(excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and

(19) For the third Wednesday of each month:

(a) The total number of FLEX AIM auctions on that date;

(b) The number of FLEX AIM auctions where the order submitted to the AIM was fewer than 50 contracts;

(c) The number of FLEX AIM auctions where the order submitted to the AIM was 50 contracts or greater;

(d) The number of FLEX AIM auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and

(e) The number of FLEX AIM auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

B. Solicitation Auction Mechanism

The Exchange is also proposing a SAM Auction for FLEX Options. The Commission believes that the proposal should allow for greater flexibility in pricing large-sized orders. The Commission further believes that the proposal includes appropriate terms and conditions to assure that the Agency Order is first exposed to FLEX Traders by RFR for the possibility of price improvement and that public customer orders on the Exchange are protected. The Commission also notes that the proposal is similar to requirements set forth in the CBOE SAM for non-FLEX Options.[41]

The Exchange proposes that the duration of the RFR response period would be established by the Exchange on a class-by-class basis and shall not be less than three seconds. As with the AIM, one commenter suggested that the response time in the SAM for newly added flex strikes be increased from three seconds to one minute.[42] The Commission believes that the three-second electronic auction proposed by the Exchange should provide sufficient time for an electronic crowd to compete for an Agency Order. The Commission notes that the RFR response period of three seconds is consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures.[43] The Commission believes that using the same period of time to respond to RFRs in SAM auctions should be appropriate for FLEX Traders.

Under the proposal, at the conclusion of the SAM, the Agency Order would be executed against the second/solicited order unless there is sufficient size to execute the entire Agency Order at a price(s) that improves the proposed crossing price. In the case where there are one or more public customers or non-TPH broker-dealers at the proposed execution price on the opposite side of the Agency Order, the second/solicited order would be cancelled and the Agency Order would be executed against other bids (offers) if there is sufficient size at the bid (offer) to execute the Agency Order entirely. If there is not sufficient size to execute the entire Agency Order, or if the execution price would be inferior to the BBO, then the proposed cross would not be executed, and both the Agency Order and second/solicited order would be cancelled. In the event the Agency Order is executed at an improved price(s) or at the proposed execution price against RFR responses and FLEX Orders, priority would first go to RFR responses and FLEX Orders for the account of public customers and non-TPH broker-dealers based on time priority, then any RFR responses and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement, and finally all other RFR responses and FLEX Orders. The Commission believes that the priority and allocation rules are reasonable and consistent with the Act.[44]

The Commission also notes that the Exchange has included a provision stating that FLEX Traders may not use the SAM auction to circumvent Rule 24B.5 limiting principal transactions. The Exchange will also require written notification to customers prior to entering Agency Orders into the SAM on behalf of the customer and will require that determinations made by the Exchange regarding eligible classes, order size parameters, and the minimum price increment shall be communicated in a Regulatory Circular. The Exchange also proposes to permit the processing of complex orders. The Commission believes that the provisions help to clarify application of the SAM rule and may encourage further use of FLEX Options.

One commenter asserted that the current FLEX auction mechanism should not be allowed to migrate to the CBOE Hybrid platform, arguing that participants that submit RFQs can receive quote responses that lock and/or cross markets.[45] In response, CBOE stated that the comments have no relevance to the instant proposed rule change, which simply seeks to implement the two new FLEX AIM and SAM auctions and which does not propose any changes to the existing electronic RFQ auction mechanism.[46]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change (File No. SR–CBOE–2011–123), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8171 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66704; File No. SR–CBOE–2012–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Transaction Fees

March 30, 2012.

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 March 29, 2012, 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 self-regulatory organization. The Commission is publishing this notice to

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[41] *See* Rule 6.74B.

[42] *See* CTC Letter, *supra* note 4, at 1. *See also* discussion at Section III.A regarding the three-second RFR period for the AIM.

[43] *See* Rule 24B.5(b)(3)(iii).

[44] The Commission also believes, for the same reasons described above for the AIM, that the proposed priority and allocation rules for electronic FLEX trading in the SAM are consistent with Section 11(a) of the Act. *See supra* note 38.

[45] *See* CTC Letter, *supra* note 4, at 2.

[46] *See* CBOE Response, *supra* note 5, at 4. CBOE, however, notes that with respect to the FLEX SAM auction, the mechanism uses an all-or-none type allocation methodology and, by design it is possible for an agency order to receive an execution at a price that is through a response price. This is consistent with how the existing SAM auction for non-FLEX Options currently operates. *Id.*

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 as it relates to Flexible Exchange Options (''FLEX Options''). 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, 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 those 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 parts of such statements.

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

1. Purpose

The Exchange has submitted a separate proposed rule change to establish two new automated auctions for FLEX Options trading: the FLEX Automated Improvement Mechanism (the ''AIM'' auction) under proposed Rule 24B.5A and the FLEX Solicitation Auction Mechanism (the ''SAM'' auction) under proposed Rule 24B.5B (the two auctions are collectively referred to herein as the ''CFLEX AIM'' auctions).[3] The primary purpose of this proposed rule change is to amend the CBOE Fees Schedule to adopt a ''CFLEX AIM Response Fee'' for broker-dealer responses to the CFLEX AIM auctions. Currently, under the existing Fees Schedule, the transaction fee for broker-dealer responses would be $0.40 per contract for OEX, XEO, SPX and volatility index options and $0.45 per contract for all other products (as such responses would be entered electronically).[4] As proposed, the transaction fee for broker-dealer responses executed in the CFLEX AIM auctions will remain $0.40 per contract for OEX, XEO and SPX and volatility index options and will be reduced to $0.25 per contract for all other products.

As structured, the transaction fees for the CFLEX AIM auctions will be as follows:

- For executions of orders that are initially entered as Agency/Primary Orders, the transaction fee will be the per contract rate(s) already specified in the Fees Schedule.[5] (No changes to the Fees Schedule are necessary to reflect these fee rates, except that footnote 19 of the Fees Schedule is being amended to provide that the Broker-Dealer AIM Agency/Primary fee applies to FLEX AIM and FLEX SAM auctions. Footnote 19 is also being amended to provide that, because there is no FLEX trading in Credit Default Options and Credit Default Basket Options, the Broker-Dealer AIM Agency/Primary fee is not applicable to those options.)
- For executions of orders that are initially entered as the contra party to an Agency/Primary Order, the transaction fee will be the AIM Contra Execution Fee already specified in the Fees Schedule.[6] (Footnote 18 of the Fees Schedule is being amended to provide that the AIM Contra Execution Fee applies to FLEX AIM and FLEX SAM auctions. Footnote 18 is also being amended to provide that, because there is no FLEX trading in Credit Default Options and Credit Default Basket Options, the AIM Agency/Primary fee is not applicable to those options.)
- For responses, as noted above, the fees schedule will be amended to provide for a ''CFLEX AIM Response Fee'' for broker-dealer responses. Again, the applicable standard transaction fee of $0.40 per contract will continue to apply for FLEX AIM and FLEX SAM auction response executions in OEX, XEO, SPX and volatility index options and $0.25 per contract will apply in all other products. For all other types of response (*i.e.,* customer, voluntary professional, professional, CBOE Market-Maker/DPM, and Clearing Trading Permit Holder Proprietary) the applicable standard transaction fee will apply.[7] (No changes to the Fees Schedule are necessary to reflect these non-broker-dealer fee rates.)[8]

The CFLEX AIM Response Fee and other changes noted above will be

[3] *See* Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 (January 4, 2012) (SR–CBOE–2011–123) (the ''CFLEX AIM Filing''). The FLEX AIM or FLEX SAM auctions would be used to cross FLEX Option orders through an exposed auction process. These FLEX auctions are modeled after the AIM and SAM auctions available for trading in non-FLEX Options under Rules 6.74A and 6.74B, respectively.

[4] *See* Section 1 of the Fees Schedule.

[5] For equity options, the transaction fees are as follows: $0.00 per contract for the account of public customers, $0.25 per contract for the account of Professionals and Voluntary Professionals, and $0.20 per contract for all others. For index, ETF, ETN and HOLDRS options, the transaction fees are as follows: For the account of public customers: $0.44 per contract in SPX if the premium is greater than or equal to $1; $0.35 per contract in SPX if the premium is less than $1; $0.40 per contract in OEX, XEO and volatility index options; and $0.18 per contract in other index, ETF, ETN and HOLDRS options. For the account of Professionals and Voluntary Professionals: $0.40 per contract in OEX, XEO, and volatility index options; and $0.25 per contract in other index, ETF, ETN and HOLDRS options. For the account of CBOE Market-Makers/DPMs: $0.20 per contract. For Clearing Trading Permit Holder (''TPH'') proprietary trading: $0.25 per contract in OEX, XEO, SPX and volatility index options; and $0.20 per contract in other index, ETF, ETN and HOLDRS options. For the account of broker-dealers $0.20 per contract in all products, except volatility index options; and $0.40 per contract in volatility index options. The Exchange notes that CBOE Market-Maker/DPM/e-DPM transactions fees are subject to a Liquidity Provider Sliding Scale and Clearing TPH transaction fees are subject to a Fee Cap. *See* Section 1 and footnotes 10, 11, 12 and 19 of the Fees Schedule. The Exchange also notes that the $0.25 per contract transaction rates for Professionals and Voluntary Professionals identified above for equity options and index, ETF, ETN and HOLDRS options (other than OEX, XEO and volatility index options) will be effective April 1, 2012. *See* SR–CBOE–2012–032.

[6] The AIM Contra Execution Fee is generally $0.05 per contract and applies to all orders (excluding facilitation orders, per footnote 11 of the Fees Schedule) in all products except OEX, XEO, SPX and volatility indexes executed in AIM that were initially entered into AIM as the contra party to an AIM Agency/Primary Order. The fee applies to such executions instead of the applicable standard transaction fee except if the applicable standard transaction fee is lower than $0.05 per contract, in which case the applicable standard fee applies. Applicable standard transaction fees apply to AIM executions in OEX, XEO, SPX and volatility index options. *See* footnote 18 of the Fees Schedule (for a description of the AIM Contra Execution Fee). *See* note 8, *supra,* for a description of the applicable standard transaction fees, including the standard transaction fees for OEX, XEO, SPX and volatility index options except for transactions for the account of broker-dealers (per Section 1 of the Fees Schedule, the applicable standard transaction fee for broker-dealers is $0.40 per contract in OEX, XEO, SPX and volatility index options).

[7] *See* note 8, *supra,* for a description of the applicable standard transaction fees.

[8] The Exchange notes that the existing CFLEX Surcharge Fee will also apply to CFLEX AIM auction executions, whether executed as a Primary/Agency Order, a contra order, or a response. The CFLEX Surcharge Fee applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is $0.10 per contract, up to the first 2,500 contracts per trade. *See* Section 1 and footnote 17 of the Fees Schedule. In addition, the existing index license surcharge fees and product research and development surcharge fees will apply to CFLEX AIM auction executions, whether executed as a Primary/Agency Order, a contra order, or a response. The index license surcharge fees and product research and development surcharge fees apply to all non-public customer transactions (*i.e.,* the surcharge fees apply to CBOE and non-TPH market-makers, Clearing TPHs and broker-dealers, voluntary professionals and professionals) and are as follows: index license surcharge fees of $0.10 per contract for OEX, XEO, SPX, DJX, and volatility index options (except GVZ, VXEEM, VXEWZ, and OVX) and $0.15 per contract for MDX, NDX, and RUT; and product research and development surcharge fees of $0.10 per contract for GVZ, VXEEM, VXEWZ, and OVX. *See* Section 1 and footnote 14 of the Fees Schedule.

effective immediately and applied once the CFLEX AIM Filing is approved and the auctions are activated on the Exchange.

The Exchange is also taking this opportunity to make other miscellaneous changes to the Fees Schedule. In particular, the Exchange is proposing to delete outdated references to the ''S&P 500 Dividend Index'' (which no longer trades on the Exchange). The Exchange is also proposing to make various non-substantive technical changes (moving, adding, removing semicolons in Section 1 of the Fees Schedule for consistency in formatting; and in footnote 19, changing the phrase ''Primary/Agency'' to ''Agency/Primary'' for consistency). Finally, the Exchange is proposing to amend Footnotes 18 and 19 of the Fees Schedule to make clear that the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee, respectively, also apply to SAM auctions in non-FLEX Options. This is how the Exchange has intended and historically applied the fee (the Exchange commonly refers to both auctions as AIM auctions, *e.g.,* the SAM auction is also commonly referred to as the ''AIM AON'' auction) and the changes to the Fees Schedule are intended to be more descriptive in that regard. These changes will be effective immediately.

The Exchange believes it is reasonable and equitable to charge TPHs for responses to CFLEX AIM auctions in the manner proposed. With the proposed rule change to include a CFLEX AIM Response Fee for broker-dealer responses, TPHs submitting responses participating in CFLEX AIM auctions will be assessed similar fees, minimizing any gap that would exist between different order origin code types should the applicable standard transaction fees be applied and at the same time equitably distributing the costs of attracting orders for execution in the CFLEX AIM auctions. In that regard, at the proposed levels, TPHs submitting responses on behalf of broker-dealers will in fact see their fees lowered for the CFLEX AIM auctions (except for OEX, XEO, SPX and volatility index options) compared to the applicable standard transaction fee that would otherwise apply. These levels are equivalent to the levels that would be assessed for responses on behalf of Professionals and Voluntary Professionals. The Exchange notes that it has historically maintained differentials in the fees it charges TPHs for transactions of public customers, Professionals, Voluntary Professionals, CBOE Market-Makers/DPMs/e-DPMs, Clearing TPHs and broker-dealers. The Exchange believes it is reasonable and equitable to treat these groups of market participants differently. For example, the Exchange believes that offering a slightly lower fee for responses of CBOE Market-Makers than those of other market participants is equitable and not unfairly discriminatory because CBOE Market-Makers take on certain obligations to the Exchange (such as providing two-sided markets) that other market participants to [sic] not undertake. The Exchange also believes that offering a lower fee for responses of public customers than those originating from other market participants is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. The Exchange also believes that the [sic] offering a lower fee for responses of Clearing TPHs is equitable and not unfairly discriminatory because it provides an incentive for Clearing TPHs to contribute capital to facilitate the execution of customer orders, which in turn provides a deeper pool of liquidity on CBOE, which ultimately benefits all market participants who trade FLEX products on CBOE.

Along the same lines, the Exchange believes it is reasonable and equitable to charge the existing AIM Agency/Primary fee for broker-dealer orders (which is $0.20 per contract in all products except for volatility indexes, which are subject to the applicable standard transaction fees) because the Exchange believes that charging a lower fee for broker-dealer Agency/Primary orders, consistent with the existing fee for Agency/Primary orders traded in Non-FLEX AIM and SAM auctions, would attract additional broker-dealer order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for broker-dealer Agency/Primary orders in Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes it is reasonable and equitable to charge the existing AIM Contra Execution fee (which is $0.05 per contract except for (i) executions for the account of public customers, which are not subject to any transaction fee; and (ii) executions in OEX, XEO, SPX and volatility index options, which are subject to the applicable standard transaction fees) because the Exchange believes charging a lower fee to the contra-party in CFLEX AIM auctions, consistent with the existing fee for contra-party executions in Non-FLEX AIM and SAM auctions, would attract additional order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for contra-parties to Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes the proposed fee structure is not unfairly discriminatory because the fee structure is consistent with the fee structure that exists today, but simply minimizes any gap that would exist between different order origin code types should the applicable standard transaction fees be applied to broker-dealer responders to CFLEX AIM auctions. Additionally, the Exchange believes that the fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade FLEX Options as its fees remain competitive with those charged by other exchanges for FLEX Options and for similar electronic auctions (although we note that CBOE is the only options exchange to offer an electronic mechanism for trading FLEX Options). The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange or the over-the-counter market if they deem fee levels at a particular exchange to be excessive. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade FLEX Options.

Finally, in amending the Fees Schedule to delete outdated references to the S&P 500 Dividend Index, make non-substantive technical changes, and make clear the applicability of the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee to SAM auctions in non-FLEX Options, the proposed rule change is more descriptive for users and should help to avoid any potential confusion about the applicability of the fees. The Exchange believes these changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5) [9] of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among TPHs.

The Exchange believes it is reasonable and equitable to charge TPHs for responses to CFLEX AIM auctions in the manner proposed. With the proposed rule change to include a CFLEX AIM Response Fee for broker-dealer responses, TPHs submitting responses participating in CFLEX AIM auctions will be assessed similar fees, minimizing any gap that would exist between different order origin code types should the applicable standard transaction fees be applied and at the same time equitably distributing the costs of attracting orders for execution in the CFLEX AIM auctions. In that regard, at the proposed levels, TPHs submitting responses on behalf of broker-dealers will in fact see their fees lowered for the CFLEX AIM auctions (except for OEX, XEO, SPX and volatility index options) compared to the applicable standard transaction fee that would otherwise apply. These levels are equivalent to the levels that would be assessed for responses on behalf of Professionals and Voluntary Professionals. The Exchange notes that it has historically maintained differentials in the fees it charges TPHs for transactions of public customers, Professionals, Voluntary Professionals, CBOE Market-Makers/DPMs/e-DPMs, Clearing TPHs and broker-dealers. The Exchange believes it is reasonable and equitable to treat these groups of market participants differently. For example, the Exchange believes that offering a slightly lower fee for responses of CBOE Market-Makers than those of other market participants is equitable and not unfairly discriminatory because CBOE Market-Makers take on certain obligations to the Exchange (such as providing two-sided markets) that other market participants to not undertake. The Exchange also believes that offering a lower fee for responses of public customers than those originating from other market participants is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. The Exchange also believes that the offering a lower fee for responses of Clearing TPHs is equitable and not unfairly discriminatory because it provides an incentive for Clearing TPHs to contribute capital to facilitate the execution of customer orders, which in turn provides a deeper pool of liquidity on CBOE, which ultimately benefits all market participants who trade FLEX products on CBOE.

Along the same lines, the Exchange believes it is reasonable and equitable to charge the existing AIM Agency/Primary fee for broker-dealer orders (which is $0.20 per contract in all products except for volatility indexes, which are subject to the applicable standard transaction fees) because the Exchange believes that charging a lower fee for broker-dealer Agency/Primary orders, consistent with the existing fee for Agency/Primary orders traded in Non-FLEX AIM and SAM auctions, would attract additional broker-dealer order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for broker-dealer Agency/Primary orders in Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes it is reasonable and equitable to charge the existing AIM Contra Execution fee (which is $0.05 per contract except for (i) executions for the account of public customers, which are not subject to any transaction fee; and (ii) executions in OEX, XEO, SPX and volatility index options, which are subject to the applicable standard transaction fees) because the Exchange believes charging a lower fee to the contra-party in CFLEX AIM auctions, consistent with the existing fee for contra-party executions in Non-FLEX AIM and SAM auctions, would attract additional order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for contra-parties to Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions. The Exchange further believes the proposed fee structure is not unfairly discriminatory because the fee structure is consistent with the fee structure that exists today, but simply minimizes any gap that would exist between different order origin code types should the applicable standard transaction fees be applied to responders to CFLEX AIM auctions. Additionally, the Exchange believes that the fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade FLEX Options as its fees remain competitive with those charged by other exchanges for FLEX Options and for similar electronic auctions (although we note that CBOE is the only options exchange to offer an electronic mechanism for trading FLEX Options). The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange or the over-the-counter market if they deem fee levels at a particular exchange to be excessive. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade FLEX Options.

Finally, in amending the Fees Schedule to delete outdated references to the S&P 500 Dividend Index, make non-substantive technical changes, and make clear the applicability of the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee to SAM auctions in non-FLEX Options, the proposed rule change is more descriptive for users and should help to avoid any potential confusion about the applicability of the fees. The Exchange believes these changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5) [12] of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system,

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

and, in general, protect investors and the public interest.

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.

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 [13] and subparagraph (f)(2) of Rule 19b–4 [14] 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 Number SR–CBOE–2012–030 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–2012–030. 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 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–CBOE–2012–030 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8172 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66705; File No. SR–BX–2012–024]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BOX Trading Rules Regarding the Short Term Option Series Program

March 30, 2012.

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 March 29, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'') 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 the Trading Rules of the Boston Options Exchange Group, LLC (''BOX'') regarding the Short Term Option Series Program. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* 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

The purpose of this proposed rule change is to amend Supplementary Material .07 to Chapter IV, Section 6 (Series of Options Open for Trading) and Supplementary Material .02 to Chapter XIV, Section 10 (Terms of Index Options Contracts) to expand the Short Term Option Series Program (''Weeklys Program'').[3] Specifically, the Exchange proposes to amend the BOX Rules to allow BOX to open short term option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.

Currently, BOX may select up to 30 currently listed option classes on which short term option series may be opened

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

[2] 17 CFR 240.19b–4.

[3] The Exchange adopted the Weeklys Program on July 15, 2010. *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047).