

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64485; File No. SR-CBOE-2011-046)

May 13, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Orders Qualifying for Certain Quantity-based Fee Waivers

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 April 29, 2011, 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) proposes to amend its Fees Schedule regarding the waiver of customer transaction fees for orders of a certain size in options on exchange-traded funds (“ETFs”), exchange-traded notes (“ETNs”) and Holding Company Depository Receipts (“HOLDERS”) and customer transaction fees for orders of a certain size that are routed in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule CBOE 6.80 (“Linkage Fees”). 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.

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

1. Purpose

The Exchange proposes to institute the following fee changes effective May 2, 2011:

The Exchange currently waives transaction fees for customer orders of 99 contracts or less in ETF, ETN and HOLDERS options.¹ For the purpose of determining which orders qualify for this quantity-based fee waiver, the Exchange proposes to aggregate multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received by the Exchange within 500 milliseconds. This change is intended to discourage firms from dividing orders into multiple orders of less than 100 contracts for purposes of qualifying for the fee waiver and avoiding transaction fees.

Additionally, under Section 20 of the CBOE Fees Schedule, for each customer order with an original size of 100 or more contracts that is routed, in whole or in part, to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in Rule 6.80, the Exchange passes through the actual transaction fee assessed by the exchange(s) to which the order was routed, minus \$0.05 per contract. For the same reason stated above, the Exchange proposes to aggregate multiple orders from the same executing firm for itself or for a CMTA or correspondent firm in the same series on the same side of the market that are received by the Exchange within 500 milliseconds for the purpose of determining the order quantity.

The proposed aggregation of orders is similar to a provision in the Exchange's Order Handling System ("OHS") Order Cancellation Fee that enables the Exchange to aggregate certain orders and count them as one executed order for purposes of the Cancellation Fee.²

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")³, in general, and furthers the objectives of Section 6(b)(4)⁴ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using its facilities. In particular, the Exchange believes the proposed rule change is equitable and reasonable in that it is designed to discourage firms from dividing orders into multiple smaller size orders for purposes of qualifying for quantity-based fee waivers and avoiding fees. In addition, the proposed aggregation of orders is similar to a provision in the Exchange's OHS Order Cancellation Fee that enables the Exchange to aggregate certain orders and count them as one executed order for purposes of the Cancellation Fee.

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.

¹ See CBOE Fees Schedule, Footnote 9.

² See CBOE Fees Schedule, Section 14 and Securities Exchange Act Release No. 59690 (April 2, 2009), 74 FR 16243 (April 9, 2009)

³ 15 U.S.C. 78f(b).

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 Act⁵ and subparagraph (f)(2) of Rule 19b-4⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2011-046 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.

All submissions should refer to File Number SR-CBOE-2011-046. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

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 website 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 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-2011-046 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.⁷

Cathy H. Ahn
Deputy Secretary

⁶ 17 C.F.R. [sic] 240.19b-4(f)(2).

⁷ 17 CFR 200.30-3(a)(12).