

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61494; File No. SR-CBOE-2010-012)

February 4, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 8.85 and Rule 8.92 Regarding the Requirement to Own an Exchange Membership

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 February 2, 2010, 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 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

CBOE proposes to amend proposes to amend proposes to amend [sic] Rule 8.85 and Rule 8.92 regarding the requirement to own an Exchange membership. The text of the rule proposal is available on the Exchange’s website (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at 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 those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

specified in Item IV below. The Exchange 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

CBOE proposes to amend Rule 8.85 and Rule 8.92 to eliminate the requirement that a DPM organization and an e-DPM organization are required to own at least one Exchange membership. Instead, each DPM organization and each e-DPM organization will be required to own or lease such number of Exchange memberships as may be necessary based on the aggregate "appointment cost" for the classes allocated to the DPM organization or e-DPM organization. CBOE established this ownership requirement with respect to DPMs in 2000 and, at the time, believed that it was appropriate and would encourage DPMs to have a long-term commitment to CBOE.³ CBOE later included this requirement when its e-DPM program was adopted.

CBOE no longer believes that this requirement is necessary particularly as its proposed restructuring approaches, and eliminating it may attract new DPM organizations to CBOE who otherwise may not be willing to apply to be a DPM due to this membership ownership requirement. CBOE notes that in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, this requirement will be eliminated. Specifically, as part of CBOE's restructuring, the owners of membership interests will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of

³ See Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR-CBOE-99-37).

CBOE Holdings. Additionally, Trading Permits will provide trading access to the Exchange, and not Exchange memberships as is currently the case. A Trading Permit will not convey any ownership interest in the Exchange, and will only be available through the Exchange.⁴ As part of this proposed rule change, CBOE proposes conforming changes to Rule 3.27, and proposes to delete Interpretation .04 of Rule 8.85 and Interpretation .01 of Rule 8.92 which are no longer necessary in light of the elimination of the membership ownership requirement.⁵

In connection with this proposed rule change, CBOE proposes to delete Interpretation .03 of Rule 8.85, which was adopted in 2003 for the purpose of allowing a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. In light of the fact that CBOE is eliminating the membership ownership requirement, Interpretation .03 no longer is applicable or necessary.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the

⁴ See Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 (September 4, 2008) (noticing for comment SR-CBOE-2008-088). CBOE has consented to an extension of time for Commission action on this proposed rule change pending a membership vote.

⁵ CBOE notes that Temporary Members under Rule 3.19.02 will not be adversely impacted by this proposed rule change.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

public interest. The DPM and e-DPM membership ownership requirement is no longer necessary and eliminating it may attract new organizations to act in the capacity of a DPM (or e-DPM). Additionally, this requirement will be eliminated in connection with CBOE's restructuring.

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 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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

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-2010-012 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-2010-012. 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 Web site viewing and printing in the Commission's Public Reference Room, 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-2010-012 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).