

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66769; File No. SR-CBOE-2012-033]

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

April 6, 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 March 30, 2012, 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 and II below, which items have been prepared by the Exchange. The Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 provide for additional time to implement new system enhancements for trading Flexible Exchange Options (“FLEX Options”)<sup>5</sup> that were the subject of another rule change filing that was recently approved. No changes to the rule text are necessary with respect to this revised implementation plan. The Exchange is also proposing to make certain amendments to its rules for trading FLEX Options. 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 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 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 February 7, 2012, the Exchange received approval of a rule change filing, SR-CBOE-2011-122, which amended certain rules pertaining to the electronic trading of FLEX Options on the Exchange’s FLEX Hybrid Trading System platform (the “FLEX System” or “System”).<sup>6</sup> In that filing, the Exchange indicated that it is in the process of enhancing the FLEX System in order to further integrate it with the Exchange’s existing technology platform utilized for Non-FLEX trading. In conjunction with the enhancement, the filing made some modifications to the existing electronic trading processes utilized on the FLEX System platform. The filing made other amendments to eliminate certain European-Capped style settlement and currency provisions with the FLEX rules that pertain to both electronic and open outcry trading. The filing also indicated that the Exchange planned to announce to its Trading Permit Holders (“TPHs”) via Regulatory Circular an implementation schedule for transitioning from the existing technology platform to the new technology platform once the rollout schedule is finalized. The filing indicated that the Exchange intended to begin implementation by no later than March 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular, as stated above. The Exchange intended to transition a few classes at a time and

anticipated full implementation within approximately one to three weeks of the initial transition. Finally, in the event that implementation did not begin by March 30, 2012, the Exchange represented that it would file a proposed rule change to establish the revised time period.

The Exchange has determined that it needs some more time to implement the FLEX System enhancements. Therefore, in accordance with rule change filing SR-CBOE-2011-122, the Exchange is submitting this instant proposed rule change filing to establish a revised time period. Rather than March 30, 2012, the Exchange now intends to begin implementation by no later than April 30, 2012, with the specific implementation schedule to be announced via Regulatory Circular. The Exchange still intends to transition a few classes at a time and anticipates full implementation within approximately one to three weeks of the initial transition. Consistent with the prior rule change filing, in the event the implementation does not begin by April 30, 2012, the Exchange represents that it will file another proposed rule change to establish the revised time period.

The Exchange is also proposing to take this opportunity to make certain other changes to the FLEX rules. First, as noted above, in rule change filing SR-CBOE-2011-122 the Exchange deleted references to certain European-Capped style settlement and foreign currency provisions (and related index multiplier provisions for such currencies).<sup>7</sup> The European-Capped style and foreign currency provisions have generally not been actively utilized.<sup>8</sup> Since the Exchange no longer plans to support foreign currency settlements in the new FLEX System, the Exchange limited the currency for FLEX Index Options to U.S. dollars.<sup>9</sup> Because the European-Capped style exercise and foreign currency provisions are no longer applicable, the Exchange is now proposing to delete certain other superfluous and unnecessary references to European-Capped style exercise

<sup>7</sup> Specifically, the Exchange eliminated references to European-capped style settlement and foreign currency provisions (and related index multiplier provisions) that were formerly contained in Rules 24A.1(c) and (i), 24A.4(a)(2)(iii) and (b)(4), 24A.5(f), 24B.1(c) and (m), 24B.4(a)(2)(iii) and (b)(4), and 24B.5(e).

<sup>8</sup> The Exchange notes that there is currently no open interest in any FLEX Option series with a European-Capped style exercise and currently no open interest in any FLEX Index Option series that is designated for settlement in a foreign currency.

<sup>9</sup> In the future, the Exchange may determine to re-enable the capability for settlement of FLEX Index Options in a foreign currency, and such foreign currency settlement provisions would be the subject of a separate rule filing.

<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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<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 is limited to open outcry trading only) are 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 trading) are contained in Chapter XXIVB. The Exchange notes that, currently, all FLEX Options are traded on the FLEX Hybrid Trading System platform.

<sup>6</sup> Securities Exchange Act No. 66348 (February 7, 2012), 77 FR 8304 (February 14, 2012) (SR-CBOE-2011-122).

options contained elsewhere in Rules 24A.4(b)(2) and 24B.4(b)(2) and to currencies (and related index multiplier provisions for currencies) contained elsewhere in Rules 24A.1(i), (o) and (q), 24A.4(a)(1) and (3)(i), 24A.9(a), 24B.1(m), (w) and (z), 24B.4(a)(1), (3)(i) and (4)(i), and 24B.9(a) and (b).

Second, the Exchange is proposing to amend Rules 24B.1(n) and 24B.14(b) and (c) to delete references to Indicative FLEX Quotes. An "Indicative FLEX Quote" refers to informational FLEX bids and offers submitted electronically by FLEX Traders in response to a call for such quotes from the FLEX Post Official or a FLEX Trader. Indicative FLEX Quotes are non-binding indications of potential market prices only and, as such, are neither firm nor the basis for a FLEX transaction. Under the existing procedures, a FLEX Official<sup>10</sup> may call for such Indicative FLEX quotes at any time during the course of trading and with respect to any series of FLEX Options that the FLEX Official deems appropriate. In addition, FLEX Traders<sup>11</sup> may call for Indicative FLEX Quotes, updates thereto, or cancellations thereof. FLEX Traders could electronically communicate their Indicative FLEX Quotes and the information would be disseminated over the FLEX Hybrid Trading System communications network interface. This functionality generally has not been utilized and the Exchange has determined that it will no longer be supported when trading begins on the enhanced System (the new System does not have a similar communication network interface), so the Exchange is proposing to delete the definition of an Indicative FLEX Quote in Rule 24B.1 and the procedures noted in Rule 24B.14.<sup>12</sup>

Third, the Exchange is proposing to amend Rules 24A.4, 24B.1, 24B.4 and 24B.5 to revise some references to FLEX

Terms and Trade Conditions, which are no longer utilized and will not be supported by the Exchange going forward. Specifically:

- The current Trade Conditions available in the System for a FLEX Trader to choose from are described in Rule 24B.1(y) and include Immediate-or-Cancel (a condition to execute a RFQ Order or FLEX Quote in its entirety or in part as soon as it is represented or cancel it), All-or-None (a condition to execute an RFQ Order or FLEX Order in its entirety or not at all) and Hedge (an RFQ or FLEX Order condition contingent on trade execution in Non-FLEX Options or other Non-FLEX components (e.g., stock, futures, or other related instruments or interests)).<sup>13</sup> These Trade Conditions only apply to electronic trading (not open outcry). Therefore, although the rule text already provides that these Trade Conditions are only available in the System and describes whether or not they are disclosed in the System, the Exchange is proposing to include certain references to "electronic RFQs" to make it more clear that the provisions only apply to electronic trading. In addition, the Exchange is proposing to delete the All-or-None Trade Condition because the System will no longer support the electronic processing of the All-or-None Trade Condition for electronic RFQ Orders or FLEX Orders. (Through a separate rule change filing, the Exchange is seeking to introduce an electronic FLEX Solicitation Auction Mechanism (the "FLEX SAM" auction) under proposed new Rule 24B.5B that will have an all-or-none type functionality).<sup>14</sup>

<sup>13</sup> An "RFQ" refers to a Request for Quotes, which means an initial request supplied by a Submitting TPH to initiate FLEX bidding and offering. An "RFQ Order" is an order to purchase or order to sell FLEX Options entered by the Submitting TPH during the RFQ Reaction Period. The "RFQ Reaction Period" is the period of time during which a Submitting TPH determines whether to accept or reject the RFQ Market (which is currently defined as the bids or offers, or both, as applicable, entered in response to an electronic RFQ and FLEX Orders resting in the electronic book). A FLEX Order refers to (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase or sell FLEX Options entered by FLEX Traders, in each case into the electronic book. See Rule 24B.1(j), (r)–(t), (v).

<sup>14</sup> See Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 (January 4, 2012) (SR-CBOE-2011-123). In SR-CBOE-2011-123, the Exchange is proposing to adopt new Rule 24B.5A (pertaining to the FLEX Automated Improvement Mechanism or "FLEX AIM" auction) and new Rule 24B.5B (pertaining to the FLEX SAM auction). The FLEX SAM would be used to cross FLEX Option orders through an exposed auction process. An original agency order and paired contra-side order entered into the SAM Auction would also be designated in the FLEX System as all-or-none (*i.e.*, an order will be executed in its entirety or not at all).

- Rule 24B.5(d)(2)(i) provides that the Exchange may from time to time establish a crossing participation entitlement subject to certain conditions. Previously, this provision described conditions with respect to both open outcry RFQ crossing participation entitlements and electronic RFQ crossing participation entitlements. However, in rule change filing SR-CBOE-2011-122, the Exchange eliminated the Intent to Cross Trade Condition<sup>15</sup> and related references to a crossing participation entitlement for electronic RFQs in various provisions, including certain references in Rule 24B.5(d)(2)(i)(A) and (B). Given the elimination of these provisions, the Exchange is proposing to delete a superfluous and unnecessary reference to the "BBO clearing price" in paragraphs (A) and (B). The Exchange is proposing to delete these references because the "BBO clearing price" references in paragraphs (A) and (B) were/are only applicable to electronic RFQs and were/are not applicable to open outcry RFQs. (Under the former electronic RFQ procedures, a Submitting TPH could have obtained a crossing participation entitlement if, among other things, the TPH matched or improved the BBO clearing price.) The Exchange is also proposing to delete a superfluous and unnecessary reference contained in Rule 24B.5(d)(2)(i)(C) to a Submitting TPH utilizing the electronic RFQ mechanics to cross an order with a solicited order for a FLEX Market-Maker account (or with a solicited order initiated by a FLEX Market-Maker for an account in which the FLEX Market-Maker has an interest) pursuant to the crossing participation entitlement provisions under Rule 24B.5(d)(2)(i)(A) and (B). Again, the Exchange is proposing to delete these references in paragraph (C) because the electronic RFQ crossing participation entitlement provisions have been eliminated from the rules.

- Currently, the terms of a FLEX RFQ shall contain, among other things, specifications on the quote type and form sought (*i.e.*, specify whether bid, offer, or both is sought). The Exchange is proposing to amend the rules to provide that an open outcry RFQ can specify a quote for a bid, offer or both; however, electronic RFQs will be limited to specifying both bids and offers. Therefore, the Exchange is proposing to amend the provision in

<sup>15</sup> "Intent to Cross" was an RFQ condition indicating that the Submitting TPH intends to cross or act as principal and receive a crossing participation entitlement. See former Rule 24B.1(y)(5).

<sup>10</sup> The Exchange may at any time designate an Exchange employee or independent contractor to act as a FLEX Official in one or more classes of FLEX Options. A FLEX Official performs the functions set out in Rule 24B.14.

<sup>11</sup> The reference to "FLEX Traders" includes any TPHs that have been approved by the Exchange to use the FLEX Hybrid Trading System and any non-TPH Sponsored Users that have been provided electronic access, through Sponsoring TPHs, to the FLEX Hybrid Trading System in accordance with Rule 6.20A, *Sponsored Users*.

<sup>12</sup> Over the years, Exchange has offered an Indicative FLEX Quote service, then discontinued the service, then reinstated it, and is now seeking to discontinue the service because it continues to not be actively utilized. See, e.g., Securities Exchange Act Release No. 58719 (October 2, 2008), 73 FR 59692 (October 9, 2008) (SR-CBOE-2008-103). In the future, the Exchange may determine to offer an Indicative FLEX Quote service and such a service would be the subject of a separate rule filing.

Rules 24B.4(a)(3) and definition of RFQ Market in Rule 24B.1(s).<sup>16</sup>

- Under the current special terms for FLEX Index Options, exercise prices shall be specified in terms of a specific index value number, a method of fixing such a number at the time a FLEX Quote is accepted, or a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date. The Exchange is proposing to delete the reference to a percentage of the index value calculated as of the open of trading on the Exchange on the trade date. This provision has generally not been actively utilized<sup>17</sup> and will no longer be supported when trading begins on the enhanced System. Therefore, the Exchange is proposing to delete the provision under Rules 24A.4(b)(2) and 24B.4(b)(2).

- Under the current special terms for FLEX Equity Options, exercise prices may be rounded to the nearest minimum tick, one-eighth of a dollar, or other decimal increment determined by the Exchange on a class-by-class basis that may not be smaller than \$0.01. The Exchange is proposing to delete the reference to nearest one-eighth of a dollar. This language used to be applicable when the Exchange traded in fractional increments and there was open interest in series with exercise prices in such an increment. However, there are no longer any options with exercise prices in this increment, so the Exchange is proposing to delete the “one-eighth of a dollar” language under Rules 24A.4(c)(2) and 24B.4(c)(2).

Finally, the Exchange is proposing to amend Rules 24B.3, 24B.5 and 24B.9 to revise some of the descriptions of the electronic RFQ trading procedures. Specifically:

- Currently, Rule 24B.3 provides that there shall be no trading rotations in FLEX Options, either at the opening or at the close of trading. An existing FLEX Option series will automatically open for trading at a randomly selected time within a number of seconds after 8:30 a.m. (all times are CT), at which point FLEX Orders may be entered directly into the electronic book (if available) and/or FLEX RFQ auctions may be initiated pursuant to Rule 24B.5. A new FLEX Option series may be established on any business day prior to the

expiration date as provided for in Rule 24A.4 and opened for trading pursuant to the procedures and principles as provided for in Rule 24B.5. The Exchange is proposing to amend Rules 24B.3 and 25B.5 to make clear that, besides RFQs under Rule 24B.5, auctions may also be initiated in existing and new series pursuant to proposed new Rule 24B.5A (regarding FLEX AIM auctions) or proposed new Rule 24B.5B (regarding FLEX SAM auctions).<sup>18</sup>

- Currently the electronic RFQ process in relevant part provides in Rule 24B.5(a)(1)(ii) and (iii) that FLEX Orders may be entered, modified or withdrawn at any point during the RFQ Response and Reaction Periods.<sup>19</sup> When trading moves to the enhanced System, FLEX Orders may not be submitted to electronic book during the RFQ Response Period, but may be withdrawn. If a FLEX Trader attempts to enter a FLEX Order during the RFQ Response and Reaction Periods, the FLEX Order will be rejected by the System. Therefore, the Exchange is proposing to amend Rule 24B.5(a)(1)(ii) and (iii) to describe how FLEX Orders will be handled under the enhanced System. The Exchange is also proposing to delete references in these provisions indicating that FLEX Quotes may be modified during the RFQ Response and Reaction Periods (mechanically, FLEX Quotes submitted in response to an electronic RFQ may only be modified by withdrawing FLEX Quotes and entering new FLEX Quotes).<sup>20</sup> The Exchange is also proposing to amend Rule 24B.9 to make clear that FLEX Quotes submitted in response to an electronic RFQ by FLEX Market-Makers shall be entered or withdrawn within the RFQ Response and Reaction Periods, which is

<sup>18</sup> Thus, as revised, the text of Rule 24B.3 will provide in relevant part that an existing series will automatically open for trading at a randomly selected time within a number of seconds after 8:30 a.m. (all times are CT), at which point FLEX Orders may be entered directly into the electronic book (if available) and/or a FLEX auction may be initiated pursuant to Rule 24B.5, 24B.5A, or 24B.5B. A new FLEX Option series may be established on any business day prior to the expiration date as provided for in Rule 24A.4 and opened for trading pursuant to the procedures and principles as provided for in Rule 24B.5, 24B.5A or 24B.5B. See proposed changes to Rule 24B.3; see also proposed changes to Rule 24B.5(a), and SR-CBOE-2011-123, note 14, *supra*.

<sup>19</sup> The “RFQ Response Period” (commonly referred to as “T1”) means the period of time during which FLEX Traders may provide FLEX Quotes in response to an RFQ. As noted in note 13, *supra*, the “RFQ Reaction Period” (commonly referred to as “T2”) means the period of time during which a Submitting TPH determines whether to accept or reject the RFQ Market. See Rule 24A.1(u)–(v).

<sup>20</sup> The Exchange also proposes to replace a reference to the FLEX Book with a reference to the electronic book in Rule 24B.5(d)(1).

consistent with Rule 24B.5(a)(1)(ii) and (iii).

- Currently the electronic RFQ process provides that, if there is an electronic book available, any remaining balance of FLEX Quotes not traded at the conclusion of the RFQ Reaction Period will be automatically entered into the electronic book (and treated the same as other FLEX Orders) unless the FLEX Trader has indicated that the FLEX Quote is to be automatically cancelled if not traded. When trading moves to the enhanced System, any remaining balance of FLEX Quotes will be automatically cancelled at the conclusion of the RFQ Reaction Period. Therefore, the Exchange is proposing to amend Rule 24B.5(a)(iii)(E) (and to delete a related cross-reference in Rule 24B.5(b)(1)) to describe how any remaining balance of FLEX Quotes will be handled under the enhanced System.

## 2. Statutory Basis

The Exchange believes 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)(5) of the Act<sup>22</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provides CBOE TPHs and investors with additional tools to trade customized options in an exchange environment<sup>23</sup> and greater opportunities to manage risk. The Exchange believes that the enhancements to the FLEX System adopted under rule change filing SR-CBOE-2011-122 should serve to further those objectives and encourage use of FLEX Options by enhancing and simplifying the existing processes and integrating the FLEX System with the

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

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> FLEX Options provide TPHs and investors with an improved but comparable alternative to the over-the-counter (“OTC”) market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

<sup>16</sup> As revised, the term “RFQ Market” will mean the bids and offers entered in response to an electronic RFQ and FLEX Orders resting in the electronic book. See proposed changes to Rule 24B.1(s); see also note 13, *supra*, for current definition of “RFQ Market.”

<sup>17</sup> The Exchange notes that there is currently no open interest in any FLEX Index Option series with an exercise price specified in terms of a percentage of the index value calculated as of the open of trading on the Exchange on the trade date.

Exchange's existing technology platform for Non-FLEX trading, which should make the FLEX System more efficient and effective and easier for users to understand. The Exchange believes that the further refinements being proposed in this instant rule change filing should also serve to further those objectives by more clearly and accurately describing the operation of the enhanced System and deleting superfluous and unnecessary provisions in the FLEX rules.

#### *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.

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

The Exchange neither solicited or received comments on the proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>24</sup> and Rule 19b-4(f)(6) thereunder.<sup>25</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>26</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>27</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>28</sup> the Commission may designate a shorter time if such

action is consistent with the protection of investors and the public interest.

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will allow CBOE to codify the revisions to its rules to more clearly and accurately describe the operation of its new system for FLEX Options prior to implementation. Therefore, the Commission designates the proposal operative upon filing.<sup>29</sup>

At any time within 60 days of the filing of such 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-2012-033 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-2012-033. 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 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-CBOE-2012-033 and should be submitted on or before May 3, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012-8839 Filed 4-11-12; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-66768; File No. SR-NASDAQ-2012-048]**

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Fees and Rebates in Penny Pilot Options**

April 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 2, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>27</sup> 17 CFR 240.19b-4(f)(6).

<sup>28</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>29</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</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.