

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64212; File No. SR-CBOE-2011-033]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to CBOE's Marketing Fee Program

April 6, 2011.

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 March 31, 2011, Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule and specifically make certain changes to its Marketing Fee Program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B),

and (C) below, of the most significant aspects of such statements.

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

##### 1. Purpose

CBOE proposes to amend its Marketing Fee Program to extend for an additional three months a pilot program it implemented on December 1, 2010, relating to the assessment of the marketing fee in the SPY option class.<sup>5</sup> 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. This pilot program is scheduled to terminate on March 31, 2011, and CBOE now proposes to extend it until June 30, 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 this 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-Makes [sic] 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.

For the reasons noted above, CBOE believes that it would make sense to extend the pilot program until June 30, 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.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</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 Trading Permit Holders in that it is intended to attract more customer volume on the Exchange in SPY options. The SPY option class is one of the most active and liquid classes and trades with a significant electronic trading volume. Because of its current trading profile, CBOE believes it might be better able to attract electronic liquidity by not assessing the marketing fee on electronic SPY transactions and therefore proposes to extend the current waiver. However, CBOE believes that continuing to collect the marketing fee on open outcry transactions, as well as electronic orders submitted to AIM for price improvement, from market makers that trade with customer orders from payment accepting firms would continue to attract liquidity in SPY to the floor and AIM mechanism, respectively. Accordingly, CBOE believes continuing the waiver is equitable because it reflects the trading profile of SPY and is designed and intended to attract additional order flow in SPY to the Exchange, which would benefit all trading permit holders.

#### 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 [sic] 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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the

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

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 63470 (December 8, 2010), 75 FR 78284 (December 15, 2010) (SR-CBOE-2010-108).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</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-2011-033 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-2011-033. 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 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 CBOE. 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-2011-033 and should be submitted on or before May 3, 2011.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64208; File No. SR-NSX-2011-02]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NSX Fee and Rebate Schedule and NSX Rule 16.4

April 6, 2011.

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 March 29, 2011, National Stock Exchange, Inc. 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 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 National Stock Exchange, Inc. ("NSX" or the "Exchange") is proposing a rule change, operative at commencement of trading on April 1, 2011, which proposes to amend the NSX Fee and Rebate Schedule (the "Fee Schedule") to adjust certain liquidity taking rebates and fees in the Automatic Execution Mode of order interaction, eliminate the Exchange's market data rebate in the Order Delivery Mode of order interaction and establish an exchange regulatory fee.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>10</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.

#### 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

With this rule change, the Exchange is proposing to modify the Fee Schedule and related text of Rule 16 in four respects. First, the proposed rule change would increase the highest rebate, and adjust the tier thresholds, for liquidity adding displayed orders in the Automatic Execution Mode of order interaction ("AutoEx")<sup>3</sup> priced at least one dollar. Certain conforming changes are also proposed for rebates for liquidity adding Zero Display Orders<sup>4</sup> in AutoEx priced at least one dollar. Second, the proposed rule change would eliminate the \$0.0028 taker fee on orders that take liquidity in AutoEx for securities one dollar and above. Third, the proposed rule change would eliminate the market data revenue rebate currently available in the Order Delivery Mode of order interaction ("Order Delivery"). Finally, the proposed rule change would establish a monthly exchange regulatory fee. Each of the proposed changes is further addressed below.

##### AutoEx Liquidity Adding Rebate for Securities Priced at Least One Dollar

Currently, for displayed orders in securities priced one dollar and above that provide liquidity in AutoEx, the Fee Schedule provides a ("Tier 1") rebate of \$0.0026 per share if an ETP Holder's liquidity adding average daily volume (as such term is defined in Endnote 3 of the Fee Schedule, "Liquidity Adding ADV") is less than 20 basis points of Total Consolidated Average Daily Volume (as defined in Endnote 13 of the Fee Schedule,

<sup>3</sup> The Exchange's two modes of order interaction are described in NSX Rule 11.13(b).

<sup>4</sup> "Zero Display Orders" means "Zero Display Reserve Orders" as specified in NSX Rule 11.11(c)(2)(A).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).