

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66520; File No. SR-CBOE-2012-021)

March 6, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make an Amendment Regarding the Administrative Fee Related to the Marketing Fee

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, 2012, the 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 and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) 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 persons.

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

The Exchange proposes to make an amendment regarding the administrative fee related to the marketing fee. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR-CBOE-2007-95, the Exchange imposed an administrative fee of 0.45% of the Exchange's marketing fee in order to offset the costs of administering the marketing fee program and also to provide funds to an association of members (now Trading Permit Holders) (the "Association")⁵ for its costs and expenses in supporting CBOE's marketing fee program and in seeking to bring flow to CBOE.⁶ In that filing, the Exchange stated that it intended to "allocate each month approximately 40% of the funds collected through the administrative fee to CBOE to offset CBOE's overall costs in administering the (marketing fee) program; the balance (approximately 60%) collected by this fee would be allocated to the Association."⁷ The Exchange also noted that it intended to monitor the funds raised by the administrative fee, and may propose

⁵ The Association is technically known as the DPM (Designated Primary Market-Maker) Association; however, its activities are not limited to assisting only DPM organizations. Through its business development activities, the Association seeks to bring order flow to CBOE for the benefit of all CBOE liquidity providers.

⁶ See Securities Exchange Act Release No. 56289 (August 20, 2007), 72 FR 49030 (August 27, 2007) (SR-CBOE-2007-95).

⁷ *Id.*

amendments to the fee as appropriate, so that the fee provides funds to the Association to cover its costs and expenses.⁸

In recent months, the amounts collected for the marketing fee have dropped, and as a result, the amount collected through the administrative fee has dropped as well. As such, the amount of the administrative fee allocated to the Association has also dropped, to a level below which the Association requires to operate effectively. At current collection levels for the administrative fee, the Association requires greater than approximately 60% of the administrative fee in order to continue to operate effectively. The Exchange therefore proposes to revise its previous statement that the Exchange intends to “allocate each month approximately 40% of the funds collected through the administrative fee to CBOE to offset CBOE’s overall costs in administering the (marketing fee) program” and allocate the remainder (approximately 60%) to the Association. Instead, the Exchange hereby proposes to allocate to the Association the amount of the funds collected through the administrative fee that is necessary to effectively operate the Association (which may, in a given month, include all of the funds collected through the administrative fee), and allocate the remainder of the funds collected through the administrative fee to offset CBOE’s overall costs in administering the marketing fee program. The proposed possible re-allocations considered in this proposal will of course not affect the Exchange’s ability to continue to fund its regulatory services or engage in its self-regulatory responsibilities.

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

⁸ *Id.*

Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act¹⁰, which provides that Exchange rules may 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 change is reasonable because there is no change to the actual amount of the administrative fee. The proposed change is equitable and not unfairly discriminatory because ensuring that the Association has enough funds to operate effectively will allow the Association to engage in business development activities to bring order flow to the Exchange. Such order flow provides greater liquidity and more trading opportunities for all market participants.

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

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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and subparagraph (f)(3) of Rule 19b-4¹² thereunder because it is concerned solely with the administration of the Exchange. 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 C.F.R. 240.19b-4(f)(3).

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-2012-021 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-2012-021. 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 website (<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 website 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 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-2012-021 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.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).