

*Paper Comments*

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

All submissions should refer to File Number SR-C2-2011-029. This file number should be included on the subject line if e-mail 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 also will be available for inspection and copying at the principal office of the C2. 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-C2-2011-029 and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65519; File No. SR-CBOE-2011-094]

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

October 7, 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 October 3, 2011, the 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.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 the  
Statutory Basis for, the Proposed Rule  
Change*

**1. Purpose**

The Exchange proposes to amend the Fees Schedule related to monthly facility fees and CBOE*direct* connectivity charges.

The Exchange proposes to amend CBOE*direct* connectivity charges to clarify that charges assessed for access to a Network Access Port are per gigabyte, for both regular access and Sponsored Users. Currently, access to such Network Access Ports is only available in one-gigabyte increments. However, in the future, the Exchange may offer faster access at a higher gigabyte level, and may elect to charge a higher rate for such access (as the infrastructure and equipment involved would be costlier). To the extent the Exchange does offer faster access at a higher gigabyte level, and assesses a higher rate, the Exchange will submit a rule filing prior to doing so. The Exchange therefore proposes to clarify that the current rates assessed are for one-gigabyte access.

The Exchange also proposes to increase the fees charged for such access to a Network Access Port \$250 per month for regular access and \$500 per month for Sponsored User access. The Exchange recently made a sizable investment to upgrade the equipment involved in the Network Access Port, and thereby proposes to increase the fees in order to recoup such costs and maintain such equipment in the future. The Exchange currently charges a different rate for regular access and Sponsored User access, and merely proposes to increase the rates in equal proportion. Moreover, this change in Network Access Port fees is in line with the amounts assessed for similar access at other exchanges. The International Securities Exchange, Inc. ("ISE") assesses a fee of \$500 for network access up to and including 1 gigabyte.<sup>3</sup>

The Exchange also proposes to amend the Fees Schedule related to CBOE*direct* connectivity charges to assess a fee for each CMI Login ID. Firms may access CBOE*direct* via either a CMI Client Application Server or a FIX Port, depending on how their systems are configured. Currently, the Exchange assesses a fee for each CMI Client Application Server. However, a firm may have many users, using different Login IDs, accessing the same CMI Client Application Server, allowing the firm to only pay the monthly fee once. Alternatively, a firm may use the same Login ID to access different CMI Client Application Servers, thereby paying multiple times for the same Login ID. At the same time, FIX Ports are shared, and firms pay the monthly fee for access to FIX Ports on a per Login ID basis (though this is not currently clear on the Fees Schedule). As such, those firms who have many Login IDs but are

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

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

<sup>3</sup> See ISE Schedule of Fees, page 9.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

accessing the same CMI Client Application Server are avoiding paying a fee for each Login ID. The Exchange proposes to rectify this issue by charging for each CMI Login ID, and to clarify that access via a FIX Port is also per Login ID. The amounts of the rates are the same, so there would be no preference for firms using either access point. This change, too, would allow the Exchange to recoup some of the costs related to the investment in upgrading the connectivity equipment, as well as maintain this new equipment in the future.

The Exchange also proposes to increase co-location fees to \$50 per month per "U", or \$100 per month per "U" for Sponsored Users (the term "U" is used to indicate an equipment unit 1.75" high with a maximum power of 125 watts per U space). The Exchange recently upgraded this equipment as well, and the increased co-location fees would allow the Exchange to recoup some of the costs associated with this investment and maintain this upgraded equipment in the future. The amount of these fees is still lower than those assessed on a number of other exchanges. For example, NASDAQ OMX PHLX LLC ("Phlx") charges a fee of \$150 per U.<sup>4</sup>

Finally, the Exchange proposes to add the CBOE Trading Floor Terminal fee to the Fees Schedule. The Exchange provides a physical computer terminal for brokers to access the CBOE trading systems. The purpose of the \$250 per month fee for use of the terminals is to recoup the costs associated with purchasing and maintaining the terminals.

## 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 CBOE Trading Permit Holders and other persons using Exchange facilities.

The proposed change to increase co-location fees is reasonable because the new fees are still lower than those assessed on other exchanges<sup>7</sup> and is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants.

The proposed change to increase the Network Access Port fees and clarify

that such fees are for 1 gigabyte access is reasonable because the fees are within the same range as those assessed on other exchanges.<sup>8</sup> This proposed change is equitable and not unfairly discriminatory because the fees, as before, will be assessed to all market participants.

The proposed change to assess CMI CBOEdirect connectivity charges based on Login ID, as opposed to Client Application Server, is reasonable because the fees for such connectivity, on a per Login ID basis, will be the same as those for FIX connectivity, and is equitable and not unfairly discriminatory because market participants desiring connectivity will now be paying the same amount for a connection via either FIX or CMI.

Assessing higher fees for Sponsored Users is equitable and not unfairly discriminatory because Sponsored Users are able to access the Exchange and use the equipment provided without purchasing a trading permit. As such, Trading Permit Holders who have purchased a trading permit will have a higher level of commitment to transacting business on the Exchange and using Exchange facilities than Sponsored Users.

The proposed change to add the CBOE Trading Floor Terminal fee to the Fees Schedule is reasonable because the amount is within the range of other fees assessed for trading floor terminal rental<sup>9</sup> and is equitable and not unfairly discriminatory because the fee will be assessed to all market participants.

Finally, the proposed change to clarify that the Exchange fees for FIX connectivity are assessed on a per Login ID basis furthers the objectives of Section 6(b)(5)<sup>10</sup> of the Act in particular, in that it is designed 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, by eliminating any confusion regarding the basis on which such fees are assessed.

## 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>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-094 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-2011-094. This file number should be included on the subject line if e-mail 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

<sup>4</sup> See Phlx Fee Schedule, Section 6.

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

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

<sup>7</sup> See Note 4.

<sup>8</sup> See Note 3.

<sup>9</sup> See Exchange Fees Schedule, Section 8(F)(10).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

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 on official business days between the hours of 10 a.m. and 3 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-2011-094, and should be submitted on or before November 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65517; File No. SR-CBOE-2011-097]

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

October 7, 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 October 3, 2011, the 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 the Fees Schedule regarding the Marketing Fee. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

CBOE proposes to amend its Marketing Fee Program to extend for an additional three months a pilot program it implemented on December 1, 2010,<sup>3</sup> and extended on April 1, 2011<sup>4</sup> and July 1, 2011<sup>5</sup> relating to the assessment of the marketing fee in the SPY option class. Specifically, CBOE previously determined not to assess the marketing fee on electronic transactions in SPY options, except that it would continue to assess the marketing fee on electronic transactions resulting from its Automated Improvement Mechanism ("AIM") pursuant to CBOE Rule 6.74A and transactions in open outcry (the "Waiver"). This pilot program is scheduled to terminate on September 30, 2011, and CBOE now proposes to extend it until December 31, 2011.

As CBOE stated in its rule filing establishing this three month pilot program, this proposed change is intended to attract more customer volume to the Exchange in the SPY option class and to allow CBOE market-

makers to better compete for order flow. CBOE noted that the SPY option class is unique in the manner in which it trades and is one of the most active option classes. CBOE also noted that DPMs and Preferred Market-Makers can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. Finally, CBOE noted that it believes that the marketing fee funds received by payment accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY option class. CBOE believes that the current demographics of electronic SPY option order flow is more driven by the displayed best bid or offer ("BBO") and size than payment for order flow considerations, and thus assessment of the marketing fee for those transactions is not a differentiator at this time.

For the reasons noted above, CBOE believes that it would make sense to extend the pilot program until December 31, 2011. CBOE believes that it is beneficial to continue to assess the fee on the limited bases as proposed and will continue to enable CBOE to compete for order flow in the SPY option class. However, because the SPY option class is unique in the manner in which it trades and is one of the most active option classes, CBOE would like to continue to evaluate for an additional three months the effect of not assessing the fee on all electronic transactions in the SPY option class, except for transactions resulting from AIM and in open outcry.

The Exchange also proposes to amend its Fees Schedule to remove the security EEM from a list of options on whom the marketing fee to be collected is \$0.00. EEM is the acronym for the exchange-traded fund ("ETF") iShares MSCI Emerging Markets Index Fund. The Exchange wishes to remove EEM from the abovementioned list. Hereafter, the marketing fee for EEM transactions would be \$0.25 per contract, as it is with nearly all other ETFs. The purpose of this change is to increase volume on EEM options. By assessing a marketing fee on EEM transactions, the Exchange will be able to use the money collected to attract volume, pursuant to the Exchange's marketing fee plan. The Exchange believes that the demographics of EEM options order flow is inclined to seek economic considerations such as payment for order flow, so a marketing fee for EEM trades is necessary to attract EEM volume and liquidity.

<sup>3</sup> See Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR-CBOE-2010-108).

<sup>4</sup> See Securities Exchange Act Release No. 64212 (April 6, 2011), 76 FR 20411 (April 12, 2011) (SR-CBOE-2011-033).

<sup>5</sup> See Securities Exchange Act Release No. 64818 (July 6, 2011), 76 FR 40978 (July 12, 2011) (SR-CBOE-2011-060).

<sup>13</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.