

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61716; File No. SR-CBOE-2010-008)

March 16, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order
Approving a Proposed Rule Change Relating to Co-location Service Fees

I. Introduction

On January 28, 2010, Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the Federal Register on February 10, 2010.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

For a monthly fee, the Exchange provides members with cabinet space in CBOE’s building for placement of network and server hardware. The fee is \$10 per month per “U” of shelf space (which is equal to 1.75 inches).⁴ A member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange’s servers, at no additional charge. This “co-location service” provides members with close physical proximity to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61489 (February 4, 2010), 75 FR 6764 (“Notice”).

⁴ See Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008). The fee for a Sponsored User is \$20 per month per “U.” See Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.⁵ In the Notice, the Exchange represented that it believes that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service. In addition, the Exchange represented that, other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's trading system. Further, the Exchange represented that its systems are designed to minimize, to the extent possible, any advantage for one member over another. The Exchange noted that the above representations apply equally to both inbound and outbound data.

The proposal clarifies the Exchange's Fee Schedule relating to co-location fees in two respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because it believes that these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

⁵ A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fee Schedule. The Exchange represents that these fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a \$40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a \$40 per month "Network Access Port" fee for use of the CMi API, and a \$40 per month "FIX Port" fee for use of the FIX API. See Securities Exchange Act Release No. 57191, supra note 1. Each of the foregoing fees is \$80 per month for a Sponsored User. See Securities Exchange Act Release No. 58189, supra note 1.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,⁷ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,⁸ which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: 1) co-location services are offered to all members who request them and pay the appropriate fees; 2) as represented by CBOE, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and 3) the Exchange has

⁶ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78f(b)(5).

stated that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CBOE-2010-008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon
Deputy Secretary

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).