

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62095; File No. SR-CBOE-2010-042)

May 13, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Suspension of Seat Market

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 6, 2010, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. CBOE has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(3) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

CBOE proposes to amend its rules governing the sale and transfer of Exchange memberships by adding new Interpretation and Policy .02 to Rule 3.14. The rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, at the Commission’s Public Reference Room, and on the Commission’s Web site at www.sec.gov.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(3).

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

The purpose of the proposed rule change is to provide for a fair and orderly market in shares of common stock of CBOE Holdings, Inc. ("CBOE Holdings Common Stock") in the unique circumstances presented during the brief period, anticipated to be three business days, between the commencement of the initial public offering of such shares and the effectiveness of the demutualization of the Exchange. The timetable for the demutualization of the Exchange and the public offering of CBOE Holdings Common Stock is such that, although the demutualization transaction will have been approved in a vote of the Exchange membership prior to the commencement of the public offering, the demutualization will not become effective until just prior to the closing of the public offering, which is expected to occur three business days after the commencement of the offering. This timetable avoids having to address difficult administrative issues that would otherwise arise on account of the need to issue special "Class A" and "Class B" shares of CBOE Holdings Common Stock to Exchange membership owners and to participants in the settlement of the "Exercise Right" litigation, respectively, upon the effectiveness of the demutualization. Upon the closing of the public offering, both of these special share Classes will be converted into the same classes of shares of CBOE Holding

Common Stock. By essentially eliminating the time interval between the effectiveness of the demutualization and the closing of the public offering, the Exchange is able to avoid difficult issues that would otherwise have to be addressed as a result of having both Class A and Class B shares of CBOE Holdings Common Stock outstanding prior to just before the closing of the public offering.

As is customary in underwritten public offerings, immediately upon the commencement of the public offering of shares of CBOE Holdings common stock the shares will begin to be traded on a when-issued basis on the exchange where the shares are listed. However, because the effectiveness of the demutualization will not occur until just before the closing of the public offering for the reason explained above, Exchange memberships will continue to be outstanding concurrently with the when-issued trading of the same class of shares into which they will ultimately be converted. It is essential to the orderliness of the public offering of shares of CBOE Holdings Common Stock and consistent with the ability of the underwriters to engage in stabilization transactions in those shares under Rule 104 of Regulation M under the Securities Exchange Act of 1934,⁵ that while there is when-issued trading in shares of CBOE Holdings Common Stock in the listed market for these shares, there must not be an alternative market in the same class of shares or in interests that are equivalent to those shares. If there were to continue to be a market for Exchange memberships during this brief period, it would amount to an alternative market for the class of shares being offered, since upon the effectiveness of the demutualization all outstanding Exchange memberships will be converted into shares of CBOE Holdings Common Stock. The Exchange believes that such a seat market would be outside of

⁵ 17 C.F.R. 242.104.

the scope of Regulation M⁶ and the underwriters' ability to stabilize the price of the shares being offered. Accordingly, the existence of such an alternative market would jeopardize the orderliness of the public offering. For this reason, the Exchange believes that it is necessary to suspend the operation of the Exchange's seat market during this brief period. A rule change is needed to accomplish this suspension, since it is for a longer period than the Board of Directors is authorized to declare under existing Interpretation and Policy .01 under Exchange Rule 3.14.

There should be no adverse consequences to Exchange members as a result of suspending the CBOE seat market for a brief, three-day period. Before the public offering commences, and as a condition of the offering, the demutualization of the Exchange will have been approved by a vote of the Exchange membership, although as explained above the demutualization will not become effective until after the public offering has been completed and just prior to its closing. During this period, the ownership interests in the Exchange will, for all practical purposes, be represented by the shares of CBOE Holdings common stock into which memberships will be converted in accordance with the terms and upon the effectiveness of the demutualization, which will have been approved by CBOE's membership. Once this happens, Exchange memberships will cease to exist and the purchase and sale of Exchange memberships will no longer be possible. Thus the effect of the proposed rule change is simply to accelerate the termination of the seat market by three days prior to the time it would have ended in any event.

In the unlikely event that the demutualization, having been approved by the membership, does not become effective as anticipated, the public offering will not close and Exchange memberships will remain outstanding. In that event, the seat market will once again resume operation, subject only to the authority of the Board to delay its resumption for no more than one

⁶ 17 C.F.R. 242.104.

business day under existing Interpretation and Policy .01 of Rule 3.14, if the Board determines that under the circumstances such a delay is needed in the interest of a fair and orderly market in memberships.

2. Statutory Basis

By providing for a fair and orderly public offering of shares of CBOE Holdings Common Stock and eliminating any possibility that the market in Exchange memberships could be used to manipulate the when-issued market in such shares, the proposed rule change is consistent with Section 6(b) of the Act⁷ in general, and furthers the objectives of Section 6(b)(5)⁸ in particular, in that it would prevent fraudulent and manipulative acts and practices, would promote just and equitable principles of trade and would protect investors and the public interest.

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

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and subparagraph (f)(3) of Rule 19b-4 thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(3).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2010-042 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-2010-042. 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 the 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-2010-042 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

Elizabeth M. Murphy
Secretary

¹¹ 17 CFR 200.30-3(a)(12).