

discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed rule change will help increase the information available about transactions executed in dark pools, and therefore further the ability of investors to identify the sources of liquidity in NMS stocks. The Commission notes that the provisions of Rule 6160(c) are designed to ensure that once a member determines to participate in the program with respect to one (or more) of its ATS dark pools, all of that dark pool's transactions, and only that dark pool's transactions, will be aggregated for publication.<sup>17</sup> The published ATS dark pool information will separately identify each dark pool and the TRF Business Members will make prominent disclosure on their Web sites that a person may need to look at both Web sites to obtain the total volume for a particular ATS dark pool.<sup>18</sup> Further, FINRA members will be required to have policies and procedures in place to ensure that trades reported with a separate MPID obtained under proposed Rule 6160(c) are restricted to trades executed within that ATS dark pool. The Commission believes that these conditions are important to assure that the public has accurate, reliable and complete information regarding the activity of ATS dark pools that choose to participate in this program.

The Commission received one comment letter in connection with the proposed rule change.<sup>19</sup> This commenter expressed concern that, while the publishing of ATS dark pool transactions is voluntary under the proposed rule change, the requirement of a separate MPID designed exclusively for reporting a member's ATS dark pool transactions could limit ATS participation and delay implementation

<sup>17</sup> Rule 6160(c) requires FINRA members that choose to participate in the program with respect to an ATS dark pool to provide all of the transaction data for that ATS dark pool to one or more of the FINRA TRFs for purposes of publication by the TRF Business Members. Thus, members may not selectively report some transactions executed within a participating ATS dark pool and keep other transactions executed in the ATS "dark." Further, Rule 6160(c) requires FINRA members that choose to participate in the program to use a single MPID to report transaction information for each participating ATS dark pool. A member cannot be assigned a second MPID to report the trading information for the same dark pool and cannot use a single MPID to report transactions executed within multiple dark pools.

<sup>18</sup> The TRF Business Members will segregate the information they receive for each ATS dark pool on their Web site and must prominently disclose that the Web site may not reflect 100 percent of that dark pool's volume, and that interested parties will need to consult all TRF Business Members' Web sites to see the total volume for any given ATS dark pool.

<sup>19</sup> See FIF Letter, *supra* note 5.

because of both administrative processes and technology modifications required to implement this reporting in the manner defined in the rule filing.<sup>20</sup> While the commenter believes that publishing ATS dark pool volume would be beneficial to the market and the public, it believes that FINRA should consider other methods to achieve this goal.<sup>21</sup> The commenter suggested some alternatives to identifying ATS dark pool volume other than obtaining a separate MPID.<sup>22</sup> The Commission appreciates this commenter's view on the proposed rule change. However, the Commission believes that FINRA's proposal to allow members to request multiple MPIDs for the purpose of reporting ATS dark pool transaction data is a reasonable method by FINRA to assure the accuracy of the information being made public. In addition, the Commission notes that a FINRA member's participation in the program to publish ATS dark pool information is voluntary and that if a member does not wish to obtain a separate MPID to display its ATS dark pool data, it does not have to participate.

In addition, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,<sup>23</sup> which requires, among other things, that FINRA rules are not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and Rule 603(a) of Regulation NMS under the Act,<sup>24</sup> which requires, among other things, that any national securities exchange, national securities association, broker or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory. In approving the proposed rule change, the Commission notes that FINRA, through its TRF Limited Liability Companies, will distribute the transaction reporting data for ATS dark pools that choose to participate in this program to the TRF Business Members so that the TRF Business Members may publish, after the close of trading, aggregate daily trading volume data for trades executed within the participating ATS dark pools, separated by dark pool, on their respective Web sites. The Commission also notes that FINRA members will not

<sup>20</sup> See FIF Letter, *supra* note 5, at 1.

<sup>21</sup> *Id.*

<sup>22</sup> See FIF Letter, *supra* note 5, at 2.

<sup>23</sup> 15 U.S.C. 78o-3(b)(6).

<sup>24</sup> 17 CFR 242.603(a).

be charged a fee for having their ATS dark pool data included in the published aggregate daily trading volume data and that no TRF Business Member will charge a fee to anyone to view the aggregate daily trading volume data posted on its Web site. The Commission believes that these conditions are necessary and appropriate to ensure that investors, market participants and other persons will have access to the ATS dark pool data on terms that are not unreasonably or unfairly discriminatory.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-FINRA-2010-001) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61659; File No. SR-CBOE-2010-023]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBSX Fees Schedule To Adopt a Document Request Fee and Transaction Fees for Cross Trades That Settle Non-Regular-Way

March 5, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 26, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</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.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the CBSX Fees Schedule to adopt a document request fee and non-Regular-way cross fees [sic]. 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, the self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

CBSX proposes to modify its Fees Schedule to add transaction fees for cross trades that are marked for cash and next-day settlement. Such settlements are permissible pursuant to Rule 51.7.<sup>3</sup> Because these are non-Regular Way settlements, CBSX deems it appropriate to charge more for these crosses than for "traditional" settlement crosses.<sup>4</sup>

CBSX also proposes to add a Document Request Fee of \$100.00 per monthly billing statement. This fee would be imposed upon any person or organization that requests that CBSX

<sup>3</sup> See CBOE Rule 51.7(a) and (b).

<sup>4</sup> The Exchange proposes to modify the CBSX fee schedule to add transaction fees for cross trades that are marked for cash and next-day settlement. As proposed, next-day settlement cross trades would be charged \$0.0025 per share with a minimum rate of \$1 per trade and a maximum rate of \$30 per trade. Cash settlement cross trades would be charged \$0.0025 per share with a minimum rate of \$1 per trade and a maximum rate of \$50 per trade. The Exchange is proposing a higher cap for cash settlement cross trades because cash settlement is a more expedited settlement time frame than next-day settlement. Because cash settlement presumably satisfies a more pressing need for the user, the Exchange believes the market will bear a higher cap for cash settlement cross trades. See e-mail from Angelo Evangelou, Assistant General Counsel, Legal Division, CBOE, to Steve L. Kuan, Special Counsel, Division of Trading and Markets, Commission, on March 5, 2010.

deliver printed hard-copy versions of the person's or organization's monthly billing statements. Current CBSX practice is to e-mail such statements, and the practice of printing and delivering such statements is costly and time-consuming because the statements are quite voluminous.

The fee changes will become effective on March 1, 2010.

#### 2. Statutory Basis

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.

#### 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 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

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)<sup>7</sup> of the Act 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-2010-023 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-2010-023. 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 a.m. and 3 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 Number SR-CBOE-2010-023 and should be submitted on or before April 2, 2010.

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

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

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

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

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