

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34-69064; File No. SR-CBOE-2013-028]

**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 7, 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 March 1, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s
Statement of the Terms of the Substance
of the Proposed Rule Change**

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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, 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 Exchange proposes to amend its Volume Incentive Program (“VIP”). First, the Exchange proposes to add a column listing tier numbers for each percentage threshold³ in the VIP. The lowest percentage threshold will be tier 1, the next will be tier 2, the next tier 3, and the highest percentage threshold will be tier 4. Neither the percentage threshold amounts nor the fee amounts will change.⁴ The purpose of this change is to make it easier to refer to the different percentage thresholds.

Second, the Exchange proposes to adopt a separate credit structure in its VIP for complex orders. Specifically, all complex orders in tiers 2–4 of the VIP will accrue a per-contract credit of \$0.17. As such, the tiers, thresholds and per-contract credits will be as follows:

Tier	Percentage thresholds of national customer volume in multiply-listed options classes (monthly)	Per contract credit (simple orders)	Per contract credit (complex orders)
1	0%–0.75	\$0.00	\$0.00
2	Above 0.75%–2.00	0.10	0.17
3	Above 2.00%–2.75	0.11	0.17
4	Above 2.75	0.14	0.17

The purpose of this proposed change is to incentivize the sending of complex orders to the Exchange.

The Exchange also proposes to amend the description of its SPX Tier Appointment fee. Currently, the SPX Tier Appointment fee is assessed to any Market-Maker Trading Permit Holder (“MMTPH”) that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month.⁵ However, recently, CBOE Market-Maker firms have, in the process of switching around the Market-Makers to whom tier appointments are assigned, briefly picked up SPX Tier Appointments without the intention of acting as a Market-Maker in SPX. Nonetheless, even though such Market-Makers never engaged in SPX trading

during the month, because they had an SPX Tier Appointment at any time during the calendar month, they were assessed the SPX Tier Appointment fee. Since the SPX Tier Appointment fee is intended to be assessed to MMTPHs who actually act as Market-Makers in SPX and engage in trading in SPX (as opposed to those who briefly pick up an SPX Tier Appointment), the Exchange proposes to add the stipulation that, in order for the SPX Tier Appointment to be assessed, an MMTPH must have an SPX Tier Appointment at any time during a calendar month and trade at least 100 SPX contracts while that appointment is active (or conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month; that stipulation is not being amended). The 100-contract threshold allows for the possibility of a very small,

unintentional SPX trade without incurring the SPX Tier Appointment fee (and is the same threshold used by the Exchange for the VIX Tier Appointment fee).⁶

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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The “percentage thresholds” refer to the column of the VIP table in the Exchange Fees Schedule entitled “Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes (Monthly)”.

⁴ The Commission notes that it understands the Exchange to mean that the credit amounts in the Exchange’s VIP for simple orders will not change as a result of the new tier numbers.

⁵ See CBOE Fees Schedule, SPX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

⁶ See CBOE Fees Schedule, VIX Tier Appointment fee description in the Trading Permit and Tier Appointment Fees table.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

processing information with respect to, and facilitation 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. Adding a column listing tier numbers for each percentage threshold is intended to make it easier to refer to the different percentage thresholds. This should prevent any potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁹ 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 adoption of a separate set of VIP credits for complex orders is reasonable because it provides for a higher VIP credit for such orders than previously existed. Providing a higher credit for complex orders than for simple orders, and providing a credit for tiers 2–4 (and not tier 1), is equitable and not unfairly discriminatory because this is intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that establishing the stipulation that a TPH that does not conduct any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month but does have an SPX Tier Appointment at any time during the calendar month will only be assessed the SPX Tier Appointment fee if such TPX also trades at least 100 SPX contracts while that appointment is active is reasonable because it will prevent MMTPHs who do not trade SPX or intend to trade SPX from being assessed the SPX Tier Appointment fee. This proposed change is equitable and not unfairly discriminatory for the same reason; the SPX Tier Appointment fee is intended

to be assessed to MMTPHs who act as Market-Makers in SPX, not those who accidentally pick up an SPX Tier Appointment, and the proposed change will prevent such MMTPHs from being assessed the SPX Tier Appointment fee.

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. The Exchange does not believe that the adoption of higher VIP credits for complex orders will impose an unnecessary burden on intramarket competition because such credits will apply to the same market participants as the VIP previously applied (public customers). Moreover, these higher credits for complex orders are intended to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, both for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders) and for those who only reach tier 1 of the VIP (indeed, this increased volume may allow for such market participants to reach the higher tiers in the VIP). As such, the greater liquidity and trading opportunities should benefit not just public customers, but all market participants.

The Exchange does not believe that the proposed change to adopt different, higher VIP credits for complex orders will impose an unnecessary burden on intermarket competition. Indeed, the proposed change should place the Exchange on a better competitive footing to attract complex orders, which benefits market participants at other exchanges by providing them with another, more attractive exchange to which to send complex orders. To the extent that the proposed change is attractive to such market participants on other exchanges, they may always elect to become CBOE market participants and execute orders (complex and simple) on CBOE. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intramarket competition because it will only apply to MMTPHs, as they are the only market participants to whom the SPX Tier Appointment fee applies. The Exchange does not believe that the proposed change to the SPX Tier Appointment fee description will impose an unnecessary burden on intermarket competition because SPX is

only traded on CBOE, and the proposed change only applies to CBOE MMTPHs.

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 Act¹⁰ and paragraph (f) of Rule 19b–4¹¹ 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or 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–CBOE–2013–028 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–2013–028. 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

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b–4(f).

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 Number SR-CBOE-2013-028, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69066; File No. SR-EDGA-2013-10]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

March 7, 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 March 1, 2013, EDGA Exchange, Inc. (the "Exchange" or "EDGA") 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

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 and rebates applicable to Members³ of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at www.directedge.com, at the Exchange's principal office, and at the Public Reference Room of 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently offers Members a rebate of \$0.0014 per share for Members' orders that route to Nasdaq OMX BX, Inc. ("BX") and remove liquidity, yielding Flag C, in securities priced at or above \$1.00. The Exchange proposes to decrease the rebate from \$0.0014 per share to \$0.0010 per share in response to BX's fee filing that was effective February 1, 2013.⁴ Direct Edge ECN LLC (d/b/a DE Route) ("DE Route"), the Exchange's affiliated routing broker-dealer, qualifies for BX's volume tiered rebate of \$0.0010 per share by adding an average of 25,000 shares but less than 1 million shares per day.⁵ DE Route passes through the rebate to the Exchange and the Exchange, in turn, passes through the rebate to its Members. The Exchange notes that its proposal does not modify the current rate of 0.10% of the dollar

value of the transaction that it charges Members for Flag C in securities priced below \$1.00 that route to BX and remove liquidity.

The Exchange proposes to add a step-up tier to Footnote 4 of its fee schedule. A Member, at a Market Participant Identifier ("MPID") level, will qualify for the "Single MPID Step-up Add Tier" by posting more than .10% of the Total Consolidated Volume ("TCV"), on a daily basis, measured monthly, on EDGA more than that MPID's December 2012 added TCV (the "December Baseline"). The volume generated from non-displayed flags that add liquidity will count towards the Single MPID Step-up Add Tier. If the MPID meets this criterion, then the Exchange will assess that MPID a reduced charge of \$0.0005 per share for Flags B, V, Y, 3 and 4 instead of its default rate of \$0.0006 per share.⁶ The Exchange notes that where a MPID's December Baseline is zero, the Exchange will apply a default baseline of 10 million shares. The Exchange believes that the Single MPID Step-up Add Tier will encourage market participants to grow their volume over an established baseline in order to achieve the volume tiered pricing. The Exchange notes that Footnote 4 is already appended to Flags B, V, Y, 3, and 4.

The Exchange proposes to implement these amendments to its fee schedule on March 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that its proposal to pass through BX's rebate of \$0.0010 per share for orders that route

⁶ Where "default" refers to the standard rate that the Exchange charges its Members for orders that add, remove, or route liquidity from the Exchange absent Members qualifying for additional volume tiered pricing. The Exchange maintains default rates for securities at or above \$1.00 and securities priced below \$1.00 for orders that add, remove, and route liquidity. The Exchange notes that a Member may qualify for a higher rebate if the Member satisfies the volume tier requirements outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule for securities priced at or above \$1.00. The Exchange notes that the volume from securities priced below \$1.00 contributes toward volume tiered requirements for securities priced at or above \$1.00 as outlined in Footnotes 1, 2, 4, 6, 16 and 17 of the fee schedule. Unless otherwise stated in Footnotes 1 and 2 of the fee schedule, the Exchange does not offer volume tiered pricing for securities priced below \$1.00.

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Exchange Rule 1.5(n).

⁴ See Securities Exchange Act Release No. 68909 (February 12, 2013), 78 FR 11935 (February 20, 2013) (SR-BX-2013-011).

⁵ The Exchange notes that to the extent DE Route does or does not achieve any volume tiered rebate on BX, its rate for Flag C will not change.