Surcharge by 30%, the Exchange merely also proposes to increase the SPX Range Options Surcharge Fee in the same proportion.

The proposed increase in the fee assessed to Clearing Trading Permit Holder Proprietary orders for electronic executions (including CFLEX AIM and FLEX Options) in equity, ETF, ETN HOLDERS and index options<sup>18</sup> is reasonable because the increased amount (\$0.25 per contract) is within the range of fees assessed to other market participants for the same type of transactions (for example, broker-dealers are assessed a fee of as much as \$0.60 per contract for such transactions, and Professionals are assessed a fee of \$0.30 per contract for such transactions). This proposed increase is equitable and not unfairly discriminatory because it will be applied to all Clearing Trading Permit Holder Proprietary orders. The amount of the fee will still be lower than that assessed to all other CBOE market participants (except customers), as Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that those other market participants do not

need to take on. Finally, the proposed increased fee amount is within the range of fee amounts assessed by other exchanges for similar transactions by similar market participants.<sup>19</sup> Assessing a different fee amount for electronic executions than for manual executions is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures. Moreover, 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. Further, in assessing what fee amounts to assess, 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 assessing a different fee 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.

The amendments to the tier volume thresholds and corresponding fees for the Liquidity Provider Sliding Scale are reasonable because even the amount of the highest fee (assessed at the lowest tier) is within the range of fees assessed to other CBOE market participants<sup>20</sup> and because, as a Liquidity Provider executes more contracts in a month, that Liquidity Provider will pay lower fees for such executions. Assessing lower fees for executing more contracts is equitable and not unfairly discriminatory because it provides Liquidity Providers with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants (including those Liquidity Providers only reaching the lower tiers of the Liquidity Provider Sliding Scale). Offering lower fees for Liquidity Providers than for other CBOE market participants (such as Broker-Dealers, Professionals, Voluntary Professionals, and Non-Trading Permit Holder Market-Makers) is equitable and not unfairly discriminatory because, as CBOE Market-Makers, Liquidity Providers take

on certain obligations, such as quoting obligations, that these other market participants do not.

Eliminating the prepayment discount from the Liquidity Provider Sliding Scale is reasonable because it merely eliminates a discount and will require Liquidity Providers to pay the fee amounts they normally would. Indeed, they will still be able to pay lowered fee amounts by executing more contracts, per the Liquidity Provider Sliding Scale; they just will not be able to receive a discount for committing to do so beforehand. This is equitable and not unfairly discriminatory because the elimination of the prepayment discount will apply to all Liquidity Providers, and therefore no Liquidity Providers will be able to receive the prepayment discount. Eliminating the requirement that a Liquidity Provider must prepay the annual fees for the first two tiers of the Liquidity Provider Sliding Scale in order to be eligible for the fees applicable to tiers 3–5, and instead allowing a Liquidity Provider to elect to prepay to be eligible for the fees applicable to tiers 3–5 of the sliding scale for the remainder of the year at any time during the year is reasonable because it will make it easier for a Liquidity Provider to be eligible for the lower fees applicable to tiers 3–5. This change is equitable and not unfairly discriminatory because it will be applied equally to all Liquidity Providers. Further, prepayment allows CBOE to more safely conceptualize Exchange finances for the future. This allows the Exchange to offer the lower fees related to prepayment, and such lower fees incentivize greater trading and liquidity provision by Liquidity Providers, which benefits all market participants (including Liquidity Providers who do not prepay).

The change of the reference from “CBOEdirect” to “CBOE Command” eliminates confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The proposed allotment of one CMI CAS Server for every 15 Trading Permits that a TPH holds (plus one total backup CAS Server regardless of the number of Trading Permits that a TPH holds) is reasonable because one CMI CAS Server should be capable of handling the bandwidth needs of at least 15 Trading Permits. This proposed allotment is equitable and not unfairly discriminatory because it will be applied to all TPHs accessing CBOE Command via a CMI connection. The proposed fee of \$10,000 for each extra

<sup>18</sup> Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

<sup>19</sup> ISE assesses a Taker fee of \$0.33 per contract for firm proprietary orders in select symbol (see ISE Schedule of Fees, Section 1). PHLX assesses a Taker fee of \$0.45 per contract for firm orders (see PHLX Pricing Schedule, Section 1A).

<sup>20</sup> See CBOE Fees Schedule, page 1.

CMI CAS Server that a TPH requests is reasonable because it is necessary to recoup the costs related to the provision, maintenance and upkeep of such Servers, and is equitable and not unfairly discriminatory because it the fee will be applied to all TPHs that request an extra CMI CAS Server.

The proposed lower Non-Standard Booth Rental Fees are reasonable because they will allow any market participants paying the Non-Standard Booth Rental Fee to pay less than such market participants are currently paying. These changes are equitable and not unfairly discriminatory because they will apply to all market participants who rent Non-Standard Booths. The lowered fees for committing to a longer lease are equitable and not unfairly discriminatory because they encourage greater commitment to booth rental and trading from the floor and on the Exchange, which benefits all market participants. Moreover, the Exchange currently offers lower fees for committing to a longer lease, and merely proposes to decrease these fees in the same proportion as they currently exist.

The proposed changes to the listings of the FINRA WebCRD<sup>SM</sup> fees are reasonable from the Exchange's position because the amounts are those provided by FINRA, and the Exchange does not collect or retain these fees. The proposed fee changes are equitable and not unfairly discriminatory from the Exchange's position because the Exchange will not be collecting or retaining these fees, and therefore will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

#### *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. The Exchange believes that the proposal to increase fees for JBO Orders will not cause an unnecessary burden on intramarket competition because the amounts of all such fees are within the range of fees assessed to other market participants for the same types of transactions. Specifically, the proposed amounts of the increased fees are equivalent to the amounts of such fees assessed to Professionals and Voluntary Professionals (except for SPX trades). Assessing JBO Orders the increased fee amounts (the same amounts as Professionals and Voluntary Professionals) does not cause an unnecessary burden on intramarket competition because JBOs do not have

the obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, or financial obligations, that Clearing Trading Permit Holders must take on. Further, unlike Clearing Trading Permit Holders, JBOs do not need to be Exchange Trading Permit Holders. Instead, JBOs are able to effect transactions on the Exchange through a Clearing Trading Permit Holder. As such, JBOs operate more like Professional customers, in that they do not possess these obligations and are merely trading for themselves. Therefore, the Exchange does not believe that the proposal to increase fees for JBO Orders will not impose any burden on intramarket competition, but to the extent that such increase may result in any change in intramarket competition, it is justifiable for the reasons stated above. The Exchange believes that the proposal to increase fees for JBO Orders will not cause an unnecessary burden on intermarket competition because the Exchange was not motivated by intermarket competition in proposing such changes and because many other exchanges do not list out separate fees for JBO Orders and therefore it is difficult to even determine the amounts of fees for JBO Orders on other exchanges.

The Exchange does not believe that the proposed changes to customer VIX options transaction fees will cause any unnecessary burden on intramarket competition because, while customers are assessed differently, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess. Further, to the extent that any change in intramarket competition may result from the proposed changes to customer VIX options transaction fees, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The Exchange does not believe that the proposed changes to customer VIX options transaction fees will cause any unnecessary burden on intermarket competition because VIX options is a proprietary product that is traded solely on CBOE.

The Exchange does not believe that the increase of the SPX Surcharge will cause any unnecessary burden on intramarket competition because the increased amount will be assessed to all market participants to whom the SPX

Surcharge applies. The Exchange does not believe that the increase of the SPX Surcharge will cause any unnecessary burden on intermarket competition because SPX is a proprietary product that is traded solely on CBOE.

The Exchange does not believe that the proposed increase in the fee assessed to Clearing Trading Permit Holder Proprietary orders for electronic executions (including CFLEX AIM and FLEX Options) in equity, ETF, ETN, HOLDRs and index options<sup>21</sup> will cause any unnecessary burden on intramarket competition because the amount of the fee will still be lower than that assessed to all other CBOE market participants (except customers), as Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that those other market participants do not need to take on. As such, to the extent that the proposed increase could cause any change in intramarket competition, it is justifiable for these reasons. The Exchange does not believe that the proposed increase will cause any unnecessary burden on intermarket competition because the proposed increased fee amount is within the range of fee amounts assessed by other exchanges for similar transactions by similar market participants.<sup>22</sup>

The Exchange does not believe that the proposed changes to the Liquidity Provider Sliding Scale will cause an unnecessary burden on intramarket competition because, while offering lower fees for Liquidity Providers than for other CBOE market participants (such as Broker-Dealers, Professionals, Voluntary Professionals, and Non-Trading Permit Holder Market-Makers) may affect such competition, this impact is justified by the fact that as CBOE Market-Makers, Liquidity Providers take on certain obligations, such as quoting obligations, that these other market participants do not. Further, assessing lower fees for executing more contracts will provide Liquidity Providers with an incentive to execute more contracts on the Exchange. This brings greater liquidity and trading opportunity, which benefits all market participants (including those Liquidity Providers only reaching the lower tiers of the Liquidity Provider Sliding Scale). The Exchange does not believe that the

<sup>21</sup> Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

<sup>22</sup> ISE assesses a Taker fee of \$0.33 per contract for firm proprietary orders in select symbol (see ISE Schedule of Fees, Section 1). PHLX assesses a Taker fee of \$0.45 per contract for firm orders (see PHLX Pricing Schedule, Section 1A).

proposed changes to the Liquidity Provider Sliding Scale will cause an unnecessary burden on intermarket competition because, while the proposed changes are designed to attract greater liquidity and trading volume, market participants trading on other exchanges can always elect to become TPHs on CBOE. Further, the Exchange exists in a competitive marketplace, and to the extent that these proposed changes make other exchanges less competitive with CBOE, market participants trading on those other exchanges can elect to trade on CBOE.

The Exchange does not believe that the proposed allotment of one CMI CAS Server for every 15 Trading Permits that a TPH holds (plus one total backup CAS Server regardless of the number of Trading Permits that a TPH holds) and the proposed fee of \$10,000 for each extra CMI CAS Server that a TPH requests will cause an unnecessary burden on intramarket competition because such allotment and fee will be applied to all TPHs accessing CBOE Command via a CMI connection. The Exchange does not believe such proposed allotment and fee will cause an unnecessary burden on intermarket competition because different exchanges have different systemic setups for connection to such exchanges and are likely not comparable or competitive.

It is not within the Exchange's position to determine whether the proposed changes to the listings of the FINRA WebCRD<sup>SM</sup> will cause any unnecessary burden on competition, as the Exchange does not establish, assess or collect such fees (FINRA does). The Exchange merely lists such fees on its Fees Schedule. That said, such increased fees will apply to all market participants (as they did before), and, to the Exchange's knowledge, apply to all other exchanges as well.

The Exchange does not believe that the proposed lower Non-Standard Booth Rental Fees will cause an unnecessary burden on intramarket competition because they will apply to all market participants who rent Non-Standard Booths. The Exchange does not believe that such fees will cause an unnecessary burden on intermarket competition because, while they are designed to encourage booth rental on and around the Exchange trading floor, which could encourage market participants to rent booths on CBOE's trading floor instead of that of other exchanges, each exchange has a different setup for its trading floor (some exchanges do not have trading floors at all), which makes a competitive comparison difficult. Further, market participants on such other exchanges can always elect to

trade on CBOE and rent such space here at CBOE.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

*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>23</sup> and paragraph (f) of Rule 19b-4<sup>24</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-2013-002 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.

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CBOE-2013-002. 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 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-2013-002, and should be submitted on or before February 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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

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**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**Data Collection Available for Public Comments and Recommendations**

**ACTION:** 60 Day Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

**DATES:** Submit comments on or before March 26, 2013.

**ADDRESSES:** Send all comments regarding whether this information

<sup>25</sup> 17 CFR 200.30-3(a)(12).