

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61852; File No. SR-CBOE-2010-034)

April 6, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on March 29, 2010, 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. 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 adjust (i) the monthly access fee for persons granted temporary CBOE membership status (“Temporary Members”) pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (“Rule 3.19.02”) and (ii) the monthly access fee for Interim Trading Permit (“ITP”) holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/Legal/>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

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

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02² and the current access fee for ITP holders under Rule 3.27³ are both \$4,875 per month. Both access fees are currently set at the indicative lease rate⁴ for March 2010. The Exchange proposes to adjust both access fees effective at the beginning of April 2010. Specifically, instead of setting these access fees at the indicative lease rate, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$7,500 per month commencing on April 1, 2010.

Because Temporary Members and ITP holders possess a feature that does not exist in the typical lease arrangement for a CBOE transferable membership, the Exchange believes that it is equitable to assess Temporary Members and ITP holders an access fee that is higher than the

² See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

³ See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR-CBOE-2008-40) for a description of the Interim Trading Permits under Rule 3.27.

⁴ The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases. Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate. The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

indicative lease rate.⁵ Specifically, under CBOE Rules 3.19 and 3.27, access to the Exchange by Temporary Members and ITP holders may only be terminated at their own direction except in the following limited circumstances: (i) as a result of regulatory action against the Temporary Member or ITP holder, (ii) in the event of a demutualization, or (iii) through a rule change approved by the Commission. On the other hand, the typical lease arrangement for a transferable membership can be terminated by the lessor without cause upon a month's notice to the lessee. As a result, Temporary Members and ITP holders enjoy more certainty than lessees with respect to their trading access to the Exchange.

CBOE also believes that the proposed access fees are reasonable when compared to the average indicative lease rate over the last six months and to indicative lease rate levels during the past year. Specifically, the average indicative lease rate between October 2009 and March 2010 was \$8,493, which is in excess of the proposed \$7,500 rate. Additionally, the indicative lease rate was above \$10,000 between June 2009 and November 2009, peaking at \$11,900 in October 2010. Also, in as recently as January 2010, the indicative lease rate exceeded the proposed \$7,500 when the indicative lease rate was \$7,928. Accordingly, the Exchange considers \$7,500 to be a reasonable rate for monthly access to the Exchange.

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁶ to modify the applicable access fee or the applicable status (i.e., the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so.

⁵ See, e.g., Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR-CBOE-2008-77).

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4) of the Act,⁸ 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. CBOE believes that the proposed access fees are reasonable when compared to the average indicative lease rate over the last six months and to indicative lease rate levels during the past year for the reasons described above. In addition, CBOE believes that the proposed access fees are equitable in that they apply uniformly to all Temporary Members and ITP holders.

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

No written comments were solicited or received with respect to the proposed rule change.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

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 Act⁹ and subparagraph (f)(2) of Rule 19b-4¹⁰ 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-2010-034 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-2010-034. 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(2).

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, 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 such 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 No. SR-CBOE-2010-034 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).