

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60185; File No. SR-CBOE-2009-028)

June 29, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to Rebating Member Dues for Certain Members

I. Introduction

On May 6, 2009, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend its Fee Schedule to rebate member dues for certain members. The proposed rule change was published for comment in the Federal Register on May 26, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting Fee, in which case the member does not pay member dues).<sup>4</sup> Under CBOE Rule 3.17(c), the membership lease agreement between a lessor member and a lessee member designates who is responsible for Exchange dues, fees and other charges. The Exchange represents that, typically, leases provide that the lessee is responsible for dues and therefore lessors do not have to pay dues.

Under the lessor compensation component of the Interim Trading Permit (“ITP”)

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 59935 (May 18, 2009), 74 FR 24888 (“Notice”).

<sup>4</sup> Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.

program, the Exchange compensates a lessor for an “open lease” while the ITP program is active and ITPs are outstanding.<sup>5</sup> The goal of this component of the ITP program is to put the lessor in a similar position as if the lessor’s membership was leased. The Exchange asserts that this goal would be frustrated if the lessor is charged dues, because the lessor would be subject to an obligation the lessor would otherwise not be subject to if the lessor’s membership was leased.

In a separate proposed rule change, the Exchange instituted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective as of May 1, 2009.<sup>6</sup> The Exchange now proposes to rebate dues to any lessor member who received such a payment from the Exchange during the period of August 1, 2008 through April 30, 2009.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.

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<sup>5</sup> The ITP program is a program pursuant to which the Exchange has the authority to issue up to 50 ITPs. The ITP program is governed by CBOE Rule 3.27. The lessor compensation component of the ITP program is described in CBOE Rule 3.27(d). An “open lease” is defined in Rule 3.27(d) as a transferable Exchange membership available for lease.

<sup>6</sup> See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009) (SR-CBOE-2009-027).

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

As note above, CBOE recently adopted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective May 1, 2009.<sup>9</sup> The current proposal will effectively allow CBOE to apply this same waiver retroactively by rebating to a lessor member its member dues for any month in which the lessor member received a payment from the Exchange for an open lease under the ITP program for the period August 1, 2008 through April 30, 2009.

The Commission believes that the rebate will put lessor members who received compensation from the Exchange for an open lease under the ITP program but who paid member dues since August 1, 2008 in the same position as those lessor members who are currently having their member dues waived pursuant to the fee waiver adopted as of May 1, 2009.<sup>10</sup> The Commission also believes that the proposed rebate will further the goal of the Exchange's ITP program to put the lessor of an "open lease" in the same position as if the lessor's membership had been leased. The Commission notes that the Exchange represented that lease agreements typically provide that the lessee member is responsible for all dues and thus the lessor would generally not have to pay such dues. Accordingly, the Commission finds that the proposed fee rebate is consistent with the Act.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the

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<sup>9</sup> See supra, note 5.

<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-CBOE-2009-028), be, and hereby is, approved.

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

Elizabeth M. Murphy  
Secretary

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<sup>12</sup> 17 CFR 200.30-3(a)(12).