

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60513; File No. SR-CBOE-2009-059)

August 17, 2009

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 2009, 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 prepared by CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>1</sup> and Rule 19b-4(f)(2) thereunder,<sup>2</sup> 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 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 relating to the Options Regulatory Fee. The text of the proposed rule change is below. Additions are underlined. Deletions are in brackets.

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CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

FEES SCHEDULE

[AUGUST] SEPTEMBER 1, 2009

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<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>2</sup> 17 CFR 240.19b-4(f)(2).

1. – 4. Unchanged.

FOOTNOTES:

(1) – (17) Unchanged.

5. – 11. Unchanged.

12. REGULATORY FEES:

A) Options Regulatory Fee: \$.004 per contract\*

\*The Options Regulatory Fee is assessed by CBOE to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (OCC) in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs. The fee is collected indirectly from members through their clearing firms by OCC on behalf of CBOE. There is a minimum one-cent charge per trade.

Remainder of Fees Schedule – Unchanged.

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

(a) Purpose

The Exchange charges an Options Regulatory Fee (“ORF”) of \$.004 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation (“OCC”) in the customer range, excluding Options Intermarket Linkage Plan (“Linkage”) orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.<sup>3</sup>

The Exchange proposes to amend the ORF to also include options transactions that are not executed by a CBOE member but are ultimately cleared by a CBOE member. Thus the Exchange would charge a member \$.004 per contract for all options transactions executed or cleared by the member that are cleared by OCC in the customer range, excluding Linkage orders, regardless of the marketplace of execution. In the case where one member both executes a transaction and clears the transaction, the ORF would be assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF would be assessed only to the member who executes the transaction and would not be assessed to the member who clears the transaction. In the case

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<sup>3</sup> The ORF was established in October 2008 as a replacement of Registered Representative (“RR”) fees. See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (“Original Filing”). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. See Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from \$.0045 per contract to \$.006 per contract. See Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009). The Exchange reduced the ORF from \$.006 per contract to \$.004 per contract, effective August 1, 2009. See Securities Exchange Act Release No. 60093 (June 10, 2009), 74 FR 28749 (June 17, 2009).

where a non-member executes a transaction and a member clears the transaction, the ORF would be assessed to the member who clears the transaction.<sup>4</sup>

The Exchange believes that its broad regulatory responsibilities with respect to its members' activities, as described in the Original Filing, supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activity, including performing surveillance for position limit violations, manipulation, insider trading, frontrunning and contrary exercise advice violations.

The Exchange expects that the proposed rule change would increase ORF revenue by less than two percent. As stated in the Original Filing, the ORF is designed to generate revenue that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs. If the Exchange determines regulatory revenues would exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies members of adjustments to the ORF via regulatory circular.

The proposed fee change would become operative on September 1, 2009, in order to give members time to implement the revised fee.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>5</sup>, in general, and furthers the objectives of Section

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<sup>4</sup> See email to Richard Holley III, Senior Special Counsel, from Jaime Galvan, Senior Attorney, CBOE, dated August 17, 2009 (clarifying the operation of the proposed change to extend the ORF to clearing activity).

<sup>5</sup> 15 U.S.C. 78f(b).

6(b)(4)<sup>6</sup> 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 rule change is reasonable because it relates to the recovery of the costs of supervising and regulating CBOE members. The Exchange believes the proposed rule change is equitable because the ORF would be charged to all members on all of their business that clears as customer at the OCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> 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

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<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-059 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-2009-059. 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 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-2009-059 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.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).