

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55629; File No. SR-CBOE-2007-34)

April 13, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Subsidy Arrangements with Members That Provide or Use Certain Order Routing Functionalities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 5, 2007, the 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 substantially prepared by CBOE. CBOE designated this proposal as one establishing or changing a due, fee, or other charge applicable only to its members pursuant to Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) 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 enter into subsidy arrangements with CBOE members that provide certain order routing functionalities to other CBOE members and/or use such functionalities themselves. This rule change does not provide for any modifications to the text of CBOE’s rules. The proposed rule change is available on the Exchange’s Web site (<http://www.cboe.com>), 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 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 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 these statements may be examined at the places 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, Proposed Rule Change

1. Purpose

CBOE proposes to enter into subsidy arrangements with CBOE members that provide certain order routing functionalities to other CBOE members and/or use such functionalities themselves.⁵ To qualify for the subsidy arrangement, a member’s order routing functionality would have to: enable the electronic routing of orders to all of the U.S. options exchanges, including CBOE; provide current consolidated market data from the U.S. options exchanges; and be capable of interfacing with CBOE’s API to access current CBOE trade engine functionality. The routing system would also need to cause CBOE to be the default destination exchange for individually executed marketable orders if CBOE is at the national best bid or offer (“NBBO”), regardless of size or time, but allow any user to manually override CBOE as the default destination on an order-by-order basis. The order routing functionality would be required to incorporate a function allowing orders at a specified price to be sent to multiple exchanges with a single click (a “sweep function”) and the sweep function would need to be configured to cause

⁵ CBOE might in the future submit to the Commission a proposed rule change to include arrangements with third party vendors that are not CBOE members.

an order to be sent to CBOE for up to the full size quoted by CBOE if CBOE is at the NBBO.⁶ Any CBOE member would be permitted to avail itself of this arrangement, provided that its order routing functionality incorporates the features described above and satisfies CBOE that it appears to be robust and reliable. The member would be solely responsible for implementing and operating its system.

CBOE is proposing to make payments to participating CBOE members to subsidize their costs of providing the routing services. The payment would be \$0.05 per contract for orders routed to CBOE through a participating member's system. The participating member would have to agree that it would not be entitled to receive any other revenue for the use of its system specifically with respect to orders routed to CBOE.⁷

A participating CBOE member could also elect to have CBOE perform certain additional marketing services on its behalf. These services would consist of including the member's functionality in the general marketing activities of CBOE's marketing staff. CBOE would permit a member electing to have CBOE perform these services place CBOE's "HyTS" trademark on its order routing functionality in a manner satisfactory to CBOE. If a member

⁶ For example, if a CBOE member were to enter an order to buy 250 contracts using the sweep function at a time when CBOE is at the NBBO for 100 contracts, the sweep function would need to be configured to send an order for 100 contracts to CBOE, with the balance of the order routed as specified by the member entering the order from the configurations offered by the routing functionality.

Nothing would require that a person using the routing functionality actually use the sweep function, and, in this same example, if the CBOE member wished to route the entire order for 250 contracts to an exchange other than CBOE using the routing functionality, it would be free to manually override CBOE as the default destination for the entire order.

⁷ This requirement would not prevent the participating member from charging fees (for example, a flat monthly fee) for the general use of its order routing system. Nor would it prevent the participating member from charging fees or commissions in accordance with its general practices with respect to transactions effected through its system.

elects to have CBOE perform these services, the amount that CBOE pays the member for orders routed to CBOE through the participating member's system would be reduced from \$0.05 per contract to \$0.04 per contract. The minimum term of these services would be one year, after which a member could terminate the marketing services effective at the end of a calendar month.

A participating CBOE member could also elect to have CBOE perform the service of billing other CBOE members with respect to the use of the participating CBOE member's router. A participating member that elects to have CBOE perform this service would pay CBOE a service fee of one percent of the fees collected by CBOE for that member. A member could terminate this service at the end of any calendar month.

Nothing about the subsidy arrangement would relieve any CBOE member that is using an order routing functionality provided by another member or its own functionality from complying with its best execution obligations. Specifically, just as with any customer order and any other routing functionality, a member would have an obligation to consider the availability of price improvement at various markets and whether routing a customer order through a functionality that incorporates the features described above would allow for access to such opportunities if readily available. Moreover, a member would need to conduct best execution evaluations on a regular basis, at a minimum quarterly, that include its use of any router incorporating the features described above.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(4) of the Act⁹ in particular in that it is designed to provide for the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

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 foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(2)¹¹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2007-34 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-34. 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 inspection and copying in the Commission's Public Reference Room. 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-2007-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).