

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61523; File No. SR-CBOE-2010-013)

February 16, 2010

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2010, 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 prepared by the 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>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 the CBOE and CBSX Fees Schedules relating to the CBSX Market Data Infrastructure Fee. 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.

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

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

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

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

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, the Proposed Rule Change

(a) Purpose

The Exchange charges CBSX market participants a monthly fee to recoup fees the Exchange pays a third party market data vendor and other parties to help establish facilities at the Exchange through which the vendor can provide CBSX participants with certain market data.<sup>5</sup> The fee has been amended three times.<sup>6</sup> The current amount of the fee is \$10,800 divided by the number of CBSX participants receiving the data.

The Exchange proposes to amend the fee in a couple of respects. First, the Exchange proposes to amend the CBSX Fees Schedule to remove the current fee amount and replace it with a statement that the Exchange will pass-through to participants receiving the data the total costs incurred by the Exchange to provide the market data infrastructure. Each participant would continue to be assessed on a monthly basis an amount equal to the Exchange's total monthly cost divided by the number of participants receiving the data. The Exchange believes this change is

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<sup>5</sup> See Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007).

<sup>6</sup> See Exchange Act Release No. 56000 (July 2, 2007), 72 FR 37554 (July 10, 2007), Exchange Act Release No. 57472 (March 11, 2008), 73 FR 14515 (March 18, 2008), and Exchange Act Release No. 61121 (December 7, 2009), 74 FR 66178 (December 14, 2009).

reasonable and appropriate in that the Exchange pays several third party costs (such as for equipment upgrades and connectivity) and these costs can vary frequently. The Exchange represents that any fee passed through to participants pursuant to this filing will reflect only the actual costs incurred by the Exchange in providing the market data infrastructure. Due to certain fixed costs incurred by the Exchange, each participant receiving the data as of February 15, 2010 will be obligated to pay its share of the fee through June 30, 2010, even if such participant terminates its receipt of the data prior to June 30, 2010.

Second, the Exchange proposes to add the fee to the CBOE Fees Schedule (under “Miscellaneous Fees”) so that the fee would also apply to any CBOE member receiving the data that is not also a CBSX participant. Thus, if in addition to CBSX participants any CBOE member that is not also a CBSX participant receives the data, the fee would be divided by the number of CBOE members and CBSX participants receiving the data.

(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>7</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>8</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 proposed rule change would help the Exchange to continue providing its members with an infrastructure for receiving certain third party market data by allowing the Exchange to pass-through its infrastructure costs in a more efficient manner.

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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 [sic] 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>9</sup> and subparagraph (f)(2) of Rule 19b-4<sup>10</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

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-2010-013 on the subject line.

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 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-2010-013. 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 on official business days between the hours of 10:00 am and 3:00 pm. 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-2010-013 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).