

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65007; File No. SR-CBOE-2011-071)

August 2, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule Concerning Facilitation Orders in Multiply-Listed FLEX Options

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 August 1, 2011, the 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 hereby proposes to waive the Clearing Trading Permit Holder Proprietary Transaction Fee for Clearing Trading Permit Holders executing facilitation orders in multiply-listed FLEX Options classes. 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, the self-regulatory organization 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Over-the-counter (“OTC”) trading and Flexible Exchange Options (“FLEX”) trading are similar in that both are highly customized, and largely involve customer-to-firm trades. Due to regulatory changes and other market forces, the Exchange believes that market participants interested in executing these types of customized, customer-to-firm trades will begin to transition from executing such trades in the OTC markets to executing them as FLEX trades. Currently, a number of other exchanges which also host FLEX trading, including the NASDAQ OMX PHLX LLC (“PHLX”), do not charge transaction fees on firm facilitation orders in multiply-listed FLEX Options classes³ (the nature of a facilitation order is such that it provides a market for a trade, and only Clearing Trading Permit Holders (or firms, on other exchanges) can enter such orders). Because CBOE anticipates an increase in FLEX trading, and because CBOE would like to be able to compete with other exchanges for FLEX trades on an even footing, the Exchange hereby proposes to waive the Clearing Trading Permit Holder Proprietary Transaction Fee for Clearing Trading Permit Holders executing facilitation orders in multiply-listed FLEX Options classes (the “Fee Waiver”).

A number of Clearing Trading Permit Holders will not be affected by this rule change because such Clearing Trading Permit Holders trade multiply-listed options in such volume on the Exchange (in capacities other than as a Clearing Trading Permit Holder executing facilitation orders in multiply-listed FLEX Options classes) that their overall trading activity already meets

³ See PHLX Fee Schedule, page 9.

the Exchange's \$75,000 per month Multiply-Listed Option Fee Cap⁴ (the "Fee Cap") and the Fee Waiver will not bring such Clearing Trading Permit Holders below the Fee Cap. However, there are some firms that are very active in OTC trading, but not very active (relatively speaking) in the trading of listed options, and therefore do not reach the Fee Cap. CBOE proposes the Fee Waiver in order to attract such firms to send order flow to the Exchange.

The Exchange proposes limiting the Fee Waiver to Clearing Trading Permit Holders facilitation orders because other exchanges also limit not charging such fees to facilitation orders,⁵ and the Exchange intends the proposed Fee Waiver to allow CBOE to compete with such exchanges for such orders. The Exchange proposes limiting the Fee Waiver to multiply-listed FLEX Options classes, as opposed to also including singly-listed (proprietary) FLEX Options classes, because the Exchange devoted a lot of resources to develop such proprietary singly-listed FLEX Options classes, and therefore must continue to collect fees for trading in such classes in order to justify and recoup such development costs.

The proposed rule change will take effect on August 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4)⁷ 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 other persons using Exchange facilities. The Exchange believes the proposed Fee Waiver is reasonable because it merely waives an already-existing fee and certainly replacing a

⁴ See the Exchange Fee Schedule, Section 1 (on page 2).

⁵ See PHLX Fee Schedule, page 9.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

current fee with no fee is a “reasonable” change for those parties who had previously been paying the fee. The Exchange also believes the proposed Fee Waiver is reasonable because it would make the amount comparable to the fee charged on other exchanges for similar facilitation orders in multiply-listed FLEX Options.⁸

The Exchange believes waiving the Clearing Trading Permit Holder Proprietary Transaction Fee for Clearing Trading Permit Holders executing facilitation orders in multiply-listed FLEX Options classes is equitable and not unfairly discriminatory because the Exchange believes the Fee Waiver will attract new FLEX order flow to the Exchange and incentivize Clearing Trading Permit Holders firms to execute more orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange’s market participants should benefit from the improved market liquidity. Further, other exchanges also do not charge transaction fees for such trades.⁹ The Exchange believes limiting the proposed Fee Waiver to multiply-listed FLEX Options is equitable and not unfairly discriminatory because the Exchange has devoted a lot of resources to develop proprietary singly-listed FLEX Options classes, and therefore must continue to collect fees for trading in such classes in order to justify and recoup such development costs.

The Exchange operates in a highly competitive market in which sophisticated and knowledgeable market participants readily can, and do, send order flow to competing exchanges based on fee levels. The Exchange believes that the fees it assesses must be competitive with fees assessed on other options exchanges. The Exchange believes that this competitive marketplace impacts the fees present on the Exchange today and influences the proposals set forth above.

B. Self-Regulatory Organization’s Statement on Burden on Competition

⁸ See PHLX Fee Schedule, page 9.

⁹ See PHLX Fee Schedule, page 9.

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

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 proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act¹⁰ and subparagraph (f)(2) of Rule 19b-4¹¹ 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.

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-2011-071 on the subject line.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 C.F.R. 240.19b-4(f)(2).

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-2011-071. 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 available publicly. All submissions should refer to File No. SR-CBOE-2011-071 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).