

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59935; File No. SR-CBOE-2009-028)

May 18, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Rebating Member Dues for Certain Members

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 6, 2009, Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) 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 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule to rebate member dues for certain members. 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’s Public Reference Room.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

below. CBOE 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

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting Fee, in which case the member does not pay member dues).⁴ Under Rule 3.17(c), the membership lease agreement between a lessor member and a lessee member designates who is responsible for Exchange dues, fees and other charges. Typically, leases provide that the lessee is responsible for dues and therefore lessors do not pay dues.

Under the lessor compensation component of the Interim Trading Permit (“ITP”) program, the Exchange compensates a lessor for an “open lease” while the ITP program is active and ITPs are outstanding.⁵ The goal of this component of the ITP program is to put such a lessor in a similar position as if the lessor’s membership was leased. This goal would be frustrated if the lessor is charged dues because the lessor would be subject to an obligation the lessor would not otherwise be subject to if the lessor’s membership was leased.

Consistent with this goal, the Exchange will waive member dues for a lessor member for any month in which the lessor receives a payment from the Exchange for an open lease under the ITP program. This waiver became effective on May 1, 2009, pursuant to a previous rule change

⁴ Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.

⁵ The ITP program is a program pursuant to which the Exchange has the authority to issue up to 50 ITPs. The ITP program is governed by CBOE Rule 3.27. The lessor compensation component of the ITP program is described in CBOE Rule 3.27(d). An “open lease” is defined in Rule 3.27(d) as a transferable Exchange membership available for lease.

that was filed by the Exchange for immediate effectiveness.⁶ The Exchange now proposes to rebate dues to any lessor member who received such a payment from the Exchange during the period August 1, 2008⁷, through April 30, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")⁸, in general, and furthers the objectives of Section 6(b)(4)⁹ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed rebate of member dues is equitable and reasonable in that it would help the Exchange place a lessor member who received compensation from the Exchange for an open lease under the ITP program prior to May 1, 2009, in a similar position as if the lessor's membership had been leased, consistent with Exchange Rule 3.27(d).

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

Within 35 days of the date of publication of this notice in the Federal Register or

⁶ See SR-CBOE-2009-027.

⁷ The ITP program was approved by the Commission on July 17, 2008. See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-2009-028 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-2009-028. 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, 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2009-028 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.¹⁰

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).