

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62034; File No. SR-CBOE-2010-035)

May 4, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending CBOE Rules 9.11, 9.18 and 9.21 to Correspond and Harmonize with Rules of the Financial Industry Regulatory Authority, Inc.

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 the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) on April 9, 2010, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of the filing by the Commission. 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 guarantees and profit sharing, confirmation to customers, and options communication rules to harmonize the Exchange’s requirements with those of the Financial Industry Regulatory Authority (“FINRA”). The text of the proposed rule change is available on the Exchange’s Web site at www.cboe.org/Legal, at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d-2 under the Act⁴, the BATS Exchange, Inc. (“BATS”), CBOE, C2 Options Exchange, Incorporated (“C2”), the International Securities Exchange, LLC (“ISE”), FINRA, the New York Stock Exchange LLC (“NYSE”), NYSE Amex LLC (“Amex”), NYSE Arca, Inc. (“Arca”), The NASDAQ Stock Market LLC (“NASDAQ”), NASDAQ OMX BX, Inc. (“BX”), and NASDAQ OMX PHLX, Inc. (“Phlx”), (collectively the “Options Self Regulatory Council”), entered into an agreement dated February 9, 2010 (the “17d-2 Agreement”) to allocate regulatory responsibility for common rules.

First, by this proposal, the Exchange seeks to harmonize its “Sharing in Accounts” rule with FINRA’s rule pursuant to the terms of the 17d-2 Agreement. In order to maintain substantial similarity with FINRA rules, the Exchange proposes to amend CBOE Rule 9.18(a) to clarify that the prohibition against guarantees also applies to persons associated with a member and to delete the language of CBOE Rule 9.18 related to profit sharing of a customer account, and replace it with the language of FINRA Rule 2150(c), Sharing in

⁴ 17 CFR 240.17d-2.

Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same prohibition against sharing in accounts as CBOE Rule 9.18, but with additional limited exceptions. The general prohibition contained in CBOE Rule 9.18 against sharing in the profits or losses of a customer account is currently covered by the 17d-2 Agreement. However, the limited exceptions of FINRA Rule 2150(c) are not covered by the 17d-2 Agreement. The Exchange proposes to add those limited exceptions to CBOE Rule 9.18 to harmonize its rule with the FINRA rule and add those limited exceptions pursuant to the 17d-2 Agreement. The portion of the rule prohibiting the guarantee of a customer against loss will remain unchanged.

Second, CBOE proposes to amend its confirmation rule, CBOE Rule 9.11, to add a requirement that confirmations disclose whether the transaction was an opening or closing transaction to harmonize the rule with FINRA Rule 2360(b)(12).

Third, CBOE proposes to amend its options communication rule, CBOE Rule 9.21, by deleting the term “market letters” in the definition of “sales literature” and adding the term “market letters” to the definition of “correspondence” to harmonize the rule with FINRA Rule 2220 and NASD Rule 2210(a)(2).

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the provisions of, and furthers the objectives of, Section 6(b)(5) of the Act,⁵ which requires, among other things, that the Exchange’s rules must 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market

⁵ 15 U.S.C. 78f(b)(5).

system, and, in general, to protect investors and the public interest. Specifically, the proposed rule changes, by harmonizing CBOE rules with FINRA rules, would provide CBOE Members with a clearer regulatory scheme. The Exchange further notes that the proposed rule changes are neither novel nor controversial and are modeled on existing FINRA rules.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ A proposed rule change filed under Rule 19b-4(f)(6)⁸ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁹ the Commission may designate a shorter time if

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6).

⁸ Id.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

such action is consistent with the protection of investors and the public interest. CBOE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Because the proposed rule change will harmonize the CBOE rules pertaining to guarantees and profit sharing, confirmations to customers, and options communications with the comparable FINRA rules pursuant to the 17d-2 Agreement, the Commission finds that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.¹⁰

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-2010-035 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.

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CBOE-2010-035. 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, 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 Web site 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 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-2010-035 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.¹¹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).