

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64217; File No. SR-CBOE-2011-030)

April 6, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PAR Official Fees

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 30, 2011, 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 CBOE. 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule to establish volume threshold tiers for the assessment of PAR Official Fees based on the percentage of volume that is effected by a PAR Official on behalf of an order originating firm or, as applicable, an executing firm. The proposed volume thresholds will apply in all options classes that have a PAR Official available to execute orders (“PAR Official Classes”), except Volatility Index Options. 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’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. 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

1. Purpose

CBOE is proposing to amend its Fees Schedule effective April 1, 2011 to establish volume threshold tiers for the assessment of PAR Official Fees in all PAR Official Classes³ other than Volatility Index Options.⁴ CBOE amended its Fees Schedule to establish PAR Official Fees in January 2011.⁵ These fees apply to all orders executed by a PAR Official,⁶ except for customer orders ("C" origin code) that are not directly routed to the trading floor (an order that is

³ Currently, CBOE does not have a PAR Official available to execute orders in the OEF, OEX, SPX and XEO options classes.

⁴ CBOE amended its Fees Schedule in March 2011 to establish distinct PAR Official Fees for Volatility Index Options to eliminate the disparity between Floor Brokerage Fees and PAR Official Fees assessed in Volatility Index Options. CBOE will continue to assess the PAR Official Fees in Volatility Index Options established in SR-CBOE-2011-022. See Securities Exchange Act Release No. 64070 (March 11, 2011), 76 FR 15025 (March 18, 2011) (SR-CBOE-2011-022).

⁵ See Securities Exchange Act Release No. 67301 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR-CBOE-2010-116).

⁶ A PAR Official is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a Designated Primary Market-Maker trading crowd with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any Trading Permit Holder that is approved to act as a Market-Maker. See CBOE Rule 7.12.

directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). In classes other than Volatility Index Options, such orders are currently charged \$.02 per contract and, like floor brokerage fees, a discounted rate of \$.01 per contract applies for crossed orders. These fees help to offset the Exchange's costs of providing PAR Official services (e.g., salaries, etc). CBOE believes that the proposed tier structure will more equitably and appropriately assess the PAR Official Fees to those Trading Permit Holders that rely more heavily on PAR Officials to conduct their floor brokerage business. Reliance on PAR Officials as the primary means of execution is inconsistent with the Exchange's intent to provide PAR Official services as a supplementary means of execution for incidental orders. CBOE believes that, after further consideration, the existing fee structure does not allocate these fees currently to take into consideration the amount that Trading Permit Holders rely on PAR Officials such that those Trading Permit Holders that incidentally use PAR Officials are assessed the same fee as Trading Permit Holders that routinely conduct their business through PAR Officials and rely heavily on PAR Officials for the execution of orders.

CBOE is proposing to amend the Fees Schedule to establish volume threshold tiers for the assessment of the PAR Official Fees in all PAR Official Classes except Volatility Index Options. Specifically, CBOE is proposing to assess PAR Official Fees based on the percentage of an order originating firm's or, as applicable, an executing firm's total monthly volume that is effected by a PAR Official during a calendar month. The percentage will be calculated on a monthly basis by dividing the number of contracts executed by PAR Officials on behalf of an order originating firm or executing firm (as applicable) by the total number of contracts executed in open outcry (by or on behalf of an order originating firm or, as applicable, an executing firm) in PAR Official Classes. Contracts in Volatility Index Options shall be excluded from this

calculation. The following sets forth the tier levels and specific fees that would be assessed to orders that are subject to PAR Official Fees:

Tier Level	% Monthly Volume Executed Through PAR Official	Standard Orders	Crossed Orders (Per Side)
1	0-24.99%	N/A	N/A
2	25-49.99%	\$.02	\$.01
3	50-74.99%	\$.03	\$.015
4	75-100%	\$.04	\$.02

For example, a Floor Broker Trading Permit Holder would be assessed \$.02 for all standard (non-cross) orders and \$.01 for all crossed orders executed by a PAR Official on behalf of the Floor Broker during a calendar month if 25.5% of the Floor Broker Trading Permit Holder’s total monthly (open outcry) volume in PAR Official Classes is executed by a PAR Official (Tier 2).

The PAR Official Fees compensate CBOE for providing overflow services to order originating firms or, as applicable, executing firms, particularly Floor Brokers,⁷ when they do not have personnel available to act as agent. Some Trading Permit Holders or TPH organizations obtain only one or two Floor Broker Trading Permits, making it unlikely that, regardless of business level, they could cover all locations on the Exchange and thus rely on CBOE personnel as part of the Floor Broker’s daily, ongoing business operations. CBOE is proposing to establish

⁷ CBOE Rule 6.70 provides: “A Floor Broker is an individual (either a Trading Permit Holder or a nominee of a TPH organization) who is registered with the Exchange for the purpose, while on the Exchange floor, of accepting and executing orders received from Trading Permit Holders or from registered broker-dealers. A Floor Broker shall not accept an order from any other source unless he is the nominee of a TPH organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, a Floor Broker who is the nominee of such organization may then accept orders directly from public customers where (i) the organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements a Floor Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of demonstrating an adequate knowledge of the securities business.”

volume threshold tiers to reduce or eliminate PAR Official Fees for those order originating firms or executing firms that maintain sufficient staff to manage their floor brokerage operations and thus, do not rely heavily on CBOE personnel to execute their orders. CBOE believes that those firms that rely heavily on PAR Officials to conduct their floor brokerage business, such that PAR Officials execute more than an incidental number of orders on their behalf, may obtain a minimum number of Trading Permits to access the floor. Thus, these firms subsidize their floor brokerage operations at CBOE's expense in that PAR Officials are either contractors paid by CBOE or CBOE employees. Under the current proposal, Trading Permit Holders that routinely rely on PAR Officials to execute their orders will be subject to higher PAR Official Fees as CBOE is, in effect, subsidizing their floor brokerage operations and going beyond the Exchange's intent to provide PAR Official services as a supplementary means of execution for overflow orders.

An additional consideration when evaluating the equitability of the proposed tier structure is the cost of each Trading Permit. For example, Floor Broker Trading Permit Holders are subject to a \$6,000 per month Trading Permit Fee.⁸ A Floor Broker Trading Permit Holder that requires ten Floor Broker Trading Permits to adequately staff its business is subject to a cost of \$60,000 per month for Trading Permit Fees (totaling \$720,000 per year). By comparison, a Trading Permit Holder that routes the majority of its orders to PAR Officials for execution and maintains one Trading Permit is subject to a \$6,000 per month Trading Permit Fee (\$72,000 annually). The existing PAR Official Fee structure that imposes a flat per contract fee does not provide an incentive for firms to adequately staff their business as each Trading Permit Holder is currently assessed the same PAR Official Fees.

⁸ See CBOE Fees Schedule, Section 10.

As provided above, PAR Officials are intended to provide overflow services to Trading Permit Holders. CBOE never intended PAR Officials to serve as the primary means of execution for order originating firms or executing firms. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials. CBOE believes that this proposal will “level the playing field” between those Trading Permit Holders that rely incidentally on PAR Officials and those Trading Permit Holders that rely heavily on PAR Officials by basing the PAR Official Fees on an order originating firm’s or, as applicable, an executing firm’s overall reliance on a PAR Official to conduct their business. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials are incurring higher costs to retain a sufficient number of Trading Permits and should not be subject to the same amount for PAR Official Fees incurred by a Trading Permit Holder that relies disproportionately on PAR Officials to conduct its floor brokerage business because it does not maintain an adequate number of Trading Permits to conduct its floor brokerage business and further, is not subject to the cost of the additional Trading Permits required to adequately staff its business.

Based on the data generated for January 2011, approximately 40% of CBOE Floor Broker Trading Permit Holders would fall under Tier 1 and would no longer be subject to PAR Official Fees. In addition, approximately one-third of the Floor Broker Trading Permit Holders fall under Tier 4, having a PAR Official execute more than 75% of the Trading Permit Holder’s total monthly volume executed in open outcry in PAR Official Classes. The proposed volume threshold tiers apportion the higher cost to those Floor Broker Trading Permit Holders that rely heavily on PAR Officials to conduct their daily business. For these reasons, CBOE believes that the proposed

implementation of volume threshold tiers is appropriate and establishes an objective standard for the equitable assessment of the PAR Official Fees.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”),⁹ in general, and furthers the objectives of Section 6(b)(4)¹⁰ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its trading permit holders and other persons using its facilities. The Exchange believes the proposed change is equitable, reasonable and not unfairly discriminatory, in that, in general, PAR Official Fees are intended to help the Exchange recover its costs of providing PAR Official services to Trading Permit Holders and the proposed change is intended to reasonably allocate such costs to order originating firms and executing firms based on the amount of business they conduct through PAR Officials. Specifically, the proposed fee tier structure is equitable in that all order originating firms or, as applicable, executing firms, are assessed the same fees at each tier level for orders executed by a PAR Official. Further, the proposed fee structure is not unfairly discriminatory because the tiers are based on the percentage of activity executed by a PAR Official. Each firm has the ability to route fewer orders to a PAR Official, such that they are not subject to higher PAR Official Fees.

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 purposes of the Act.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4¹² 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.

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-2011-030 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-2011-030. This file number should be

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(2).

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-2011-030 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

Cathy H. Ahn
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).