

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61329; File No. SR-CBOE-2009-101)

January 11, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Professional 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 December 24, 2009, 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. 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

CBOE is proposing to amend its Fees Schedule as it relates to fees for certain orders. 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 17, 2009, the Securities and Exchange Commission approved a proposed rule change by the CBOE to establish a Professional³ designation.⁴ This designation provides that certain non-broker-dealer customers will participate in CBOE's allocation process on equal terms with broker-dealer orders. In the aforementioned filing, the Exchange represented that it intends to establish, via a separate rule filing, transaction fees applicable to Professionals. In accordance with that representation, the Exchange now proposes to amend its fees schedule to establish the transaction fees that would be applicable to Professional orders. These fees will be commencing on January 4, 2010.

The Exchange proposes to charge Professional orders in the same manner that it charges Voluntary Professional orders. Specifically, Professional orders will be charged a \$0.20 per contract transaction fee in all equity options and options on indexes, exchange-traded funds and holding company depository receipts (except those listed below). The Exchange proposes a \$0.40 per contract transaction fee in DXL, OEX, XEO, and DVS options and all volatility index options, and a \$0.85 per contract transaction fee in credit default and credit default basket options. The Exchange proposes

³ See CBOE Rule 1.1(ggg).

⁴ See Securities Exchange Act Release No. 61198 (December 17, 2009)(SR-CBOE-2009-078).

to amend footnote 14 (index option surcharge fee) to clarify that the Surcharge Fee would apply to Professionals.

The Exchange notes that the Options Regulatory Fee contained in section 12 will apply to Professionals as it currently does to Voluntary Professionals (no changes to the text are needed to reflect this).⁵ In addition, the Exchange notes that, as with Voluntary Professionals, Professional orders will not be subject to the order handling system order cancellation fee contained in section 14 (no changes to the text are needed to reflect this).

Lastly, the Exchange is proposing one other change to its fees schedule that will be applicable to both Voluntary Professional orders and Professional orders. Specifically, the Exchange is proposing to amend section 20 (non-customer linkage fees) to provide that the non-customer linkage fees will be assessed on Voluntary Professional orders and Professional orders.⁶

⁵ The Options Regulatory Fee is assessed by CBOE to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (“OCC”) in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs. Professional orders, which will use order origin code “W,” are cleared in the customer range at OCC.

⁶ Under the non-customer linkage fee, for any non-customer order routed to other exchanges, CBOE assesses the following costs to the member that submitted the non-customer order to CBOE: (i) charge a \$0.05 per contract routing fee, (ii) pass through all actual charges assessed by the away exchange(s) (these are calculated on an order-by-order basis since different away exchanges charge different amounts), and (iii) charge CBOE’s customary execution fees applicable to the order. The routing fee helps offset costs incurred by the Exchange in connection with using an unaffiliated broker-dealer to access other exchanges. Passing through charges assessed by other exchanges for “linkage” executions and charging for related CBOE executions are appropriate because non-customer order flow can route directly to those exchanges if desired and the Exchange chooses not to absorb those costs at this time.

2. Statutory Basis

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)⁸ 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 members and other persons using its facilities. The proposed fee changes would enable the Exchange to implement the Professional designation.

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 establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(2)¹⁰ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 19b-4(f)(2).

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-2009-101 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-2009-101. 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 of the submission,¹¹ 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

¹¹ The text of the proposed rule change is available on CBOE's Web site at <http://www.cboe.org/legal>, on the Commission's Web site at <http://www.sec.gov>, at CBOE, and at the Commission's Public Reference Room.

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 inspection and copying 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 CBOE. 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-2009-101 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).