

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63470; File No. SR-CBOE-2010-108]

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

December 8, 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 December 1, 2010, 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 and II 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> which renders the proposal 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule and specifically make certain changes to its Marketing Fee Program. 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

CBOE proposes to amend its Marketing Fee Program in two respects. First, CBOE proposes to amend the types of transactions in which the fee is assessed in the SPY option class. Currently, the marketing fee is assessed on transactions as set forth in footnote 6 of the Fees Schedule.<sup>5</sup> In that regard, CBOE notes that it is assessed on both electronic and open outcry transactions. CBOE now proposes to not assess the marketing fee on electronic transactions in SPY options, except that it would continue to assess the marketing fee on electronic transactions resulting from its Automated Improvement Mechanism ("AIM") pursuant to CBOE Rule 6.74A and transactions in open outcry. CBOE proposes to implement this change on a pilot basis starting on December 1, 2010 and continuing through March 31, 2011.

This proposed change is intended to attract more customer volume to the Exchange in this option class and to allow CBOE market-makers to better compete for order flow. CBOE notes that the SPY option class is unique in the manner in which it trades and is one of the most active option classes. CBOE also notes that DPMS and Preferred Market-Makers can utilize the marketing fee funds to attract orders from payment accepting firms that are executed in AIM and in open outcry. Finally, CBOE believes that the marketing fee funds received by payment accepting firms may be used to offset transaction and other costs related to the execution of an order in AIM and in open outcry, including in the SPY option class. For these reasons, CBOE believes that it would make sense to continue to assess the marketing fee in transactions resulting from AIM and in open outcry in the SPY option class, and would

<sup>5</sup> In particular, the marketing fee is assessed only on transactions of Market-Makers, e-DPMs, and DPMS, resulting from (i) customer orders from payment accepting firms, or (ii) customer orders that have designated a "Preferred Market-Maker" under CBOE Rule 8.13. However, as described in footnote 6, the marketing fee does not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-Trading Permit Holder market-makers; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from any of the strategies identified and/or defined in footnote 13 of this Fees Schedule; and transactions in the Penny Pilot classes resulting from orders executed through the Hybrid Agency Liaison under Rule 6.14.

assist in attracting customer volume to the Exchange.

In addition, CBOE proposes to amend its Marketing Fee Program to not assess the fee in transactions in Flexible Exchange Options ("FLEX"), which CBOE believes may encourage Market-Makers to transact in FLEX options. CBOE proposes to implement this change to the marketing fee program beginning on December 1, 2010. CBOE is not amending its Marketing Fee Program in any other respects.

##### 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>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</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 its Trading Permit Holders and other persons using its facilities in that it is intended to attract more customer volume on the Exchange in the SPY option class and also to encourage Market-Makers to transact in FLEX options.

#### 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 [sic] 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 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>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> 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

<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).

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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-2010-108 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-2010-108. 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 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-2010-108 and should be submitted on or before January 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63496; File No. SR-NYSEArca-2010-114]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11 To Extend the Effective Date of the Pilot

December 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 7, 2010, NYSE Arca, Inc. ("NYSE Arca" or "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 to amend NYSE Arca Equities Rule 7.11 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on December 10, 2010, until April 11, 2011. 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.11 to extend the effective date of the pilot by which such rule operates, which is currently scheduled to expire on December 10, 2010,<sup>3</sup> until April 11, 2011.

NYSE Arca Equities Rule 7.11 requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by 10% as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a "Trading Pause." The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all S&P 500 Index securities, Russell 1000 Index securities, and specified exchange-traded products.<sup>4</sup>

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. Additionally, extension of

<sup>3</sup> See Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR-NYSEArca-2010-41).

<sup>4</sup> The Exchange notes that the other national securities exchanges have adopted the pilot in substantially similar form.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>10</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.