

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64405; File No. SR-CBOE-2011-042)

May 4, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Retroactive Waiver of 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 April 25, 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 and II 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 retroactively waive PAR Official Fees for the month of February 2011. 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.

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).

² 17 CFR 240.19b-4.

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

The Exchange proposes to retroactively waive PAR Official Fees for the month of February 2011.

Background

The Exchange established PAR Official³ Fees in January 2011.⁴ These fees apply to all orders executed by a PAR Official, except for customer orders (“C” origin code) that are not directly routed to the trading floor (an order that is directly routed to the trading floor is directed to a PAR Official for manual handling by use of a field on the order ticket). The PAR Official Fees established in January 2011 were \$.02 per contract and a discounted rate of \$.01 per contract for crossed orders.⁵ PAR Official Fees help to offset the Exchange’s costs of providing PAR Official services (e.g., salaries, etc).

After establishing PAR Official Fees, the Exchange became concerned that the PAR Official Fee structure did not allocate these fees to take into consideration the amount that

³ 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.

⁴ See Securities Exchange Act Release No. 67301 (January 11, 2011), 76 FR 2934 (January 18, 2011) (SR-CBOE-2010-116).

⁵ PAR Official Fees for crossed orders, like Floor Brokerage Fees, are assessed at a discounted rate because these fees are assessed “per side” and thus, these fees are equal to the amount assessed for one standard (non-crossed) order.

Trading Permit Holders rely on PAR Officials such that those Trading Permit Holders that incidentally use PAR Officials were 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. 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. Heavy reliance on PAR Officials subjects the Exchange to the additional expense and undue strain of providing the additional staffing of PAR Officials.

PAR Official Fees compensate the Exchange for providing overflow services to order originating firms or, as applicable, executing firms, particularly Floor Brokers,⁶ 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. The Exchange 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

⁶ 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."

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. Trading Permit Holders that adequately staff their business operations and rely incidentally on PAR Officials incur higher costs to retain a sufficient number of Trading Permits.⁷ The Exchange determined such Trading Permit Holders 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.

For the reasons above, the Exchange determined to change the manner in which it assessed PAR Official Fees such that PAR Official Fees would be reduced or eliminated for those Trading Permit Holders that maintain sufficient staff to manage their floor brokerage operations and thus, do not rely heavily on PAR Officials to execute their orders. On February 1, 2011, the Exchange filed a proposed rule change to waive PAR Official Fees for any affiliated Trading Permit Holders that have ten or more Floor Broker Trading Permits throughout the calendar month.⁸ The change did not become effective. To minimize disruption while the

⁷ For example, pursuant to Section 10 of CBOE's Fees Schedule, Floor Broker Trading Permit Holders are subject to a \$6,000 per month Trading Permit Fee. 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).

⁸ See CBOE Regulatory Circular RG11-021.

Exchange continued to consider changes to the PAR Official Fees, the Exchange announced that it would not collect any PAR Official Fees for the month of February 2011.⁹

CBOE subsequently amended its Fees Schedule effective March 1, 2011, to assess PAR Official Fees in Volatility Index Options in the amount of \$.03 per contract for standard (non-crossed) orders and \$.015 per contract for all crossed orders (per side) and to waive PAR Official Fees for all classes except Volatility Index Options for March 2011.¹⁰ The Exchange amended its Fees Schedule effective April 1, 2011 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.¹¹

Fee Waiver

As described above, the Exchange did not collect any PAR Official Fees for February 2011 as it was considering changes in the manner in which it would assess the fees. Accordingly, the Exchange proposes to waive PAR Official Fees in all options classes for all firms for the month of February 2011. Since the Exchange did not collect any PAR Official Fees for February 2011, the Exchange is not proposing to rebate any 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")¹², in general, and furthers the objectives of Section

⁹ See CBOE Regulatory Circular RG11-026 dated February 9, 2011. The Exchange collects PAR Official Fees in arrears at the end of each month.

¹⁰ See Securities Exchange Act Release No. 64070 (March 11, 2011), 76 FR 15025 (March 18, 2011) (SR-CBOE-2011-022).

¹¹ See Securities Exchange Act Release No. 64217 (April 6, 2011), 76 FR 20793 (April 13, 2011) (SR-CBOE-2011-030).

¹² 15 U.S.C. 78f(b).

6(b)(4)¹³ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders. The Exchange believes that the proposed rule change is equitable, reasonable and not unfairly discriminatory in that, in general, the Exchange decided to waive PAR Official Fees for the month of February 2011 while it considered a way to more equitably and reasonably assess the PAR Official Fees to those Trading Permit Holders that rely more heavily on PAR Officials to conduct their floor brokerage business. After establishing flat per contract PAR Official Fees, the Exchange became concerned that the flat per contract fees did not provide an incentive for firms to adequately staff their business as each Trading Permit Holder was currently assessed the same PAR Official Fees. To minimize disruption while the Exchange continued to consider changes to the PAR Official Fees, and to avoid assessing fees that the Exchange believed could be more equitably and reasonably assessed, the Exchange announced that it would not collect any PAR Official Fees for the month of February 2011.¹⁴ The Exchange ultimately amended its Fees Schedule effective April 1, 2011 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.¹⁵

Specifically, the Exchange believes that the proposal to retroactively waive PAR Official Fees for the month of February 2011 is equitable and reasonable in that the waiver will apply in all options classes and to all firms. No PAR Official Fees will be collected for the month of February 2011 from any firm. The Exchange notes that CBOE Trading Permit Holders were provided with notice of the fee waiver on February 9, 2011, and were thus aware for most of the

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ Supra Footnote 9.

¹⁵ Supra Footnote 11.

month of February that PAR Official Fees would not be assessed for that month.¹⁶ The Exchange believes that during the time period from February 1 to February 9, 2011, it is unlikely that any Trading Permit Holder made a trading decision based on a belief that the PAR Official Fees would be assessed during that time period. For these reasons, the Exchange believes that retroactive waiver of the fee will not result in any unfair discrimination with respect to any firm or group of firms.

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.

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 change 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

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

¹⁶ Supra Footnote 9.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

otherwise in furtherance of the purposes of the Act. CBOE has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

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-2011-042 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-2011-042. 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-2011-042 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.¹⁹

Elizabeth M. Murphy
Secretary

¹⁹ 17 CFR 200.30-3(a)(12).