

Finally, while Nasdaq believes that, consistent with best practices, many listed companies have already established and implemented an internal audit function, to allow sufficient time for companies that have not yet done so, each company listed on Nasdaq on or before June 30, 2013, will be required to establish an internal audit function by no later than December 31, 2013. Companies listed after June 30, 2013, will be required to establish an internal audit function prior to listing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general and with Section 6(b)(5) of the Act,⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will require listed companies to establish and maintain an internal audit function. It is intended to ensure that listed companies have a mechanism in place to regularly review and assess their system of internal control and, thereby, to identify any weaknesses and develop appropriate remedial measures. It is also intended to make sure that management and the audit committee are provided with ongoing information about the company's risk management processes and system of internal control. As such, it is designed to protect investors and the public interest.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. In this regard, Nasdaq notes that the competition among exchanges for listings is robust and vigorous, and the proposed rule change is not intended, nor is it expected, to reduce or diminish such competition.

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

Written comments were neither solicited nor received.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-NASDAQ-2013-032 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-NASDAQ-2013-032. 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 on official business days between the hours of 10:00 a.m. and 3:00 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-NASDAQ-2013-032, and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69025; File No. SR-CBOE-2013-025]

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

March 4, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 19, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

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 these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On February 8, 2013, the Commission approved a proposed rule change that would amend CBOE rules to permit the listing and trading, on a pilot basis, of cash-settled S&P 500 index 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 ("P.M.-settled") (the proposed contract is referred to as "SPXPM").³ As such, the Exchange proposes herein to establish fees for SPXPM.

The Exchange already lists and trades A.M.-settled options on the S&P 500 index under the contract "SPX." Therefore, the Exchange proposes to assess the same fees regarding SPXPM as are assessed regarding SPX (with a few exceptions, which shall be explained herein). Like SPX, SPXPM is one of the Exchange's proprietary index options products, and the Proprietary Index Options Rate Table will apply to SPXPM (as such, SPXPM, like SPX, will be excluded from the Exchange's other Index Options Rate Table, which excludes a number of proprietary index products⁴). Transaction fees for SPXPM will be as follows (all listed rates are per contract):

Customer (Premium > or = \$1)	\$0.44
Customer (Premium < \$1)	0.35

³ See Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668 (February 14, 2013) (SR-CBOE-2012-120).

⁴ See Exchange Fees Schedule, Index Options Rate Table—All Index Products Excluding SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

Clearing Trading Permit Holder Proprietary	0.25
CBOE Market-Maker/DPM/E-DPM/LMM	0.20
Joint Back-Office, Broker-Dealer, Non-Trading Permit Holder Market-Maker	0.40
Professional/Voluntary Professional ...	0.40

All of the proposed SPXPM transaction fees listed above are the same amounts as those for SPX, with the exception of the Professional/Voluntary Professional fee.⁵ SPX is traded on the Exchange's Hybrid 3.0 system ("Hybrid 3.0"), and the Professional and Voluntary Professional designations are not available in Hybrid 3.0 classes.⁶ As such, Professionals and Voluntary Professionals trading SPX are assessed the same fee amounts as customers. However, SPXPM, like all proprietary index options products except SPX, will be traded on the Exchange's Hybrid Trading System ("Hybrid"), which recognizes the difference between Professionals/Voluntary Professionals and Customers. As such, the Exchange proposes to assess to Professionals/Voluntary Professionals the same fee amounts as apply to the majority of other proprietary index options trading on Hybrid.⁷ The Exchange also proposes to apply to SPXPM, like SPX, the Floor Brokerage Fee of \$0.04 per contract (\$0.02 per contract for crossed orders) (the Floor Brokerage Fee applies only to Floor Brokers, and only for open outcry trading).

The Exchange also proposes to apply to SPXPM, like SPX, an Index License Surcharge Fee of \$0.13 per contract.⁸ The Exchange licenses from Standard & Poor's the right to offer an index option product based on the S&P 500 index (including SPXPM). In order to recoup the costs of the S&P 500 Index license, the Exchange assesses a surcharge on S&P 500 Index-based products. We note that the cost of that license works out to more than the proposed SPXPM Surcharge amount of \$0.13 per SPXPM contract traded.

Like SPX, the Exchange proposes to except SPXPM from the Liquidity Provider Sliding Scale,⁹ the Marketing Fee,¹⁰ the Clearing Trading Permit Holder Fee Cap in all products except

⁵ See Exchange Fees Schedule, Proprietary Index Options Rate Table—SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

⁶ See Exchange Rules 1.1(fff) and 1.1(ggg).

⁷ This includes OEX, XEO, VIX and Volatility Indexes, and SPXW, which is a series of SPX that is P.M.-settled and is traded on the Hybrid system.

⁸ See Exchange Fees Schedule, Proprietary Index Options Rate Table—SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES.

⁹ See Exchange Fees Schedule, Liquidity Provider Sliding Scale Table and Footnote 10.

¹⁰ See Exchange Fees Schedule, Footnote 6.

SPX, SRO, VIX or other volatility indexes, OEX or XEO (the "Fee Cap"), the exemption from fees for facilitation orders,¹¹ the AIM Contra Execution Fee (applicable standard transaction fees will apply to AIM, SAM, FLEX AIM and FLEX SAM executions in SPXPM, like SPX),¹² the CFLEX AIM Response Fee (applicable standard transaction fees will apply to FLEX AIM and FLEX SAM response executions in SPXPM, like SPX),¹³ the Market-Maker Trading Permit Sliding Scale,¹⁴ and the CFLEX AIM Credit (which has already expired and the Exchange will propose to remove from the Fees Schedule shortly).¹⁵ Like SPX, the Exchange proposes to apply to SPXPM the CBOE Proprietary Products Sliding Scale¹⁶ and the Customer Large Trade Discount.¹⁷

Unlike SPX, the Exchange does not propose to apply a Tier Appointment Fee¹⁸ to SPXPM at this time, as the Exchange does not want to discourage Market-Makers from registering for an SPXPM tier appointment. Because the Exchange is not assessing a Tier Appointment Fee for SPXPM, the Exchange will also not assess a fee to Floor Brokers who execute more than 20,000 SPXPM contracts during a month (this fee is assessed regarding SPX).¹⁹ Such a fee, as applied to SPX and VIX options transactions, is intended to equalize the opportunity between Market-Makers and Floor Brokers in those classes (since SPX and VIX options both have a Tier Appointment Fee). Unlike SPX, the Exchange also does not propose to apply the Hybrid 3.0 Execution Fee²⁰ to SPXPM, as SPXPM will not be trading on Hybrid 3.0. The Exchange does not propose to apply the SPX Arbitrage Phone Positions Fee²¹ to SPXPM, as that fee regards the Exchange's actual SPX trading pit. The Exchange also does not propose to apply the Chicago Mercantile Exchange (CME) Members SPX and OEX

¹¹ See Exchange Fees Schedule, Footnotes 11 and 22.

¹² See Exchange Fees Schedule, Footnote 18.

¹³ See Exchange Fees Schedule, Footnote 20.

¹⁴ See Exchange Fees Schedule, Market-Maker Trading Permit [sic] Sliding Scale Table and Footnote 24.

¹⁵ See Exchange Fees Schedule, Footnote 28.

¹⁶ See Exchange Fees Schedule, CBOE Proprietary Products Sliding Scale Table and Footnote 23.

¹⁷ See Exchange Fees Schedule, Customer Large Trade Discount Table.

¹⁸ See Exchange Fees Schedule, Trading Permit and Tier Appointment Fees Table.

¹⁹ See Exchange Fees Schedule, Footnote 25.

²⁰ See Exchange Fees Schedule, Proprietary Index Options Rate Table—SPX, SPXW, SRO, OEX, XEO, VIX and VOLATILITY INDEXES and Footnote 21.

²¹ See Exchange Fees Schedule, Facility Fees Table.

Fees²² to SPXPM, as such fees are no longer applicable to CBOE and the Exchange intends to propose to remove them from the Fees Schedule shortly.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²³ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²⁴ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed SPXPM transaction fee amounts for Professional and Voluntary Professional orders are reasonable because they are the same as the amounts of corresponding fees for SPX orders (SPX and SPXPM are based on the same underlying index). The proposed SPXPM transaction fee amounts for Professional and Voluntary Professional orders are reasonable because they are the same as the amounts for corresponding fees for a number of other proprietary index options orders (including SPXW, which is based on the same underlying index as SPXPM and is also P.M.-settled). Assessing, for Professional and Voluntary Professional SPXPM orders, the same fee amount as that for SPXW orders (as opposed to the same fee amount as SPX orders) is equitable and not unfairly discriminatory because SPX, unlike SPXPM and a number of other proprietary index options, trades on Hybrid 3.0, and the Professional and Voluntary Professional designations are not available in Hybrid 3.0 classes. Since SPXPM will trade on Hybrid, it is equitable and not unfairly discriminatory to assess the same fee amount for Professional and Voluntary Professional SPXPM orders as for other proprietary index options products that also trade on Hybrid (including SPXW, which is based on the same underlying index as SPXPM and is also P.M.-settled).

It is equitable and not unfairly discriminatory to assess lower fees to CBOE Market-Maker/DPM/E-DPM/

LMM orders than those other market participants because CBOE Market-Makers/DPMs/E-DPMs/LMMs must take on a number of obligations, such as quoting obligations, that other market participants do not take on. Similarly, it is equitable and not unfairly discriminatory to assess lower fees to Clearing Trading Permit Holder Proprietary orders than those of other market participants because Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on.

Assessing a higher fee for Customer transactions in SPXPM options whose premium is greater than or equal to \$1.00 than for Customer transactions in SPXPM options whose premium is less than \$1.00 is equitable and not unfairly discriminatory because the nearly all options based on the S&P 500 Index are priced at well above \$1.00. However, most Customers, at the end of an expiration cycle, desire to continue to hold options based on the S&P 500 Index (including both SPX and SPXPM), and because it is the end of an expiration cycle, such options are priced very low. The Exchange therefore offers lower pricing for Customer SPX options (and proposes to offer equivalent pricing for SPXPM options) in order to encourage such trading and thus encourage Customers to open SPX (and SPXPM) options positions in the next cycle. As these new positions will almost certainly be priced above \$1.00, offering the lower pricing for SPXPM options whose premium is below \$1.00 therefore benefits market participants trading SPXPM options whose premium is at or above \$1.00 by encouraging Customers to open up those positions (thereby providing greater liquidity). Customer fees for SPXPM options will still be lower than those assessed to Broker-Dealers and non-Trading Permit Holder Market-Makers (among other market participants) because Customers are not assessed a Surcharge Fee for SPXPM options transactions. Further, the Exchange currently offers different fees depending on the premium for Customer transactions in SPX options, and the amounts of the proposed SPXPM Customer transaction fees are equivalent to those already in existence for SPX.

Also, the SPXPM fee amounts for each separate type of market participant will be assessed equally to all such market participants (*i.e.* all Broker-Dealer orders will be assessed the same amount, all Joint Back-Office orders will be assessed the same amount, etc.), and

the amounts are the same as those assessed for similar SPX transactions (except for Voluntary Professional and Professional SPXPM transactions, which are assessed the same fee amount as transactions in a number of other proprietary index options products, as discussed above).

Assessing the Floor Brokerage Fee of \$0.04 per contract (\$0.02 per contract for crossed orders) to Floor Brokers (and not other market participants) trading SPXPM orders is equitable and not unfairly discriminatory because only Floor Brokers are statutorily capable of representing orders in the trading crowd, for which they charge a commission. Moreover, this fee is already assessed, in the same amounts, to SPX orders.

Assessing the Index License Surcharge Fee of \$0.13 per contract to SPXPM transactions is reasonable because the Exchange still pays more for the SPXPM license than the amount of the proposed SPXPM Index License Surcharge Fee (meaning that the Exchange will be subsidizing the costs of the SPXPM license). This increase is equitable and not unfairly discriminatory because the increased amount will be assessed to all market participants to whom the SPXPM Surcharge applies. Not applying the SPXPM Index License Surcharge Fee to Customer orders is equitable and not unfairly discriminatory because this is designed to attract Customer SPXPM orders, which increases liquidity and provides greater trading opportunities to all market participants. Further, there is a longstanding practice in the options marketplace of providing preferential pricing for Customers. Moreover, the proposed SPXPM Index License Surcharge Fee amount is the same amount as already exists for SPX, which also does not apply to Customer orders.

Excepting SPXPM from the Liquidity Provider Sliding Scale, the Marketing Fee, the Fee Cap, the exemption from fees for facilitation orders, the AIM Contra Execution Fee, the CFLEX AIM Response Fee, the Market-Maker Trading Permit Sliding Scale, and the CFLEX AIM Credit is reasonable because SPX is excepted from those same items. This is equitable and not unfairly discriminatory for the same reason; it seems equitable to except SPXPM from items on the Fees Schedule from which SPX, an index options product that, like SPXPM, is based on the S&P 500 Index, is also excepted (barring any further rationale to the contrary).

Applying to SPXPM the CBOE Proprietary Products Sliding Scale and the Customer Large Trade Discount is

²² See Exchange Fees Schedule, Trading Permit Holder Transaction Fee Policies and Rebate Programs Table.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(4).

reasonable because these items apply to SPX. This is equitable and not unfairly discriminatory for the same reason; it seems equitable (barring any further rationale to the contrary) to apply to SPXPM the same items on the Fees Schedule that apply to SPX (an index options product that, like SPXPM, is based on the S&P 500 Index).

Not applying a Tier Appointment Fee, the Hybrid 3.0 Execution Fee, the SPX Arbitrage Phone Positions Fee, and the CME Members SPX Fee to SPXPM is reasonable because those market participants involved in the trading of SPXPM will not have to pay such fees. Not applying a Tier Appointment Fee to SPXPM is equitable and not unfairly discriminatory because the Exchange desires to encourage Market-Makers to register for an SPXPM tier appointment, and the more Market-Makers that do so, the more SPXPM quoting there will be, which benefits all market participants. Not applying a fee to Floor Brokers who execute more than 20,000 SPXPM contracts during a month is equitable and not unfairly discriminatory because the Exchange is not assessing a Tier Appointment Fee for SPXPM (the fee for Floor Brokers in SPX is intended to equalize the opportunity between Market-Makers and Floor Brokers in those classes (since SPX has a Tier Appointment Fee)).

Not applying the Hybrid 3.0 Execution Fee to SPXPM is equitable and not unfairly discriminatory because SPXPM is not traded on Hybrid 3.0. Not assessing the SPX Arbitrage Phone Positions Fee to SPXPM is equitable and not unfairly discriminatory because this fee refers to the actual SPX crowd area at the Exchange. Not applying the CME Members SPX Fee to SPXPM is equitable and not unfairly discriminatory because such fees are no longer applicable to CBOE and the Exchange intends propose to remove them from the Fees Schedule shortly.

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. CBOE does not believe that assessing lower fees to CBOE Market-Maker/DPM/E-DPM/LMM orders than those other market participants will impose any unnecessary burden on intramarket competition because CBOE Market-Makers/DPMs/E-DPMs/LMMs must take on a number of obligations, such as quoting obligations, that other market participants do not take on. Similarly, CBOE does not believe that assessing

lower fees to Clearing Trading Permit Holder Proprietary orders than those of other market participants will impose any unnecessary burden on intramarket competition because Clearing Trading Permit Holders have a number of obligations (such as membership with the Options Clearing Corporation), significant regulatory burdens, and financial obligations, that other market participants do not need to take on.

CBOE does not believe that not applying the SPXPM Index License Surcharge Fee to Customer orders will impose any unnecessary burden on intramarket competition because this is designed to attract Customer SPXPM orders, which increases liquidity and provides greater trading opportunities to all market participants. Further, there is a longstanding practice in the options marketplace of providing preferential pricing for Customers.

CBOE does not believe that the proposed SPXPM fees will impose any unnecessary burden on intramarket competition because SPXPM is a proprietary product that will only be traded on CBOE. However, to the extent that the proposed SPXPM fees may be attractive to market participants on other exchanges, such market participants may always elect to become CBOE market participants.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and paragraph (f) of Rule 19b-4²⁶ 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. Please include File No. SR-CBOE-2013-025 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 No. SR-CBOE-2013-025. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal 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-2013-025 and should be submitted on or before March 29, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Kevin M. O'Neill,

Deputy Secretary.

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²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).

²⁷ 17 CFR 200.30-3(a)(12).