

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69760; File No. SR- CBOE-2013-058)

June 13, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

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 6, 2013, 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. 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 Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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. In 2002, the Exchange added to its Fees Schedule a rebate for duplicate fees related to manual data entry ("keypunch") errors.³ This change was made due to the possibility that an options trade could be matched and cleared inappropriately as a result of a keypunch error. Indeed, the example given in SR-CBOE-2002-013 describes a situation involving a member's clerk, or other similar personnel, inputting the wrong clearing firm code into the appropriate form or program. As a result, the trade is cleared through the wrong clearing firm and, in order to correct the situation, corrective transactions are entered to reverse the error trades and then new trades are submitted to reflect the original intentions of the parties. Without the keypunch error rebate program, the clearing firm whose code was erroneously entered would have to pay Exchange transaction fees for any transactions necessary to reverse the initial trade (despite not having been a party to such trade).

³ See Securities Exchange Act Release No. 45675 (March 29, 2002), 67 FR 16480 (April 5, 2002) (SR-CBOE-2002-013). The Section of the Fees Schedule describing the keypunch error rebate program currently states:

On occasion, options transactions are matched and cleared as a result of certain keypunch errors and Trading Permit Holders are forced to execute subsequent transactions to achieve the originally intended results. A qualifying error is any error that is inadvertent and creates a duplicate fee or fees to be charged in the matching and clearing of corrective options trades. Only those transactions that require a minimum of 500 contracts to correct the error or errors shall be eligible for this rebate. The CBOE shall have the discretion to rebate any duplicate transaction fees incurred in the course of correcting such errors. A written request with all supporting documentation (trade date, options class, executing firm and broker, opposite firm and broker, premium, and quantity) and a summary of the reasons for the error must be submitted within 60 days after the last day of the month in which the error occurred.

In a recent overall review of the Fees Schedule, the Exchange reviewed the “Keypunch Error” rebate program and has determined to modify the rebate. The term “keypunch” is open to interpretation and could be read to include a variety of types of errors that involve the erroneous entry of any type of trade information (beyond just the wrong clearing firm). As such, the Exchange proposes to delete the current language associated with the keypunch error rebate program, re-title it “Clearing Trading Permit Holder Position Re-Assignment” and add the following language: CBOE will rebate assessed transaction fees to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party’s transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed.

If a market participant makes an error that requires a corrective transaction, the Exchange believes that the market participant should be responsible for the fees involved in correcting that transaction (as the Exchange must expend resources in order to process such transactions). However, when a Clearing Trading Permit Holder is required to re-assign a position, that Clearing Trading Permit Holder may have been assigned that position by another market participant and therefore the Exchange does not wish to assess fees for such re-assignment to the Clearing Trading Permit Holder. The reason that the rebate is limited to a business day following the original trade is because if an error is discovered on the day it occurs, it can be corrected prior to clearing and accurate fees will be assessed. The Exchange determined to eliminate the stipulation that, in order

to qualify for the rebate, a transaction be of a minimum of 500 contracts because the Exchange believes that any transaction, regardless of size, should be eligible for the rebate, and a *de minimis* requirement is not necessary.

Because the Exchange may not always be able to automatically identify these situations, in order to receive a rebate, a written request with all supporting documentation (trade detail regarding both the original and re-assigning trades)⁴ and a summary of the reasons for the re-assignment must be submitted within 60 days after the last day of the month in which the original transaction occurred.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Modifying exactly what qualifies for the rebate prevents confusion, thereby removing impediments to and

⁴ Such detail would include the trade date, options class, trade symbol, executing firm and broker, opposite firm and broker, premium, and quantity.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that Exchange rules 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 that removing the “keypunch error” language and replacing it with the proposed new language is reasonable because the term “keypunch error” is too vague and could be defined in many ways, whereas the new language is clearer about what qualifies for the rebate. Further, it is reasonable to offer a rebate when a Clearing Trading Permit Holder re-assigns a position, as the Clearing Trading Permit Holder may not have elected to take that position in the first place (and may just have been erroneously listed as a party to the transaction). The Exchange believes that this change is equitable and not unfairly discriminatory for the same reason; it is equitable to rebate fees to a Clearing Trading Permit Holder that was assessed fees for taking a position from a transaction to which that Clearing Trading Permit Holder was not a party. Otherwise, the Exchange believes it is equitable for a party that made an error reporting a transaction to be responsible for paying the fees associated with making that error. Further, the proposed changes will apply equally to all market participants.

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. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the situation in which a Clearing Trading Permit Holder is reported as being party to a trade to

⁷ 15 U.S.C. 78f(b)(4).

which it is not a party and thereby forced to take a position only applies to Clearing Trading Permit Holders. Further, the proposed change will apply to all Clearing Trading Permit Holders. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies to trading on CBOE only. Further, to the extent that the proposed change may make CBOE a more attractive market for market participants on other exchanges, such market participants may determine to become CBOE market participants.

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and paragraph (f) of Rule 19b-4⁹ 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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:

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f).

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-2013-058 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-2013-058. 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 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 publicly available. All submissions should refer

to File Number SR-CBOE-2013-058 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.¹⁰

Elizabeth M. Murphy
Secretary

¹⁰ 17 CFR 200.30-3(a)(12).