

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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2011-078 and should be submitted on or before December 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65875; File No. SR-CBOE-2011-112]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Transaction Fees

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2011, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 CBOE. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> 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 is proposing to amend its Fees Schedule as it relates to Flexible Exchange Options ("FLEX Options").<sup>5</sup> The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, CBOE 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. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The purpose of this proposed rule change is to revise the CBOE Fees

Schedule as it relates to FLEX Options. In particular, the Exchange is proposing to amend the fees schedule to provide that FLEX transactions for the account of non-Trading Permit Holder broker-dealers (which use the "C" order origin code) are subject to the same transaction fee rates that are applicable to public customers (which also use the "C" order origin code).<sup>6</sup> This change will be effective immediately.

Currently, the FLEX trading procedures and principles contained in Rule 24B.5 provide for certain allocation priorities to public customers and non-Trading Permit Holder broker-dealers.<sup>7</sup> To accomplish this, both public customer orders and non-Trading Permit Holder broker-dealer orders in FLEX Options are currently identified through using the order origin code "C". However, use of the same code may result in billing discrepancies because the public customer fee rates currently differ from broker-dealer fee rates.<sup>8</sup> For

<sup>6</sup> The FLEX transaction fees for public customers are currently as follows: \$0.00 per contract for equity options; \$0.44 per contract for SPX options where the premium is greater than or equal to \$1; \$0.35 per contract for SPX options where the premium is less than \$1; \$0.40 per contract for OEX, XEO, S&P500 Dividend Index and Volatility Index options (except OEX and XEO Weeklys); \$0.30 per contract for OEX and XEO Weeklys; \$0.00 for QQQQ options; \$0.18 per contract for all other index, exchange-traded fund ("ETF"), exchange-traded note ("ETN") and HOLDRS options; and \$0.85 per contract for credit default options and credit default basket options. In addition, a "CFLEX Surcharge Fee" of \$0.10 per contract applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is charged up to the first 2,500 contracts per trade. See CBOE Fees Schedule Section 1 and Footnotes 1 and 17.

<sup>7</sup> Under the FLEX electronic request for quotes ("RFQ") process, an incoming RFQ order is eligible to trade with FLEX RFQ responses (referred to as "FLEX Quotes") and FLEX Orders at a single clearing price that leaves bids and offers which cannot trade with each other (referred to as a "BBO clearing price"). In determining priority, the FLEX system gives priority to FLEX Quotes and FLEX Orders whose price is better than the BBO clearing price, then to FLEX Quotes and FLEX Orders at the BBO clearing price. Generally, allocation among multiple FLEX Quotes and FLEX Orders at the BBO clearing price are first to FLEX Quotes subject to a FLEX Appointed Market-Maker participant entitlement, if applicable; second to FLEX Orders resting in the FLEX electronic book; third to FLEX Quotes for the account of public customers and non-Trading Permit Holder broker-dealers, with multiple interest ranked based on time priority, and finally all other FLEX Quotes, with multiple interest ranked based on time priority. See Rule 24B.5(a)(1)(C); see also Rule 24B.5(a)(1)(C) and (D) for various on the allocation algorithm when the RFQ market is locked or crossed or when the Trading Permit Holder that initiated the RFQ has indicated an intention to cross.

<sup>8</sup> The Exchange notes that, to the extent there may be any billing discrepancy with respect to FLEX Options transactions for the account of a non-Trading Permit Holder broker-dealers, such discrepancy would result in an under collection by the Exchange for such transactions. In that regard,

Continued

<sup>24</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote ("RFQ") System platform (which consists of open outcry based trading) are generally contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (which combines both open outcry and electronic based trading) are generally contained in Chapter XXIVB. Currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

ease of administration, the Exchange is therefore proposing that the same FLEX Option transactions fees that apply to transactions for the account of public customers should apply to transactions for the account on non-Trading Permit Holder broker-dealers. The Exchange also believes that applying the same fee for FLEX Option transactions on behalf of the account of public customer orders and non-Trading Permit Holder broker-dealers is a reasonable and equitable allocation of fees in that the same fees are applicable to all Trading Permit Holders representing public customer and non-Trading Permit Holder broker-dealer orders. The Exchange also generally believes that the level of activity associated with FLEX Options trading overall,<sup>9</sup> and with FLEX Options trading on behalf of non-Trading Permit Holder broker-dealer activity in particular, is de minimis and it is therefore administratively convenient to assess transaction fees for non-Trading Permit Holder broker-dealers in this manner.<sup>10</sup>

the FLEX transaction fees for broker-dealers are currently as follows: \$0.25, \$0.45 and \$0.20 per contract for equity options respectively for manual, electronic and QQQ transactions; \$0.40 per contract for OEX, XEO, SPX, S&P 500 Dividend Index and Volatility Index options; \$0.25 per contract for other indexes, ETFs, ETNs, and HOLDRS for manual transactions; \$0.45 per contract for other indexes, ETFs, ETNs, and HOLDRS options for electronic transactions; \$0.20 per contract for QQQ; \$0.25 per contract for credit default options and credit default basket options for manual transactions; and \$0.45 per contract for credit default options and credit default basket options for electronic transactions. In addition, certain "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 to Voluntary Professionals and Professionals. These surcharges include an index license fee of \$0.10 per contract for OEX, XEO, SPX, S&P500 Dividend Index, DJX and Volatility Index options (except GVZ), and \$0.15 per contract for MNX, NDX and RUT options; and a product research and development fee of \$0.10 per contract for GVZ options. As noted above, a "CFLEX Surcharge Fee" of \$0.10 per contract also applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is charged up to the first 2,500 contracts per trade. See CBOE Fees Schedule Section 1 and Footnotes 1, 14 and 17.

<sup>9</sup> For example, during September 2011, all FLEX Options trading activity accounted for approximately 0.08% of the Exchange's average daily volume.

<sup>10</sup> The Exchange is evaluating whether to introduce a separate order origin code for FLEX Orders that are entered for the account of non-Trading Permit Holder broker-dealers. If the Exchange would introduce such a code in the future, we anticipate that the Exchange may consider revising the fee schedule to assess transaction fees rates for non-Trading Permit Holders broker-dealers that differ from the transaction fee rates applicable to public customers. Any such change to the fees schedule would be addressed through a separate rule change filing.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Trading Permit Holders. The proposed change is reasonable because the transaction fee rates for the account of non-Trading Permit Holder broker-dealers are the same as the rates that apply to public customers. The proposed change is equitable and not unfairly discriminatory because the same fees are applicable to all Trading Permit Holders representing public customers and non-Trading Permit Holder broker-dealers. Further, the Exchange generally believes that level of activity associated with FLEX Options trading overall,<sup>13</sup> and with FLEX Options trading on behalf of non-Trading Permit Holder broker-dealer activity in particular, is de minimis and it is therefore administratively convenient to assess transaction fees for non-Trading Permit Holder broker-dealers in this 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 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>14</sup> and subparagraph (f)(2) of Rule 19b-4<sup>15</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-2011-112 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2011-112. 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-2011-112 and should be submitted on or before December 29, 2011.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

<sup>13</sup> See note 9, *supra*.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(2).

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

**Kevin M. O'Neill,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

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

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

December 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 23, 2011, the Chicago Board Options Exchange, Incorporated [sic] (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

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

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

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

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

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among C2 Trading Permit Holders and other persons using Exchange facilities. Continuing the waiver of the SPXPM Tier Appointment Fee is reasonable because it will allow Market-Makers with an SPXPM Tier Appointment to avoid paying the Tier Appointment Fee for another month, and is equitable and not unfairly discriminatory because all Market-Makers with an SPXPM Tier Appointment will be able to avoid paying the SPXPM Tier Appointment Fee for December 2011. Assessing transaction fees for SPXPM Trades on the Open is reasonable because the amount of the transaction fees will be the same as the amount of SPXPM transaction fees assessed during the rest of the trading day. Assessing transaction fees for SPXPM Trades on the Open is equitable and not unfairly discriminatory because the fees will be assessed equally to all parties within each class who qualify for the fees, just as they are during the rest of the trading day.

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

C2 does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 34-65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008).

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

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

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