

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66727; File No. SR-CBOE-2012-025)

April 3, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Trading Floor Booth Fees and Policy

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2012, 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. CBOE has designated the proposed rule change as it pertains to fees for non-standard booths as “establishing or changing a due, fee or other charge” under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder<sup>4</sup>, which renders the proposal effective upon receipt of this filing by the Commission. Additionally, CBOE has designated the proposed rule change as it pertains to the Exchange’s trading floor booth policy as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder<sup>6</sup>, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule as it pertains to Exchange trading floor booth fees and to update the Exchange's current policy regarding the rental and use of booths on the CBOE trading floor. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the Exchange's Fees Schedule to include fees for a "non-standard booth" (as defined below) and to update the Exchange's policy ("Policy") regarding the rental and use of booth space on the CBOE trading floor by Trading Permit Holder ("TPH") organizations.

Fees

The Exchange has booth space located on its trading floor that it makes available for rental to TPH organizations. These booths are located at various locations on the trading floor adjacent to

the trading crowds where the actual CBOE trading activity takes place. The booths generally are used by TPH organizations to perform various functions in support of their CBOE trading activities.

The Exchange Fees Schedule includes a monthly fee to rent a booth that is based on the location of the booth on the trading floor. The fee for booths located along the perimeter of the trading floor is \$195 per month. The fee for booths located in the OEX, Dow Jones, MNX and VIX pits is \$550 per month.<sup>7</sup>

The Exchange is proposing to revise the Exchange Fees Schedule to include fees for a larger type of booth for use by TPH organizations. This booth type is different in design and much bigger than a standard booth. These booths can range from several hundred square feet as compared to 4 square feet for a standard booth.

The Exchange proposes to codify fees charged to TPH organizations for rental of these larger booths. The proposed fees would be reflected in Section 8 of the CBOE Fees Schedule as the fees for a “non-standard booth”. A TPH organization would pay the fees per square foot in the table below on a monthly basis for use of a non-standard booth:

BOOTH SIZE	Per Sq. Ft.	Per Sq. Ft.	Per Sq. Ft.
Extra-Large (1000 sq. ft. or greater)	\$5.50	\$5.34	\$5.23
Large (800-999 sq. ft.)	\$8.00	\$7.76	\$7.60
Medium (401-799 sq. ft.)	\$9.50	\$9.22	\$9.03
Small (400 sq. ft. or less)	\$15.00	\$14.55	\$14.25
LENGTH OF LEASE	1 Year	2 Years (97%)	3 Years (95%)

The fee per square foot a TPH organization would pay for a non-standard booth would be determined based on the size of the booth and length of the lease the TPH organization enters into

<sup>7</sup> See CBOE Fees Schedule, Section 8(A).

with the Exchange. Greater booth size and longer lease terms would result in a reduced fee per square foot.

Non-standard booths would be grouped into four size categories: Small (400 square feet or less), Medium (from 401 to 799 square feet), Large (from 800 to 999 square feet) and Extra-Large (1000 square feet or greater). As an example, the fee for a Small non-standard booth leased for one year would be \$15.00 per square foot. Greater booth size would result in a reduced fee per square foot.

The amount of the fee per square foot would also be reduced based on the length of the lease. For example, the fee for a Small non-standard booth leased for two years would be \$14.55 per square foot (a 3% discount from the fee for a one year lease) and the fee for a Small non-standard booth leased for three years would be \$14.25 per square foot (a 5% discount from the fee for a one year lease).

A TPH organization that terminates its lease prior to its expiration date would, on the effective date of such termination, pay to the Exchange an amount equal to twenty five percent (25%) of the balance of the monthly charges remaining in the lease term. In addition, a TPH Organization would be responsible for all costs associated with any modifications and alterations to any trading floor booths leased by the TPH Organization and would be required to reimburse CBOE for all costs incurred by CBOE in connection therewith. This fee would be reflected in Section 8 of the CBOE Fees Schedule as a “booth pass-through fee”.

The proposed fees will take effect on April 1, 2012.

Policy

The Exchange memorialized the Policy and filed it with the Commission in 1994.<sup>8</sup> The Exchange proposes to update the Policy in a few respects. First, the Exchange proposes to change references to “member organization” and “member firm” to “TPH Organization” and to replace a reference to the “Facilities Committee”, which no longer exists, with “the Exchange”.

Second, the Exchange proposes to amend the Policy with respect to eligibility requirements for booths. The Policy currently sets forth four broad categories of TPH organizations that may rent booth space on the floor. These categories accommodate TPH organizations having the greatest need of working space in close proximity to CBOE trading activity, and they encompass almost all major types of CBOE TPH organizations. Market-maker organizations are the only major category that may not obtain a booth under the Policy. Clearing firms lease the majority of the booths on the trading floor and market-maker organizations customarily obtain booth space through their clearing firms. Until recent years, demand for booth space on the trading floor exceeded the supply. Prior to establishment of the Policy, the low supply of booths coupled with the fact that clearing firms leased most of the booths (many of which were used by their market-maker clients) meant there was little booth space on the floor to accommodate order flow providing firms. To help address this issue, market-maker organizations were not allowed to obtain a booth under the Policy since they could obtain booths through their clearing firms. At this time, there is an ample supply of booth space on the trading floor. Therefore, the Exchange believes there is no longer a need to prohibit market-maker organizations from directly leasing booths. The Exchange proposes to amend the Policy to provide that booths on the trading floor will be allocated to any TPH organization that is in good standing.

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<sup>8</sup> Securities Exchange Act Release No. 33972 (April 28, 1994), 59 FR 23242 (May 5, 1994).

No changes are proposed to the section of the Policy that addresses the potential future need for the adoption of allocation and assignment guidelines with respect to booth space. The Exchange has no such guidelines in effect today and does not currently envision implementing any in the foreseeable future. In the event that demand for booth space at some point threatens to exceed availability, the Exchange would establish allocation guidelines. The Policy informs TPH organizations of this possibility and identifies the general nature of the criteria upon which such guidelines would be based. Any such guidelines established by the Exchange would be filed with the Commission under Section 19(b) of the Act.

At this time, the Exchange has ample space on its trading floor for booth space. The Exchange will consider any reasonable request from a TPH organization with respect to the specifications for building a non-standard booth. The Exchange may deny a request from a TPH organization to build a non-standard booth if the Exchange determines the request is unreasonable with respect to the specifications for the non-standard booth. A TPH organization that has been denied a request to build a non-standard booth may appeal the decision to the Appeals Committee under Chapter 19 of the Exchange's rules.

The Policy includes a section that sets forth the requirement that all TPH organizations renting booths execute a "Trading Floor Booth Rental Agreement" (hereinafter, "Agreement") which sets forth the contractual terms, conditions and restrictions governing rental and use of booths by TPH organizations.<sup>9</sup> A copy of the Agreement was included in the Exchange's 1994 rule filing noted above for the Commission's information.<sup>10</sup> The Agreement specifically sets forth the details of the parties' contractual relationship regarding rental and use of the booths. Among other provisions, the Agreement includes specific provisions delineating the termination rights of both the

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<sup>9</sup> The Agreement is non-negotiable and its terms are the same for every TPH organization.

<sup>10</sup> Supra Footnote 8.

TPH organization and the Exchange and sets forth a procedure for adding booths to and deleting booths from the Agreement. The Agreement also spells out requirements respecting the TPH's use of the booths, such as those governing the installation of equipment, the conduct of business, and access of persons to the booths.

The Exchange has updated the Agreement (which is now referred to as the Agreement for "standard booths") and created a separate form of the Agreement for non-standard booths. A copy of each form of Agreement is included with this filing in Exhibit 3. The forms are substantially similar except for the differences in the lease terms (standard booths are leased on a month-to-month basis), termination provisions<sup>11</sup> and applicable fees. The Exchange proposes to update this section of the Policy to set forth the requirement that all TPH organizations renting booths execute the applicable form of the Agreement. The Exchange will disseminate the updated Policy and forms of the Agreement to Trading Permit Holders by posting them on the Trading Permit Holder portion of the CBOE web site ([www.cboe.org](http://www.cboe.org)).

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>12</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>13</sup> 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 the objectives of Section 6(b)(5)<sup>14</sup> of the Act in particular in that it is not designed to permit unfair

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<sup>11</sup> The form of the Agreement for non-standard booths provides that a TPH Organization may terminate the Agreement at any time for any reason upon at least one hundred eighty (180) days prior written notice to CBOE.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(4).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers. The Exchange believes the proposed fees for non-standard booths are reasonable because there are higher costs related to operation of these large size booths (e.g., utilities, routine maintenance, etc.) as compared with a standard booth. The Exchange believes the proposed fees are equitable and not unfairly discriminatory in that the fee per square foot each TPH organization would pay would be determined in an objective manner based on the size of the booth and length of the lease the TPH organization enters into with the Exchange. The proposed fees would be applied uniformly to all eligible TPH organizations that wish to use a non-standard booth.

In addition, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would update the Policy to reflect non-standard booths and the requirement that TPH organizations enter into the applicable booth lease agreement as well as make other non-substantive changes that merely clarify the Policy and make it more accurate. The Exchange believes these changes are designed to promote just and equitable principles of trade by helping to make the Policy easier to understand and putting TPH organizations on notice of the new requirements for non-standard booths. The Exchange believes that providing in the Policy for building non-standard booths for TPH organizations may help provide additional depth and liquidity to options traded on the CBOE trading floor by providing TPH organizations more booth space from which to execute additional options transactions, thereby removing impediments to and perfecting the mechanism for a free and open market and a national market system.

The proposed rule change would also establish a standard for the Exchange's consideration of requests to build non-standard booths and an appeals process for denials of such requests. The Exchange believes the proposed standard and procedures for consideration of requests to build non-standard booths and denials of such requests are reasonable and designed to promote just and equitable principles of trade in that they will help ensure Exchange decisions on building non-standard booths are made in a fair and equitable manner while also protecting the Exchange by providing it with the ability to deny any unreasonable request.

In addition, the proposed rule change would update the Policy to eliminate a prohibition against market-maker organizations directly leasing trading floor booths. Any TPH organization in good standing would be eligible to lease a booth. Therefore the Exchange believes the proposed rule change is not designed to permit unfair discrimination between TPH organizations in that it will help ensure that trading floor booths are leased to TPH organizations on equal and non-discriminatory terms.

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

The Exchange neither solicited nor received comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The portion of the foregoing rule change pertaining to fees for non-standard booths has become effective pursuant to Section 19(b)(3)(A)<sup>15</sup> of the Act and paragraph (f)(2) of Rule 19b-4<sup>16</sup> thereunder.

Additionally, because the portion of the foregoing proposed rule change pertaining to the Exchange's trading floor booth policy 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 Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

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

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-025 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-2012-025. 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 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 offices 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-2012-025, 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.<sup>19</sup>

Elizabeth M. Murphy  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).