

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62382; File No. SR-CBOE-2010-058)

June 25, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Conforming Changes in Connection with Demutualization

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 June 18, 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 and II below, which Items have been prepared by the CBOE. CBOE has filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) 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 is filing this proposed rule change to make certain conforming and technical changes to Chapters IV – LIV of CBOE’s rules, to the CBOE Fee Schedule, to CBOE’s circular regarding membership application and other membership fees (“CBOE Membership Fee Circular”), and to the CBOE Stock Exchange, LLC (“CBSX”) Fee Schedule in connection with the restructuring of CBOE from a non-stock corporation to a stock corporation and wholly-owned subsidiary of CBOE Holdings, Inc. (“CBOE Holdings”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

The text of the proposed amendments to CBOE's rules, the proposed amendments to the CBOE Fee Schedule, the proposed amendments to the CBOE Membership Fee Circular, and the proposed amendments to the CBSX Fee Schedule is available on the Exchange's Web site (<http://www.cboe.org/Legal/>), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room and on the Commission's Web site www.sec.gov.

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. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a rule filing ("Demutualization Filing") by the Exchange to adopt a new Certificate of Incorporation and Bylaws for CBOE Holdings and to replace the Exchange's Certificate of Incorporation and Constitution with a new Certificate of Incorporation and Bylaws in connection with the restructuring of the Exchange from a non-stock corporation to a stock corporation and wholly-owned subsidiary of CBOE Holdings ("Restructuring Transaction").⁵ In general, these changes are designed to restructure the Exchange in the manner described in the preceding sentence and to address the operation of the Exchange as a self-regulatory organization in this new structure.

⁵ Securities Exchange Act Release No. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (SR-CBOE-2008-88).

As part of the Demutualization Filing, the Exchange amended Chapters I-III of its rules to provide for the use of Trading Permits to access the Exchange and to make certain technical and conforming changes. These changes became effective upon the consummation of the Restructuring Transaction on June 18, 2010. Accordingly, as indicated in the Demutualization Filing, the Exchange now is submitting this companion filing to make the changes proposed in Chapters I-III to the remaining chapters of the Exchange's rules (Chapters IV – LIV).⁶ This companion filing also proposes to make corollary changes to the CBOE Fee Schedule, the Membership Fee Circular, and the CBSX Fee Schedule. The Exchange decided to make the changes in this manner because of the length of the Demutualization Filing and the fact that the substantive changes to Exchange's rules regarding trading access were subject to notice and comment as part of the Demutualization Filing.

Listed below are the changes to the rules in Chapters I-III made by the Demutualization Filing that will be made to the rules in the remaining chapters and to the Fee Schedule by this filing:

- The Exchange is proposing to change references to the term "member" in the rules

⁶ The Exchange also amended CBOE Rule 8.3 in the Demutualization Filing.

in Chapters IV – LIV, the CBOE Fee Schedule, and the CBOE Membership Fee Circular to "Trading Permit Holder."⁷ As part of this change, references to an "individual member" will be changed to an "individual Trading Permit Holder" and references to a "member organization" will be changed to a "TPH organization."

- The Exchange is proposing to change references to the term "membership" in the rules in Chapters IV – LIV, the CBOE Fee Schedule, and the CBOE Membership Fee Circular to either "Trading Permit" or "Trading Permit Holder" depending on the circumstances of its usage. In certain circumstances, the term "membership" is used to refer to the possession of the right to trade on the Exchange.⁸ In those circumstances, the term will be changed to "Trading Permit." In addition, because a Trading Permit will be a license issued by the Exchange, references in those circumstances related to "owning" or "leasing" a membership will be changed to "holding" a Trading Permit. In other

⁷ The term "Trading Permit Holder" is defined in Section 1.1(f) of the CBOE Bylaws as:

any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. If a Trading Permit Holder is an individual, the Trading Permit Holder may also be referred to as an "individual Trading Permit Holder." If a Trading Permit Holder is not an individual, the Trading Permit Holder may also be referred to as a "TPH organization." A Trading Permit Holder is a "member" solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.

CBOE Rule 1.1(gg) also defines the term "Trading Permit Holder" by cross-referencing this definition in the CBOE Bylaws.

⁸ For example, the number of "memberships" owned or leased by a Market Maker serves as the basis in CBOE Rule 8.3 for determining the number of options classes that the Market Maker can trade. The term "membership" when used in this manner will be changed to "Trading Permit."

circumstances, the term "membership" is used to refer to the members of the Exchange.⁹

In those circumstances, the term will be changed to "Trading Permit Holders." In still other circumstances, the term "membership" is used to refer to being or becoming a member of the Exchange.¹⁰ In those circumstances, the term will be changed to "Trading Permit Holder."

- In connection with the change of the term "member" to "Trading Permit Holder," the Exchange is proposing to change references to the term "Clearing Member" in the rules in Chapters IV – LIV and the CBOE Fee Schedule to "Clearing Trading Permit Holder."¹¹ The Exchange is also proposing to change certain references to the term "member firm" in the CBOE Fee Schedule to "Clearing Trading Permit Holder" (as the term "member firm" has also been used to refer to a CBOE Clearing Member because Clearing Members utilize the "F" (or "Firm") order origin code). Similarly, the Exchange is proposing to change references to the term "Person Associated with a Member" in the rules in Chapters IV – LIV, the CBOE Fee Schedule, and the CBOE Membership Fee

⁹ For example, the Exchange is required in CBOE Rule 6.2B(a) to provide notice to the "membership" of the period of time before the opening of trading in the underlying security when the Hybrid System will accept orders and quotes. The term "membership" when used in this manner will be changed to "Trading Permit Holders."

¹⁰ For example, CBOE Rule 4.6 in part prohibits members, persons associated with members and applicants for "membership" from making any willful or material misrepresentation, including a misstatement or false statement, or omission in any application, report or other communication to the Exchange. This provision will be amended to prohibit Trading Permit Holders, persons associated with Trading Permit Holders and applicants to be Trading Permit Holders from making any willful or material misrepresentation, including a misstatement or false statement, or omission in any application, report or other communication to the Exchange.

¹¹ See CBOE Rule 1.1(f) (amended in the Demutualization Filing to change the defined term "Clearing Member" to "Clearing Trading Permit Holder"). The substance of the definition of "Clearing Member" is unchanged.

Circular to "Person Associated with a Trading Permit Holder."¹² In addition, the Exchange is proposing to change references to the "Membership Department" in the rules in Chapters IV – LIV to "TPH Department."¹³

- The Exchange is proposing to change references to the term "Constitution" in the rules in Chapters IV – LIV to "Bylaws."¹⁴ The Exchange is making this change because it now has "Bylaws" rather than a "Constitution" following the restructuring of the Exchange to a for-profit stock corporation.
- The Exchange is proposing to delete the reference to the term "lessor" and the related language in CBOE Rule 4.18 because the concept of leasing memberships no longer exists after the restructuring of the Exchange.¹⁵
- The Exchange is proposing to delete references to the concept of registering a membership for a member organization because that concept does not exist now that Trading Permits are used to provide trading access to the Exchange.¹⁶

¹² See CBOE Rule 1.1(qq) (amended in the Demutualization Filing to change the defined term "Person Associated with a Member" to "Person Associated with a Trading Permit Holder"). The substance of the definition of "Person Associated with a Member" is unchanged.

¹³ See CBOE Rule 1.1(iii) (amended in the Demutualization Filing to define the term "TPH Department"). This provision defines the term as the department or division of the Exchange (which may be referred to by the Exchange from time to time by a name other than the TPH Department) that has the functions set forth in the Rules for the TPH Department. The Exchange initially plans to refer to the department of the Exchange that has the functions set forth in the Rules for the TPH Department as the "Registration Services Department" and uses that term in reference to the TPH Department in the revised CBOE Fee Schedule and CBOE Membership Fee Circular.

¹⁴ See CBOE Rule 1.1(b) (amended in the Demutualization Filing to change the defined term "Constitution" to "Bylaws").

¹⁵ See CBOE Rule 1.1(ff) (amended in the Demutualization Filing to delete the defined term "Lessor" and replace it with the defined term "Person"). The Exchange also deleted the term "Lessee" in the Demutualization Filing. See CBOE Rule 1.1(gg) (amended in the Demutualization Filing to delete the defined term "Lessee" and replace it with the defined term "Trading Permit Holder").

- The Exchange is proposing to delete references relating to the requirement to post notices of proposed actions on the Exchange Bulletin Board.¹⁷ As noted in the Demutualization Filing, the use of a physical bulletin board at the Exchange has become outdated as trading on the Exchange has become more electronic and remote from the Exchange. Despite this change, the Exchange will still be required to provide persons with notice of proposed actions. The Exchange will also continue to provide notice of proposed actions via electronic means, such as through its website.

In addition to these changes, the Exchange is proposing to make technical, non-substantive changes to clarify its regulatory authority to revoke Trading Permits when a Trading Permit Holder experiences operational or financial difficulty, as well as its regulatory authority to suspend or revoke Trading Permits when a Trading Permit Holder is disciplined by the Exchange. For example, the Exchange is proposing to amend CBOE Rule 16.4 to provide that the Exchange can revoke a Trading Permit of a Trading Permit Holder who has been suspended for operational or financial difficulty in the event the holder does not apply for reinstatement (or does not obtain reinstatement) in accordance with CBOE Rule 16.3. In addition, the Exchange is proposing to amend Rule 17.1 to provide the Exchange with the authority to suspend or revoke one or more Trading Permits of a Trading Permit Holder in the event the holder has been disciplined by the Exchange. The proposed changes to Rules 16.4 and 17.1 apply the new terminology without altering the existing revocation and suspension authority.

The Exchange is also proposing to make technical, non-substantive changes to a few rules in Chapters IV – LIV to make certain corrections to them. For example, the Exchange is updating a cross-reference in CBOE Rule 6.7. In general, this provision limits the liability of the

¹⁶ See, e.g., CBOE Rule 3.8 as amended in the Demutualization Filing.

¹⁷ See CBOE Rule 3.9(e) as amended in the Demutualization Filing.

Exchange, its directors, officers and employees, and provides that this limitation of liability is in addition to the limitation of liability provided in Article Thirteenth of the Exchange's Certificate of Incorporation.¹⁸ As a result of the replacement of the Exchange's Certificate of Incorporation as mentioned above, the substance of current Article Thirteenth has been moved to Article Eighth in the Exchange's new Certificate of Incorporation. Accordingly, this cross-reference in CBOE Rule 6.7 is being updated to refer to Article Eighth of the Exchange's Certificate of Incorporation.

Finally, in addition to updating the provisions of the CBOE Fee Schedule and the CBOE Membership Fee Circular to reflect the new terminology and Trading Permit structure that will be in place following the restructuring of the Exchange, the Exchange is proposing to revise the CBOE Fee Schedule and the CBOE Membership Fee Circular to eliminate certain fees that will no longer be in place as a result of the restructuring. The eliminated fees include: (i) the member dues monthly fee, which is being terminated in connection with the demutualization of the Exchange; (ii) the lessor firm application fee, which is being eliminated because the Exchange no longer has lessor members; (iii) the post-demutualization trading permit application fee, which terminated by its terms upon the effective date of the demutualization of the Exchange (and which is also being deleted from the CBSX Fee Schedule); (iv) the fee to transfer a membership into trust, because the Exchange no longer has memberships that are owned by members and that can be transferred into trust; (v) the member death benefit fee, because the Exchange has eliminated the member death benefit through the deletion of previous CBOE Rule 3.24 in the Demutualization Filing; (vi) the temporary membership status access fee, which is being eliminated because the Exchange no longer has temporary members; and (vii) the Interim

¹⁸ Article Thirteenth generally limits the fiduciary liability of directors to the fullest extent permitted by the General Corporation Law of Delaware.

Trading Permit access fee, which is being eliminated because the Exchange no longer has an Interim Trading Permit program. In conjunction with the elimination of the Interim Trading Permit program and because the Exchange no longer has lessors or member dues, the Exchange is also proposing to delete the dues waiver that was provided to lessors with open leases under the Interim Trading Permit program.

2. Statutory Basis

The proposed rule change updates references in the Exchange's rules, eliminates potential uncertainty about the application of various rules following the Exchange's demutualization by removing obsolete terminology from the rules, and does not change the substantive application of the Exchange's rules. Accordingly, the Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,¹⁹ in general, and with Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. In addition, the fee changes provided for in the proposed rule change eliminate obsolete fees from the CBOE Fee Schedule, the CBOE Membership Fee Circular, and the CBSX Fee Schedule and will not have an impact on Trading Permit Holders. Therefore, the Exchange believes that the proposed rule change also furthers the objections of Section 6(b)(4) of the Act²¹ in that it is designed to provide for the equitable allocation of reasonable fees and charges among persons using Exchange facilities.

¹⁹ 15 U.S.C. 78f.

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 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 the 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.²³ However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),²⁴ which would make the rule change effective and operative upon filing.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied this requirement.

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to promptly update its rulebook and avoid potential confusion by deleting obsolete terminology and amending the Exchange's rulebook to reflect post-demutualization terminology. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.²⁵

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. Please include File Number SR-CBOE-2010-058 on the subject line.

Paper Comments:

²⁵ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2010-058. 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, 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 also will 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-2010-058 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.²⁶

Florence E. Harmon
Deputy Secretary

²⁶ 17 CFR 200.30-3(a)(12).