

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62579; File No. SR-CBOE-2010-068]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Fees Schedule

July 28, 2010.

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 July 16, 2010, Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder.<sup>4</sup> 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule to make changes related to options on Exchange-Traded Notes and Exchange-Traded Funds. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.org/Legal>, at the Exchange's Office of the Secretary, on the Commission's Web site at <http://www.sec.gov>, 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 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 Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

Exchange-Traded Note ("ETN") Options<sup>5</sup>

The first change being proposed by this filing is to codify the Exchange's existing practice of assessing fees for transactions in ETN options at the same rates charged for Exchange-Traded Fund ("ETF") options.<sup>6</sup> To affect this change, the Exchange is proposing to amend Section 1, *Index Options*, to the Fees Schedule by including references to ETNs throughout that section. The transaction fees for ETN options are as follows:

- \$0.20 per contract for Market-Maker and Designated Primary Market-Maker transactions;<sup>7</sup>
- \$0.20 per contract for Clearing Trading Permit Holder proprietary transactions;
- \$0.25 per contract for manually executed broker-dealer transactions;
- \$0.45 per contract for electronically executed broker-dealer transactions;
- \$0.20 per contract for voluntary professional transactions;
- \$0.20 per contract for professional transactions;
- \$0.18 per contract for customer transactions; and
- \$0.10 per contract CFLEX surcharge fee.

The Exchange is also proposing to amend Section 2, *Marketing Fee*, to the Fees Schedule to codify the marketing fee (\$0.25) that will be assessed to any ETN options classes that participate in the Penny Pilot. Currently, there are no ETN options classes in the Penny Pilot.

In addition, the Exchange is proposing to add a reference to ETN options to Footnote 6 regarding the assessment of the marketing fee, which is \$0.65 per contract for those classes not in the Penny Pilot.<sup>8</sup>

The Exchange is also proposing to add a reference to ETN options to Footnote

<sup>5</sup> ETN options are also referred to as "Index Linked Securities" in Interpretation and Policy .13 to Rule 5.3. See also Securities Exchange Act Release No. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (order approving proposal to list and trade ETN options) (SR-CBOE-2008-64).

<sup>6</sup> See e.g., Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (noting the Exchange's belief that the marketplace and investors expect ETN options to trade in a similar manner to ETF options) (SR-CBOE-2010-005).

<sup>7</sup> This is the standard rate that is subject to the Liquidity Provider Sliding Scale as set forth in Footnote 10 to the Fees Schedule.

<sup>8</sup> See Section 2, *Marketing Fee*, of the Fees Schedule.

9 regarding the waiver of transaction fees for customer orders of 99 contracts or less and the charging of any leg of a complex order in ETN options that exceed 99 contracts, even if the leg is only partially executed below the 99 contract threshold.

Lastly, the Exchange is proposing to add a reference to ETN options to Section 18, *Customer Large Trade Discount*, which provides that regular customer transaction fees will only be charged up to the first 3,000 contracts.

##### Exchange-Traded Note and HOLDRs Options

The second change being proposed by this filing is to amend Section 2, *Marketing Fee*, to the Fees Schedule to codify the marketing fee (\$0.25) that will be assessed to any ETF and Holding Company Depository Receipts ("HOLDRs") option classes that participate in the Penny Pilot (other than those ETF options that are either assessed a modified marketing fee or no marketing fee).

In addition, the Exchange notes that options on the iShares MSCI Emerging Markets Index Fund ("EEM") and the iShares MSCI Taiwan Index Fund [sic] ("EWT") are not assessed a marketing fee.<sup>9</sup> EEM and EWT are classes that participate in the Penny Pilot. Similar to QQQQ and IWM (which are not assessed a marketing fee and participate in the Penny Pilot), the Exchange is proposing to add EEM and EWT to QQQQ and IWM to Section 2, *Marketing Fee*, to clarify that no marketing fee applies to these Penny Pilot classes.

##### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>11</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 Trading Permit Holders and other persons using its facilities. The Exchange believes the fee changes proposed by this filing are equitable and reasonable in that [sic] will codify the Exchange's existing practice of assessing fees for ETN options in a manner similar to ETF options. In addition, the changes proposed by this filing clarify CBOE's Fees Schedule.

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

CBOE does not believe that the proposed rule change will impose any

<sup>9</sup> See Footnote 6 of the Fees Schedule.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

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

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

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

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

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*

The Exchange neither solicited nor received comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed 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 Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4<sup>13</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-2010-068 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-2010-068. 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 publicly available. All submissions should refer to File Number SR-CBOE-2010-068 and should be submitted on or before August 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62610; File No. SR-NYSEArca-2010-73]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. That Constitutes a Stated Interpretation With Respect to the Meaning, Administration, and Enforcement of NYSE Arca Equities Rule 7.10(g)**

July 30, 2010.

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 July 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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.

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

The Exchange proposes that constitutes [sic] a stated interpretation with respect to the meaning, administration, and enforcement of NYSE Arca Equities Rule 7.10(g). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

**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

The Exchange proposes to adopt a stated interpretation with respect to the meaning, administration, and enforcement of NYSE Arca Equities Rule 7.10(g), concerning the ability of an Exchange Officer to act on his or her own motion to review potentially erroneous executions.

Rule 7.10(g) provides that an Officer, acting on his or her own motion, may review potentially erroneous executions that occur on the Exchange and may, among other things, declare such transaction(s) null and void. When extraordinary circumstances exist, any such action must be taken by no later than the start of the Regular Trading Hours of the Exchange on the trading day following the date of execution(s) under review.

For purposes of Rule 7.10(g), the Exchange believes that a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on incorrect or grossly misinterpreted structural or issuance information, resulting in a severe pricing dislocation for all such transactions (the "Event"). In such

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</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.