

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62386; File No. SR-CBOE-2010-060)

June 25, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of the Initial Fees for Post-Demutualization Trading Permits, Tier Appointment and Bandwidth Packets

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 21, 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 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

CBOE proposes to establish the initial fees for CBOE's initial post-demutualization Trading Permits, tier appointment and bandwidth packets. The text of the proposed rule change 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 at 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

1. Purpose

In connection with the demutualization of the Exchange through which the Exchange is restructuring from a non-stock corporation to a stock corporation and a wholly-owned subsidiary of CBOE Holdings, Inc., the Exchange has amended its Rules to provide for the use of Trading Permits, instead of memberships, to access the Exchange.

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. The purpose of this proposed rule change is to establish the initial fees for CBOE's initial post-demutualization Trading Permits, tier appointment and bandwidth packets. These post-demutualization Trading Permits, tier appointment and bandwidth packets will become effective immediately following the close of trading on the date of the closing of the Exchange's demutualization transaction, and CBOE members on the date of the closing of the demutualization transaction will retain their then current access to the Exchange until the close of trading on that date. The Exchange also proposes to amend the CBOE Stock Exchange, LLC ("CBSX")³ Fees Schedule to cross-reference that CBSX Trading Permit access fees are set forth in the CBOE Fees Schedule. As further described below, there is no access fee proposed for CBSX-only Trading Permit Holders.

Trading Permit Fees

CBOE Rule 1.1(ggg) defines a Trading Permit as a license issued by the Exchange that grants the holder or the holder's nominee the right to access one or more of the facilities of the

³ CBSX is a facility of CBOE for the trading of non-option securities, and trading on CBSX is governed by CBOE Rules.

Exchange for the purpose of effecting transactions in securities traded on the Exchange without the services of another person acting as broker, and otherwise to access the facilities of the Exchange for purposes of trading or reporting transactions or transmitting orders or quotations in securities traded on the Exchange, or to engage in other activities that, under CBOE Rules, may only be engaged in by Trading Permit Holders, provided that the holder or the holder's nominee, as applicable, satisfies any applicable qualification requirements to exercise those rights. A Trading Permit does not convey any ownership interest in the Exchange, is only available through the Exchange, and is subject to the terms and conditions set forth in CBOE Rule 3.1. Holders of Trading Permits fall within the definition of "member" in Section 3(a)(3)(A) of the Securities Exchange of 1934, as amended ("Act").⁴

CBOE Rule 3.1 provides, among other things, that the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits. Specifically, under Rule 3.1(a)(iv), the Exchange may issue different types of Trading Permits that allow holders to trade one or more products authorized for trading on the Exchange and to act in one or more trading functions authorized by CBOE Rules. The Exchange will have four initial types of Trading Permits immediately following its demutualization. These Trading Permits will be issued in accordance with the provisions of CBOE Rule 3.1A which addresses the initial issuance of post-demutualization Trading Permits and Rule 3.1 which sets forth the general provisions that are applicable to post-demutualization Trading Permits. In addition, Rule 3.1(a)(v) provides, in relevant part, that Trading Permits will be subject to such fees and charges as are established by the Exchange from time to time pursuant to CBOE Rule 2.20 and the Exchange Fees Schedule.

The first type of Trading Permit is a Market-Maker Trading Permit that entitles the holder to act as a Market-Maker (including a Market-Maker trading remotely), DPM, eDPM or LMM.

⁴ 15 U.S.C. 78c(a)(3)(A).

This permit provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins, trading floor access and Trading Permit Holder status. A Market-Maker Trading Permit also provides trading access to CBSX. The Exchange is proposing to establish the initial fee for a Market-Maker Trading Permit at \$7,500 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for a Market-Maker Trading Permit will be \$6,000 per month between July 2010 and December 2010.

The quoting bandwidth allowance for a Market-Maker Trading Permit is equivalent to a maximum of 31,200,000 quotes over the course of a trading day. The quoting bandwidth allowance for a Market-Maker Trading Permit in which the holder has a Market-Maker appointment in a Hybrid 3.0 option class shall be proportionately reduced by the appointment cost of the class. To the extent that a Market-Maker is able to submit electronic quotes in a Hybrid 3.0 class (such as an LMM that streams quotes in the class), the Market-Maker shall receive the quoting bandwidth allowance attributable to that Hybrid 3.0 class to quote in, and only in, that class. For example, the appointment cost for SPX, which is a Hybrid 3.0 class, is .95. Accordingly, the quoting bandwidth for a Market-Maker Trading Permit in which the holder has a Market-Maker appointment in SPX would be .05 of the quoting bandwidth for non-Hybrid 3.0 classes, unless the Market-Maker is an LMM and is using a Market-Maker Trading Permit to stream quotes in SPX. With the exception of LMMs, Market-Makers do not quote electronically in Hybrid 3.0 classes so they are not allocated quoting bandwidth with respect to Market-Maker appointments in those classes. This is consistent with CBOE's pre-demutualization quoting bandwidth allocations to SPX Market-Makers.

The second type of Trading Permit is a Floor Broker Trading Permit that entitles the holder to act as a Floor Broker. This permit provides an order entry bandwidth allowance, up to three logins, trading floor access and Trading Permit Holder Status. A Floor Broker Trading Permit also provides access to CBSX. The Exchange is proposing to establish the initial fee for a Floor Broker Trading Permit at \$7,500 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for a Floor Broker Trading Permit will be \$6,000 per month between July 2010 and December 2010.

The third type of Trading Permit is the Electronic Access Permit that entitles the holder to electronic access to the Exchange. Electronic Access Permit holders must be broker-dealers registered with the Exchange in one or more of the following capacities: (a) Clearing Trading Permit Holder; (b) TPH organization approved to transact business with the public; (c) Proprietary Trading Permit Holder;⁵ and (d) order service firm. The Electronic Access Permit does not grant access to the trading floor. This permit provides an order entry bandwidth allowance, up to three logins and Trading Permit Holder status. An Electronic Access Permit also provides access to CBSX. The Exchange is proposing to establish the initial fee for an Electronic Access Permit at \$2,000 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for an Electronic Access Permit will be \$1,600 per month between July 2010 and December 2010.

The fourth type of Trading Permit is a CBSX Trading Permit that entitles the holder to perform any of the trading functions of a Trading Permit Holder on CBSX and to receive the CBSX login and bandwidth allowances. The CBSX Trading Permit provides trading access only

⁵ A Proprietary Trading Permit Holder is a proprietary broker-dealer engaged in principal trading. A proprietary broker-dealer may not use an Electronic Access Permit to submit Market-Maker orders (i.e., M orders) for its own account or an affiliated Market-Maker account.

to CBSX. The proposed initial CBSX Trading Permit fee is the same as the access fee that applied with respect to the CBSX trading permits that granted trading access to CBSX prior to CBOE's demutualization in that there was no access fee charged for pre-demutualization CBSX trading permits (just as there is no access fee initially proposed to be charged with respect to post-demutualization CBSX Trading Permits). Because CBSX is a relatively new trading venue, CBSX has sought to encourage broker-dealers to become participants in CBSX's market in order to build volume and market share by, among other things, not assessing an access fee. This proposed rule change continues that approach with respect to the initial CBSX Trading Permit access fee following CBOE's demutualization.

Trading Permit fees will be assessed by the Exchange commencing on July 1, 2010. The Exchange is delaying the commencement of the fee until then because the leases for the transferable memberships that existed prior to CBOE's demutualization generally provided for monthly lease payments and the Exchange assessed temporary members and Interim Trading Permit holders monthly access fees. Therefore, most post-demutualization Trading Permit holders have already paid to access the Exchange for the month of June 2010 in some form. As a result, the Exchange will not charge an additional amount for access to the Exchange during that month. Trading Permit fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month.⁶ If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the

⁶ Thus, Trading Permit Fees for access during July 2010 will be assessed through the integrated billing system during the first week of August 2010.

25th is not a business day) a written notification⁷ to cancel the Trading Permit effective at or prior to the end of the applicable month.⁸

The Exchange proposes to amend the CBOE Fees Schedule effective on June 21, 2010 to set forth the initial access fees for these four initial Trading Permit types by including in the Fees Schedule the initial access fee applicable to each Trading Permit type, the description of each Trading Permit type included above, and the procedural provisions included above describing the manner in which Trading Permit access fees will be assessed by the Exchange.

Tier Appointment Fee

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that appointment. The Exchange will have one type of tier appointment immediately following its demutualization, the SPX Tier Appointment. A Market-Maker Trading Permit Holder must obtain an SPX Tier Appointment to act as a Market-Maker in SPX. Further, consistent with the provisions of Rule 8.3(e), each SPX Tier Appointment may only be used with one designated Market-Maker Trading Permit. The Exchange is proposing that the initial fee for an SPX Tier Appointment be set at \$3,000 per month, commencing July 1, 2010, the same date as the commencement of the Trading Permit

⁷ Written notification may be submitted to the Registration Services Department by email to tradingpermits@cboe.com or by other means of written notification, including, but not limited to, a hand-delivered letter or facsimile to the Registration Services Department.

⁸ Thus, if a Trading Permit Holder has a Trading Permit in July 2010, notice must be provided by July 23, 2010 (the preceding business day prior to July 25, 2010 since July 25, 2010 is not a business day) if the Trading Permit Holder would like to terminate the Trading Permit by the end of July 2010 and not be assessed the applicable Trading Permit Fee for August 2010.

fees. The SPX Tier Appointment fee is not eligible for the 20% discount for the remainder of 2010 that is applicable to the Trading Permit fees.

SPX Tier Appointment fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. The SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder, registered with the Exchange to conduct business on the Exchange as a Market-Maker, that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX at any time during a calendar month. SPX Tier Appointments will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification to cancel the SPX Tier Appointment effective at or prior to the end of the applicable month.

Bandwidth Packet Fees

CBOE is also proposing to establish fees for bandwidth packets. Bandwidth packets provide Trading Permit Holders with additional bandwidth to use to electronically access the Exchange. Market-Makers will be offered the opportunity to purchase one or more Quoting and Order Entry Bandwidth Packets. Each Quoting and Order Entry Bandwidth Packet will entitle the Trading Permit Holder to up to three additional logins and contain the standard Market-Maker quoting and order entry bandwidth allowance, which may then be added onto the total bandwidth pool for a Market-Maker's acronym(s) and Trading Permit(s) without the Market-Maker having to obtain additional Trading Permits. All Trading Permit Holders will have the opportunity to purchase one or more Order Entry Bandwidth Packets. Each Order Entry

Bandwidth Packet will entitle the Trading Permit Holder to up to three additional logins and an order entry bandwidth allowance.

The Exchange is proposing that the initial fee for a Quoting and Order Entry Bandwidth Packet be set at \$3,750 per month. In addition, the Exchange is proposing that the initial fee for an Order Entry Bandwidth Packet be set at \$2,000 per month. Bandwidth packet fees will be assessed by the Exchange commencing on July 1, 2010, the same date as the commencement of the Trading Permit and SPX Tier Appointment fees. However, for the remainder of 2010, CBOE will provide a 20% discount on these fees, such that, between July 2010 and December 2010, the fee for a Quoting and Order Entry Bandwidth Packet will be \$3,000 per month and the fee for an Order Entry Bandwidth Packet will be \$1,600 per month. Bandwidth packet fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a bandwidth packet is issued during a calendar month after the first trading day of the month, the bandwidth packet fee for that calendar month is prorated based on the remaining trading days in the calendar month. Bandwidth packets will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification to cancel the bandwidth packet effective at or prior to the end of the applicable month.

The same quoting and order entry bandwidth allowance will be provided for each Market-Maker Trading Permit and each Quoting and Order Entry Bandwidth Packet (except to the extent described above with respect to each Market-Maker Trading Permit in which the holder has a Market-Maker appointment in a Hybrid 3.0 option class). Similarly, the same order entry bandwidth allowance will be provided for each Floor Broker Trading Permit, Electronic Access Permit, and Order Entry Bandwidth Packet and the same bandwidth allowance will be

made available for each CBSX Trading Permit. Accordingly, bandwidth will be available to all Trading Permit Holders on an equal basis. The Exchange has provided the Commission with a detailed description of the foregoing bandwidth allowances pursuant to a Freedom of Information Act confidential treatment request. To the extent that the Exchange changes these bandwidth allowances in the future, the Exchange will comply with the rule filing requirements of Section 19 of the Act.⁹

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder application and other related fees. The Exchange proposes to revise this circular to incorporate the Trading Permit, tier appointment and bandwidth packet fees. The proposed changes to the circular are included as Exhibit 2 to the Form 19b-4.

CBOE believes that the proposed fees are reasonable when compared to the average access fee previously charged to CBOE temporary members and interim trading permit holders by the Exchange over the last twelve months. Specifically, the average of these access fees between July 2009 and June 2010 was \$8,967. Additionally, these access fees were above \$10,000 between July 2009 and November 2009, peaking at \$11,900 in October 2009.

The Exchange may adjust the proposed Trading Permit, tier appointment and bandwidth packet fees in the future if the Exchange determines that it would be appropriate to do so based upon the circumstances at the time. The Exchange may also make future additions or changes to the types of Trading Permits, tier appointments or bandwidth packets in accordance with Exchange Rules. Any future Trading Permit, tier appointment or bandwidth packet fee changes and the fees for any new or modified types of Trading Permits, tier appointments or bandwidth packets will be reflected in amendments to the CBOE Fees Schedule that will be submitted to the

⁹ 15 U.S.C. 78s.

Commission through further rule filings pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁰ (provided that the fee changes will only apply to Trading Permit Holders and their associated persons). Any other such fee changes, including those that will be applicable to persons that are not Trading Permit Holders or associated persons of Trading Permit Holders, will be submitted to the Commission through further rule filings pursuant to Section 19(b)(2) of the Act.¹¹

2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner by assessing the same Trading Permit, tier appointment and bandwidth packet fees (and applying the same discount to the trading permit and bandwidth packet fees) to all Trading Permit Holders based on the type of Trading Permit(s), tier appointment and bandwidth packet(s) requested and by assessing no Trading Permit fee to all Trading Permit Holders with access solely to CBSX. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(4) of the Act¹³ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.¹⁴

B. Self-Regulatory Organization's Statement on Burden on Competition

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ The Exchange also believes that it is equitable to assess different access fees for trading permits that provide differential access as long as the same access fee is assessed to all Holders of the same type of Trading Permit.

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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and subparagraph (f)(2) of Rule 19b-4¹⁶ 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. Please include File Number SR-CBOE-2010-060 on the subject line.

Paper Comments:

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(2).

- 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-2010-060. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR-CBOE-2010-060 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).