

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64876; File No. SR-CBOE-2011-061)

July 13, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Fees Schedule Concerning Certain Orders of Certain Affiliates for Purposes of a Fee Cap and Sliding Scale

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 June 30, 2011, the Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “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

The Exchange proposes to amend its Fees Schedule to apply the Multiply-Listed Options Fee Cap (the “Fee Cap”) and the CBOE Proprietary Products Sliding Scale for Clearing Trading Permit Holder Proprietary Orders (the “Sliding Scale”) to orders of certain non-Trading Permit Holder affiliates of a Clearing Trading Permit Holder (“CTPH”). 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places 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

The Exchange proposes to amend its Fees Schedule to apply the Fee Cap and the Sliding to orders of certain non-Trading Permit Holder affiliates of a CTPH.

Under the Fee Cap, the Exchange caps CTPH Proprietary transaction fees in all products except options on OEX, XEO, SPX, and volatility indexes, in the aggregate, at \$75,000 per month per CTPH, except that any AIM Execution Fees incurred by a CTPH do not count towards the cap. The Sliding Scale reduces the standard CTPH Proprietary transaction fee in OEX, XEO, SPX, and volatility indexes provided a CTPH reaches certain volume thresholds in multiply-listed options on the Exchange in a month.³

The Exchange proposes to amend its Fees Schedule to apply the Fee Cap and the Sliding Scale to orders of certain “Non-Trading Permit Holder Affiliates” (as defined below) of a CTPH. Specifically, a CTPH may request that the Exchange aggregate its trading activity with certain trading activity (as described below) of a Non-Trading Permit Holder Affiliate for purposes of calculating the Fee Cap and Sliding Scale. For this purpose, a “Non-Trading Permit Holder Affiliate” would be defined as a 100% wholly-owned affiliate or subsidiary of a CTPH that is registered as a United States or foreign broker-dealer and that is not a CBOE Trading Permit Holder. In other words, a Non-Trading Permit Holder Affiliate for this purpose must be either a

³ The Fee Cap and Sliding Scale apply to CTPH proprietary orders (“F” origin code), except for orders of joint back-office (“JBO”) participants. See, CBOE Fees Schedule, Footnote 11.

wholly-owned subsidiary of a CTPH or a wholly-owned subsidiary of the parent company of a CTPH.

Only proprietary orders of a Non-Trading Permit Holder Affiliate (“B” origin code) effected for purposes of hedging the proprietary over-the-counter trading of the CTPH or its affiliates would be included in calculating the Fee Cap and Sliding Scale. Such orders must be marked with a code approved by the Exchange identifying the orders as eligible for the Fee Cap and Sliding Scale. The Exchange would aggregate a CTPH’s transaction fees⁴ in multiply-listed options on the Exchange with the transaction fees of its Non-Trading Permit Holder Affiliates in multiply-listed options on the Exchange⁵ for purposes of determining whether the CTPH has reached the \$75,000 Fee Cap. The Exchange would aggregate the contracts traded by a CTPH and its Non-Trading Permit Holder Affiliates in multiply-listed options on the Exchange for purposes of determining whether the CTPH has reached the Sliding Scale volume thresholds and qualified for the reduced fees for CBOE Proprietary Products set forth in the Sliding Scale.⁶

A CTPH would be required to certify the affiliate status of any a Non-Trading Permit Holder Affiliate whose trading activity it seeks to aggregate and to certify that the trades

⁴ The CTPH transaction fee is \$.20 per contract in all products except OEX, XEO, SPX, and Volatility Index options, which are proprietary products and are assessed \$.25 per contract. See, CBOE Fees Schedule, Section 1.

⁵ Broker-Dealer transaction fees apply to orders of a Non-Trading Permit Holder Affiliate as defined herein: \$.25 per contract for manual executions and \$.45 per contract for electronic executions in all products except OEX, XEO, SPX, S&P 500 Dividend Index and Volatility Index options, which are proprietary products and are assessed \$.40 per contract. See, CBOE Fees Schedule, Section 1, and Footnote 16.

⁶ The CTPH transaction fee for OEX, XEO, SPX, and Volatility Index options is \$.25 per contract. The Broker-Dealer transaction fee applicable to orders of a Non-Trading Permit Holder Affiliate in OEX, XEO, SPX, S&P 500 Dividend Index and Volatility Index options is \$.40 per contract. See, CBOE Fees Schedule, Section 1 (Index Options), and Footnote 16. These fees would be reduced to the fees set forth in the Sliding Scale once a CTPH reaches the volume thresholds set forth in the Sliding Scale.

identified as eligible for the Fee Cap and Sliding Scale were made for the purposes of hedging proprietary over-the-counter trading of the CTPH or its affiliates. In addition, each CTPH would be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate.

Other exchanges have rules that permit the aggregation of the trading activity of affiliated entities for the purposes of calculating and assessing certain fees.⁷ Similarly, the International Securities Exchange, LLC (“ISE”) includes certain non-ISE Market-Maker transaction fees in calculating its Firm Proprietary transaction fee cap.⁸

The proposed rule change will take effect on July 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the 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 CBOE Trading Permit Holders and other persons using Exchange facilities, and the objectives of Section 6(b)(5)¹¹ of the Act in particular in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the Exchange believes the proposed rule change is equitable, reasonable and not unfairly discriminatory because it would allow aggregation of the trading activity of a CTPH and its Non-Trading Permit Holder Affiliates for purposes of the Fee Cap and Sliding Scale only in very narrow circumstances, namely, where (i) the Non-Trading

⁷ See, e.g., Nasdaq Rule 7027 and Chicago Stock Exchange Fees Schedule, Section P.

⁸ See ISE Schedule of Fees, footnote 2.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78f(b)(5).

Permit Holder Affiliate is registered as a United States or foreign broker-dealer, (ii) the trading activity of the Non-Trading Permit Holder Affiliate that would be included in the calculation of the Fee Cap and Sliding Scale is limited to proprietary orders of the Non-Trading Permit Holder Affiliate effected for purposes of hedging the proprietary over-the-counter trading of the CTPH or its affiliates, and (iii) the CTPH and the Non-Trading Permit Holder Affiliate have a complete identity of common ownership. Any CTPH may request that the Exchange aggregate its trading activity with the trading activity of its Non-Trading Permit Holder Affiliates for purposes of calculating the Fee Cap and Sliding Scale. Other exchanges have rules that permit the aggregation of the trading activity of affiliated entities for the purposes of calculating and assessing certain fees.¹² Similarly, the International Securities Exchange includes certain non-ISE Market-Maker transaction fees in calculating its Firm Proprietary transaction fee cap.¹³

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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section

¹² See, e.g., Nasdaq Rule 7027 and Chicago Stock Exchange Fees Schedule, Section P.

¹³ See ISE Schedule of Fees, footnote 2.

19(b)(3)(A) of the Act¹⁴ and subparagraph (f)(2) of Rule 19b-4¹⁵ 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.

In particular, the Commission is interested in receiving comment as to whether the Exchange's proposal is consistent with the Act and the rules and regulations issued thereunder that are applicable to the Exchange, including Section 6 of the Act and Sections 6(b)(4) and 6(b)(5) in particular. In addition, the Commission is interested in receiving comment as to whether the Exchange has carried its burden to demonstrate such consistency.

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-2011-061 on the subject line.

Paper Comments:

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 C.F.R. 240.19b-4(f)(2).

- 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-2011-061. 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 such filing will also 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-2011-061 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.¹⁶

Cathy H. Ahn
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).