SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60454; File No. SR-CBOE-2009-054)

August 6, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Marketing Fee Program

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 July 31, 2009, the 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, II, and III below, which Items have been prepared by the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b-4(f)(2) thereunder,[4] 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 parties.

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

CBOE proposes to amend its Marketing Fee Program. The text of the proposed rule change is available on the Exchange's website (http://www.cboe.org/Legal/), at the Exchange's Office of the Secretary, and at the Commission.

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

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A)(ii).

4 17 CFR 240.19b-4(f)(2).

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. The 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

(a) Purpose

Currently, CBOE's marketing fee is assessed only on transactions of Market-Makers, e-DPMs, and DPMs, resulting from (i) orders for less than 1,000 contracts from payment accepting firms, or (ii) customer orders for less than 1,000 contracts that have designated a "Preferred Market-Maker" under CBOE Rule 8.13. CBOE proposes to amend its marketing fee program such that the fee will be assessed on transactions of Market-Makers, e-DPMs, and DPMs resulting from customer orders for less than 1,000 contracts from payment accepting firms. CBOE believes that limiting the collection of the fee to transactions resulting from customer orders for less than 1,000 contracts from payment accepting firms is appropriate and will continue to allow its DPMs to compete for order flow.[5]

CBOE will continue to assess the fee on transactions resulting from customer orders for less than 1,000 contracts that have designated a "Preferred Market-Maker" under CBOE Rule

[5] CBOE notes that in the past, its marketing fee was assessed on transactions resulting from customer orders. See Securities Exchange Act Rel. No. 34-50736 (11/24/04), 69 FR 69966 (12/1/04) (SR-CBOE-2004-68).

8.13. CBOE proposes to implement this change to the marketing fee program beginning on August 1, 2009.

Additionally, CBOE proposes to amend the marketing fee program to eliminate a limitation pertaining to the manner in which DPMs use the funds made available to them to attract order flow to CBOE. Currently, the funds made available to DPMs can only be used to attract orders in the option classes at the trading station where the fee is assessed. CBOE imposed this limitation at a time when CBOE Market-Makers' appointments consisted of those option classes located at a particular trading station. Market-Makers were required by rule to be physically present in the trading station in order to quote electronically into the classes at that station. As a result (and as discussed in CBOE's rule filing SR-CBOE-2004-58; Rel. No. 34-51429), Market-Makers effectively had a "one-station" appointment.

CBOE subsequently amended its rules to provide the same flexibility to its on-floor Market-Makers that its former Remote Market-Makers ("RMM") had. (CBOE eliminated its RMM program a couple years ago and all former RMMs were designated as Market-Makers with the same trading privileges.) Today, as Rule 8.3(c)(i) makes clear, Market-Makers create customized class appointments, called "virtual trading crowd" appointments, which allow Market-Makers to quote electronically into various option classes irrespective of their geographic location on CBOE's trading floor. Additionally, as Rule 8.3(c)(ii) states, Market-Makers have an appointment to trade in open outcry in all Hybrid classes traded on CBOE, meaning that they are free to go from trading crowd to trading crowd to trade in open outcry in any Hybrid option class. Market-Makers are not required to be on the trading floor to submit electronic quotations into their appointed classes (see Rule 8.3(c)(v)) and also are permitted to enter orders electronically in non-appointed option classes (see Rule 8.7(b)(iii)B). Also, CBOE

has established Off-Floor DPMs, and the option classes formerly located at one trading station can be relocated among various trading stations – even though the same DPM organization continues to function now as the Off-Floor DPM. As a result of all of these changes, this limitation has become unnecessary.

For an example of this proposed change, assume the same DPM operated at two different trading stations on CBOE's trading floor: Station 1 and Station 5. If $10,000 was generated from the marketing fee in a given month from transactions in option classes located at Station 1 and $15,000 from Station 5, under CBOE's proposed change a total of $25,000 would be made available to the DPM for the month, and the DPM could use the funds to attract order flow in the option classes located at Stations 1 and 5. (This example assumes none of these funds were made available to Preferred Market-Makers.) CBOE believes that this is fair and reasonable in light of the manner in which Market-Makers function today on CBOE as described above.

Finally, CBOE proposes to delete reference in footnote 6 to two option classes it no longer trades: BXO and RUH.

CBOE is not amending its marketing fee program in any other respects.

(b) Statutory Basis

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

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6 15 U.S.C. 78f(b).

7 15 U.S.C. 78f(b)(4).

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 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 Act[8] and subparagraph (f)(2) of Rule 19b-4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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 Number SR-CBOE-2009-054 on the subject line.

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8 15 U.S.C. 78s(b)(3)(A).

9 17 C.F.R. 240.19b-4(f)(2).

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-2009-054. 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 inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10:00 am and 3:00 pm. 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-2009-054 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon
Deputy Secretary

[10] 17 CFR 200.30-3(a)(12).