

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59892; File No. SR-CBOE-2009-027]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

May 8, 2009.

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 30, 2009, 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 to (i) waive the customer transaction fee for orders of a certain size in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDRs"), (ii) reduce the fee for use of a Floor Broker Workstation, and (iii) waive member dues for certain members. 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 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, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to institute the following fee changes effective May 1, 2009:

##### Waiver of Customer Transaction Fee in ETF and HOLDRs Options

Customer orders in ETF and HOLDRs options are charged a transaction fee of \$.18 per contract, except that only certain customer complex orders in QQQQ options are assessed a transaction fee.<sup>1</sup> The Exchange proposes to waive the transaction fee on all customer orders of 99 contracts or less in ETF and HOLDRs options. The Exchange would charge any leg of a complex order in ETF and HOLDRs options that exceeds 99 contracts, even if the leg is only partially executed below the 99 contract threshold.<sup>2</sup> For example, if a member enters a spread order in an ETF or HOLDRs option to buy 50 contracts and sell 100 contracts, and 90 contracts of the 100 contract leg are executed, the Exchange would charge the member \$.18 per contract for the 90 contracts that were executed.

##### Reduction of Floor Broker Workstation Fee

The Floor Broker Workstation (FBW) is a system for electronically entering and electronically managing orders on the Exchange floor. The Exchange currently assesses a fee of \$355 per month per login ID for use of an FBW. The Exchange proposes to reduce this fee to \$200 per month per login ID.

##### Waiver of Member Dues for Certain Members

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting

<sup>1</sup> Customer complex orders in QQQQ options that take liquidity from the complex order book are assessed \$.18 per contract. See CBOE Fees Schedule, Section 1 and Footnote 12.

<sup>2</sup> The Exchange notes that the transaction fee waiver is based on the size of the order that is entered and not on the number of contracts that are executed, *i.e.*, the fee waiver would apply only if the size of the order entered is 99 contracts or less. For example, if a member enters an order for 200 contracts in an ETF option and only 50 contracts are executed, the Exchange would charge the member the standard ETF option customer transaction fee (\$.18/contract) for the 50 contracts that were executed. The fee waiver would not apply in that case. If, for example, a member enters an order for 90 contracts in an ETF option and all or a portion of the order is executed, the member would not be charged any transaction fee. See email from Jaime Galvan, Assistant Secretary, CBOE, to Sara Hawkins, Special Counsel, Commission, dated May 6, 2009.

Fee, in which case the member does not pay member dues).<sup>3</sup> Under Rule 3.17(c), the membership lease agreement between a lessor member and a lessee member designates who is responsible for Exchange dues, fees and other charges. Typically, leases provide that the lessee is responsible for dues and therefore lessors do not pay dues.

Under the lessor compensation component of the Interim Trading Permit ("ITP") program, the Exchange compensates a lessor for an "open lease" while the ITP program is active and ITPs are outstanding.<sup>4</sup> The goal of this component of the ITP program is to put such a lessor in a similar position to if the lessor's membership was leased. This goal would be frustrated if the lessor is charged dues because the lessor would be subject to an obligation the lessor would not otherwise be subject to if the lessor's membership was leased.

Consistent with this goal, the Exchange proposes to waive member dues for a lessor member for any month in which the lessor receives a payment from the Exchange for an open lease under the ITP program. The Exchange would not waive member dues for any lessor with an open lease who has not notified the Exchange of the open lease or otherwise complied with Exchange Rule 3.27.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</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 CBOE members and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable and reasonable in that, with regard to the customer transaction fee waiver in ETF and HOLDRs options, the fee waiver would help the Exchange maintain its competitiveness for retail order flow in these products; with regard to the reduction in the FBW fee, the Exchange would be providing a cost savings to all users of FBWs; and with regard to the

<sup>3</sup> Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.

<sup>4</sup> The ITP program is a program pursuant to which the Exchange has the authority to issue up to 50 ITPs. The ITP program is governed by CBOE Rule 3.27. The lessor compensation component of the ITP program is described in CBOE Rule 3.27(d). An "open lease" is defined in Rule 3.27(d) as a transferable Exchange membership available for lease.

<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(4).

waiver of member dues for certain lessor members with open leases, the waiver would help the Exchange place such a lessor in a similar position to if the lessor's membership was leased, consistent with Exchange Rule 3.27(d).

#### *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.

### **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>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</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-2009-027 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 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-027. 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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 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-2009-027 and should be submitted on or before June 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59889; File No. SR-BATS-2009-011]

#### **Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.**

May 7, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2009, BATS Exchange, Inc. ("BATS" 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 Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange 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 proposed rule change 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**

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective as of May 1, 2009.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### 1. Purpose

Under the Exchange's fee schedule effective May 1, 2009, the Exchange charges 0.25% of the total dollar value of the execution for any security priced under \$1.00 per share that is routed away from the Exchange. The Exchange is filing this proposed rule change to clarify that this charge only applies to orders routed through its "CYCLE" strategy,<sup>5</sup> and thus, does not apply to

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

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

<sup>5</sup> The Exchange's CYCLE strategy is the best execution routing strategy through which the Exchange routes to venues other than dark liquidity venues. The current fee schedule states that the charge applies to "orders routed to and executed at

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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