

auction, to elect to have last priority in the AIM auction's order allocation.<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on December 29, 2011.<sup>4</sup> The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6(b)(5) of the Act,<sup>6</sup> in that it is designed to provide additional flexibility for TPHs to obtain executions on behalf of their customers through AIM because the initiating TPH may elect to have last priority. The Commission believes that, as a result of this flexibility, there may be increased usage of AIM auctions and the mechanism may attract new participants, thereby helping to further competition and to enhance the possibility of price improvement on behalf of customers.<sup>7</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CBOE-2011-117) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

[FR Doc. 2012-3607 Filed 2-15-12; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>3</sup> In an AIM auction, described here generally, a TPH submits into the mechanism an order that it represents as agent ("Agency Order") along with a contra-side order at a specified price (which must comply with parameters set forth in Rule 6.74A) and for the same size that either represents principal interest of the TPH or is a solicited order. Certain Exchange participants, as set forth in Rule 6.74A, then can compete with the contra-side order by submitting bids (offers) to execute against the Agency Order. After better-priced orders are filled and public customers competing at the best price receive their allocations, the TPH is granted priority ahead of other participants to execute against 40% (in some circumstances 50%) of the original size of the Agency Order. Under the proposed rule change, the initiating TPH will be able to elect to have last priority.

<sup>4</sup> See Securities Exchange Act Release No. 66038 (December 22, 2011), 76 FR 82016.

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> The Commission notes that Chapter V, Section 18(f)(v) of the Rules of the Boston Exchange Group, LLC, "The Price Improvement Period" ("PIP"), includes a similar provision that permits an options participant initiating a PIP auction to designate a lower amount than the 40% to which it is otherwise entitled upon the conclusion of the PIP auction.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66382; File No. SR-CBOE-2012-014]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Transaction Fees for Options on the CBOE Emerging Markets ETF Volatility Index, the CBOE Brazil ETF Volatility Index and CBOE Oil ETF Volatility Index

February 10, 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 February 1, 2012, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CBOE proposes to amend its Fees Schedule to establish fees for transactions in options on the CBOE Emerging Market ETF Volatility Index ("VXEEM"), the CBOE Brazil ETF Volatility Index ("VXEZW") and the CBOE Crude Oil ETF Volatility Index ("OVX"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

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

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

#### 1. Purpose

The Exchange received approval to list and trade options on the CBOE Emerging Market ETF Volatility Index ("VXEEM"), the CBOE Brazil ETF Volatility Index ("VXEZW") and the CBOE Crude Oil ETF Volatility Index ("OVX") (collectively herein, "volatility indexes"), which are up-to-the-minute market estimates of the expected volatility of their corresponding exchange-traded funds ("ETF")<sup>3</sup> calculated by using real-time bid/ask quotes of CBOE listed options on the respective ETF.<sup>4</sup> The volatility indexes use nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility. The Exchange will list VXEEM options beginning on January 30, 2012, VXEZW options beginning on February 20, 2012 and OVX options beginning on March 6, 2012.

The purpose of this rule change is to clarify that the existing transaction fees for "Volatility Indexes" shall apply for transactions in VXEEM options, VXEZW options and OVX options except that the existing Surcharge Fee (currently \$.10 per contract for Volatility Index options) will not apply to VXEEM options, VXEZW options and OVX options.<sup>5</sup> In addition, the Exchange's marketing fee<sup>6</sup> shall not apply to VXEEM options, VXEZW options and OVX options. The Product Research & Development fee shall apply to VXEEM options, VXEZW options and OVX options at the rate of \$.010 per contract.<sup>7</sup>

For reference, the existing Volatility Index transactions fees that will apply

<sup>3</sup> The corresponding ETFs are: the iShares MSCI Emerging Markets Index ETF ("EEM"), the iShares MSCI Brazil Index ETF ("EWZ") and the United States Oil Fund ("USO").

<sup>4</sup> See Securities Exchange Act Release No. 64551 (May 26, 2011), 76 FR 32000 (June 2, 2011) (approving SR-CBOE-2011-026).

<sup>5</sup> This fee is assessed to help the Exchange recoup license fees the Exchange pays to the different index licensors in order to list options on the respective indexes.

<sup>6</sup> See Footnote 6 of the Fees Schedule.

<sup>7</sup> See Section 1 (Index Options), VII.(B) to the Fees Schedule. The Product Research & Development fee is assessed to help offset some of the costs and expenses expended for product research and development and ongoing maintenance of CBOE's products. The Product Research & Development fee applies 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. See Footnote 12 of the Fees Schedule.

to VXEEM options, VXEWS options and OVX options are as follows:

- \$0.40 per contract for customer transactions;
- \$0.40 per contract for voluntary professional transactions;
- \$0.40 per contract for professional transactions
- \$0.20 per contract for CBOE Market-Maker/DPM transactions;
- \$0.25 per contract for Clearing Trading Permit Holder proprietary transactions;<sup>8</sup>
- \$0.40 per contract for broker-dealer transactions;
- \$0.10 per contract CFLEX Surcharge Fee;
- \$0.03 per contract floor brokerage fee;<sup>9</sup>
- \$0.015 per contract floor brokerage fee for crossed orders;<sup>10</sup>
- \$0.03 per contract par official fee;<sup>11</sup> and
- \$0.015 per contract for par official fee for crossed orders.<sup>12</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>14</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities.

The Exchange is excluding VXEEM, VXEWS and OVX options from the Index License/Surcharge Fee of \$0.10 per contract because that fee is assessed to help the Exchange recoup license fees that the Exchange pays to different index licensors in order to list options on the respective indexes. The Exchange does not pay fees to index licensors to list VXEEM, VXEWS and OVX options. The Exchange is assessing a Product Research & Development/Surcharge fee 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. The Product Research & Development/Surcharge fee is assessed to help the Exchange offset some of the costs and expenses expended for

product research and development and ongoing maintenance associated with these new volatility index products.

The Exchange believes that the fees are reasonable because they are comparable to fees that the Exchange currently assesses for another similar volatility index option, i.e., CBOE Gold ETF Volatility Index ("GVZ") options. The Exchange believes the level of the fees furthers the Exchange's goal of introducing new products to the marketplace that are competitively priced.

The Exchange believes that the fees are equitable and do not unfairly discriminate because they provide comparable pricing among similar categories of market participants. The Exchange believes that a fee of \$0.20 per contract for CBOE Market-Maker/DPM transactions is equitable since those market participants provide a valuable market service by adding liquidity to the Exchange and since they are subject to liquidity provider obligations. This standard rate is not subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule. The Exchange also believes that a fee of \$0.25 per contract for Clearing Trading Permit Holders is equitable since they contribute capital to facilitate customer orders, which in turn provides a deeper pool of liquidity that benefits all market participants.

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

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

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

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

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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and subparagraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder.

At any time within 60 days of the filing of the proposed rule change, the

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-014 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-2012-014. 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-

<sup>8</sup> This is the standard rate that is subject to the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders as set forth in Footnote 11 to the Fees Schedule.

<sup>9</sup> See Section 3 (Floor Brokerage and Par Official Fees) to the Fees Schedule and Footnotes 1, 5 and 15 of the Fees Schedule.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(4).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

2012–014 and should be submitted on or before March 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

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

[FR Doc. 2012–3641 Filed 2–15–12; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66379; File No. SR–NYSEArca–2012–11]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Fee Schedule Increasing the Indication of Interest Tier 1 Credit and the Tracking Order Tier 1 Credit for ETP Holders and Market Makers

February 10, 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 February 1, 2012, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Fee Schedule (“Fee Schedule”) to increase the indication of interest (“IOI”) Tier 1 credit and the Tracking Order Tier 1 credit for ETP Holders and Market Makers. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to increase the IOI Tier 1 credit<sup>3</sup> and the Tracking Order<sup>4</sup> Tier 1 credit for ETP Holders and Market Makers. The credits are designed to attract trading interest to and promote liquidity on the Exchange. The Exchange does not propose to make any changes to the other IOI or Tracking Order Tiers.

##### IOI Tier 1 Credit

Currently, an IOI Tier 1 credit is offered to each ETP Holder and Market Maker that send IOIs to the Exchange resulting in executions with an average daily share volume (“ADV”) per month greater than or equal to 10 million shares in Tape A, B, and C securities. The credit is \$0.0012 per share for each share up to and including 15 million shares and \$0.0015 per share for each share in excess of 15 million shares.<sup>5</sup>

The Exchange proposes to amend the IOI Tier 1 credit so that each ETP Holder and Market Maker will receive a credit of \$0.0015 per share for all shares if its IOIs result in executions on the Exchange with an ADV per month greater than 15 million shares. The Exchange will continue to provide a \$0.0012 credit per share for IOIs sent to the Exchange resulting in executions with an ADV per month up to and including 15 million shares (assuming the 10 million share threshold is met).

For example, under the current Fee Schedule, if an ETP Holder sends IOIs

to the Exchange resulting in executions with an ADV per month of 17 million shares, the ETP Holder receives a \$0.0012 per share credit for the first 15 million shares and a \$0.0015 per share credit for the 2 million shares in excess of the 15 million shares. Under the proposed Fee Schedule, the ETP Holder will receive a \$0.0015 per share credit for all 17 million shares.

##### Tracking Order Tier 1

Currently, the Tracking Order Tier 1 credit is offered to each ETP Holder and Market Maker that sends Tracking Orders to the Exchange resulting in executions with an ADV per month greater than or equal to 5 million shares in Tape A, B, and C securities.<sup>6</sup> The credit is \$0.0012 per share for each share up to and including 15 million shares and \$0.0015 per share for each share in excess of 15 million shares.

The Exchange proposes to amend the Tracking Order Tier 1 credit so that each ETP Holder and Market Maker will receive a credit of \$0.0015 per share for all shares if its Tracking Orders result in executions on the Exchange with an ADV per month greater than 15 million shares. The Exchange will continue to credit ETP Holders \$0.0012 per share for Tracking Orders that result in executions up to and including 15 million shares (assuming the 5 million share threshold is met).

For example, under the current Fee Schedule, if an ETP Holder sends Tracking Orders to the Exchange resulting in executions with an ADV per month of 17 million shares, the ETP Holder receives a \$0.0012 per share credit for the first 15 million shares and a \$0.0015 per share credit for the remaining 2 million shares. Under the proposed Fee Schedule, the ETP Holder will receive a \$0.0015 per share credit for all 17 million shares.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed change is

<sup>3</sup> An IOI is a non-displayed indication of symbol, size and side, which does not interact with the NYSE Arca Book. At their discretion, participating ETP Holders and Market Makers may send an IOI to the Exchange, which in turn will consider the IOI when determining potential destinations for outbound routes. See Securities Exchange Act Release No. 58397 (August 20, 2008), 73 FR 50389 (August 26, 2008) (SR–NYSEArca–2008–83).

<sup>4</sup> A Tracking Order is an undisplayed, priced round lot order that is eligible for execution in the Tracking Order Process against orders equal to or less than the aggregate size of Tracking Order interest available at that price. See NYSE Arca Equities Rule 7.31(f).

<sup>5</sup> See Securities Exchange Act Release No. 60495 (August 13, 2009), 74 FR 41957 (August 19, 2009) (SR–NYSEArca–2009–72). The Exchange proposed an incremental credit in an effort to attract and enhance participation in the IOI program, by offering attractive rebates and volume based incentives.

<sup>6</sup> See Securities Exchange Act Release No. 60944 (November 5, 2009), 74 FR 58668 (November 13, 2009) (SR–NYSEArca–2009–99). The Exchange proposed to add new transaction credits stemming from the use of Tracking Orders in an effort to enhance participation on the Exchange and to offer increased liquidity to ETP Holders and Market Makers.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>17</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.