(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

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

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been 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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the 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 Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2011–12 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–OCC–2011–12. 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 Section, 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 filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_12.pdf.*

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–OCC–2011–12 and should be submitted on or before October 11, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23976 Filed 9–16–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65325; File No. SR–CBOE–2011–085]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Concerning the Clearing Trading Permit Holder Proprietary Transaction Fee Waiver for Orders in Multiply-Listed FLEX Options Classes

September 12, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2011, the Chicago Board Options Exchange, Incorporated (''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

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

On August 1, 2011, the Exchange implemented a waiver of the Clearing Trading Permit Holder (''CTPH'') Proprietary Transaction Fee (the ''Fee'') for CTPHs executing facilitation orders in multiply-listed FLEX Options classes (the ''Waiver'').[3] At that time, the Exchange intended to exclude from the Waiver such orders originating from joint back-office (''JBO'') participants, but due to an oversight, such orders were not excluded. Therefore, the Exchange now proposes to amend the Waiver to exclude such orders originating from JBO participants.

A JBO is an arrangement whereby a broker/dealer maintains a nominal ownership interest in its clearing firm. The clearing firm will issue a special class of non-voting preferred stock to other broker/dealers that clear their proprietary positions through the clearing firm. JBO participants are not considered self-clearing for any purpose other than the extension of credit under CBOE Rule 12.3 or under comparable

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–65007 (August 2, 2011), 76 FR 48190 (August 8, 2011) (SR–CBOE–2011–071).

rules of another self-regulatory organization.[4]

JBOs are separate entities from the CTPHs with which they maintain an arrangement, and do not have a complete common identity of ownership with the CTPHs. JBOs take advantage of the exposure across the market that CTPHs afford and use CTPHs for margin relief. While JBO trades come into market with the same origin code as CTPHs, these trades are executed on behalf of the JBO and not the CTPHs. CTPHs have various obligations, such as clearing accounts and settling trades, and must abide by certain requirements, such as those regarding books and records, and risk analysis, that JBOs do not. Moreover, unlike CTPHs, JBOs do not guarantee performance on contracts, and if a JBO backs out of a position or otherwise cannot maintain a position that the JBO had taken, the CTPH is still on the hook to maintain that JBO position. Also, unlike CTPHs, JBOs are not self-clearing for the purposes of facilitation.[5] Further, CTPHs must work with the Options Clearing Corporation (''OCC'') to clear trades and satisfy OCC requirements on subjects such as capital requirements, which JBOs do not need to satisfy. In recognition of the obligations and liabilities that CTPHs possess and which JBOs do not possess, and because JBOs are not self-clearing for the purposes of facilitation, the Exchange does not at the present time desire to provide the Waiver to JBOs, and therefore proposes to exclude JBOs from the Waiver. Finally, the Exchange currently excludes JBO orders from the Fee Cap and Sliding Scale.[6] Excluding JBOs from the Waiver helps to achieve a level of consistency in the Fees Schedule.

As previously stated, JBO trades come into the market with the same origin code as CTPHs. However, CTPHs may possess different clearing firm numbers; each CTPH has a number for its own trades, and a different number for each JBO. Therefore, JBO trades will be identified and differentiated from CTPH trades by these different numbers.

The proposed rule change would take effect on September 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) [8] 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 Exchange believes that amending the Waiver to exclude JBO orders is reasonable because the amount of the fee, either $0.20 or $0.25 per contract (depending on the product), is within the range of fees assessed by the Exchange for other orders charged to other market participants for the same product.[9] Indeed, up until August 1, 2011 (one month ago), when the Waiver was instituted and unintentionally included JBO trades, JBOs paid this amount for firm facilitation orders in multiply-listed FLEX Options classes.

The Exchange believes amending the Waiver to exclude JBO orders is equitable and not unfairly discriminatory because, unlike CTPHs, JBOs are not self-clearing for the purposes of facilitation,[10] and because CTPHs have a number of obligations, responsibilities and liabilities that JBOs do not possess. These obligations include clearing accounts, settling trades, and must abide by certain requirements, such as those regarding books and records, and risk analysis. Moreover, unlike CTPHs, JBOs do not guarantee performance on contracts, and if a JBO backs out of a position or otherwise cannot maintain a position that the JBO had taken, the CTPH is still on the hook to maintain that JBO position. Further, CTPHs must work with the OCC to clear trades and satisfy OCC requirements on subjects such as capital requirements, which JBOs do not need to satisfy. In recognition of the obligations and liabilities that CTPHs possess and which JBOs do not possess, and because JBOs are not self-clearing for the purposes of facilitation, the Exchange believes it is equitable and not unfairly discriminatory to exclude JBOs from the Waiver. Finally, the Exchange currently excludes JBO orders from the Fee Cap and Sliding Scale.[11] Excluding JBOs from the Waiver helps to achieve a level of consistency in the Fees Schedule.

The Exchange operates in a highly competitive market in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges based on fee levels. The Exchange believes that the fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

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[12] and subparagraph (f)(2) of Rule 19b–4[13] 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.* Please include File

[4] *See* CBOE Rule 13.4, Interpretation and Policy .01.

[5] *See* CBOE Rule 13.4, Interpretation and Policy .01.

[6] *See* Exchange Fees Schedule section regarding the Multiply-Listed Options Fee Cap and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Exchange Fees Schedule, Section 1.

[10] *See* CBOE Rule 13.4, Interpretation and Policy .01.

[11] *See* Exchange Fees Schedule section regarding the Multiply-Listed Options Fee Cap and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

Number SR–CBOE–2011–085 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–2011–085. 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 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–2011–085 and should be submitted on or before October 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–23897 Filed 9–16–11; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65330; File No. SR–BX–2011–046]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the BOX Fee Schedule With Respect to Credits and Fees for Transactions in the BOX Price Improvement Period

September 13, 2011.

I. Introduction

On July 15, 2011, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Fee Schedule of the Boston Options Exchange Group, LLC (''BOX'') to increase the credits and fees for certain transactions in the BOX Price Improvement Period (''PIP'').[3] The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4] Notice of filing of the proposed rule change was published in the **Federal Register** on August 3, 2011.[5]

Under Section 19(b)(3)(C) of the Act, the Commission is (1) hereby temporarily suspending File No. SR–BX–2011–046, and (2) instituting proceedings to determine whether to approve or disapprove File No. SR–BX–2011–046.

II. Summary of the Proposed Rule Change

The Exchange proposes to increase the credits and fees for certain transactions in the PIP by modifying Section 7d of the BOX Fee Schedule. Specifically, the Exchange proposes to: (1) Increase both the credits and the fees for PIP transactions in classes that are not subject to the Penny Pilot (''Non-Penny classes'') from $0.30 to $0.75 per contract; and (2) increase both the credits and the fees for PIP transactions in Penny Pilot classes where the trade price is equal to or greater than $3.00 per contract (other than in QQQQ, SPY, and IWM) from $0.30 to $0.75 per contract. The credits and the fees for PIP transactions in QQQQ, SPY, and IWM and in all other Penny Pilot classes where the trade price is less than $3.00 per contract will remain at $0.30 per contract. The credits are paid by the Exchange on the agency order that is submitted to the PIP auction on behalf of a customer. The fees are charged by the Exchange to the order that is executed against the agency order, whether such order is a paired order submitted by the BOX Options Participant that also submitted the agency order or an order submitted by another BOX Options Participant in response to the PIP auction. The credits and fees are in addition to any applicable trading fees, as described in Sections 1 through 3 of the BOX Fee Schedule.[6]

III. Suspension of SR–BX–2011–046

Pursuant to Section 19(b)(3)(C) of the Act,[7] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[8] the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization 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.

The Commission believes it is appropriate to evaluate the effect of the proposed rule change on competition among different types of market participants and on market quality, particularly with respect to the net fee differential that it would place on BOX Options Participants that respond to a PIP auction (''PIP Responders'') compared to a BOX Options Participant that initiated the PIP auction (''PIP Initiator''). Under the proposed rule change, the Exchange would charge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PIP is a mechanism in which a BOX Options Participant submits an agency order on behalf of a customer for price improvement, paired with a contra-order guaranteeing execution of the agency order at or better than the National Best Bid or Offer (''NBBO''). The contra-order could be for the account of the Options Participant, or an order solicited from someone else. The agency order is exposed for a one-second auction in which other BOX Options Participants may submit competing interest at the same price or better. The initiating BOX Options Participant is guaranteed 40% of the order (after public customers) at the final price for the PIP order, assuming it is at the best price. *See* Chapter V, Section 18 of the BOX Rules.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] *See* Securities Exchange Act Release No. 64981 (July 28, 2011) 76 FR 46858 (''Notice'').

[6] Sections 1 through 3 of the Box Fee Schedule include a $0.25 per contract transaction fee for contracts traded in the PIP. Depending on its average daily volume (''ADV''), a Participant who initiates PIP auctions may be charged a lower per contract fee. *See* Section 7d. of the Box Fee Schedule. *See also infra* note 9.

[7] 15 U.S.C. 78s(b)(3)(C).

[8] 15 U.S.C. 78s(b)(1).