

consistent with Section 6(b)(5)⁶ of the Act, in particular, in that it does not unfairly discriminate against new Sponsors given the additional Exchange resources dedicated to such new Sponsors, such as the additional extensive time, legal and business resources required to properly advise novice Sponsors through the listing and approval process.⁷ The Exchange believes that the proposed consulting fee is reasonable, given the amount of resources dedicated by the Exchange to new issuers of new Derivative Securities Products. The Exchange believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to all new issuers of new Derivative Securities Products.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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 change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-NYSEArca-2009-52 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-NYSEArca-2009-52. 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 the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at <http://www.nyse.com>. 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-NYSEArca-2009-52 and should be submitted on or before July 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60185; File No. SR-CBOE-2009-028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Relating to Rebating Member Dues for Certain Members

June 29, 2009.

I. Introduction

On May 6, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its Fee Schedule to rebate member dues for certain members. The proposed rule change was published for comment in the **Federal Register** on May 26, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

CBOE assesses dues with respect to every membership (unless a member is assessed the Hybrid Electronic Quoting Fee, in which case the member does not pay member dues).⁴ Under CBOE 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. The Exchange represents that, typically, leases provide that the lessee is responsible for dues and therefore lessors do not have to 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

⁶ 15 U.S.C. 78f(b)(5).

⁷ The Commission notes that the Exchange has represented that the proposed rule change does not unfairly discriminate against new Sponsors vis-à-vis Sponsors who have previously listed Derivative Securities Products or other first time issuers of other securities listed on the Exchange because of the additional extensive time, legal and business resources dedicated to new Sponsors. Telephone call between Sharon Lawson, Senior Special Counsel, and Terri Evans, Division of Trading and Markets, Commission, and Sudhir Bhattacharyya, Vice President, NYSE Euronext and Laura Morrison, Vice President, NYSE Euronext, June 18, 2009.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59935 (May 18, 2009), 74 FR 24888 ("Notice").

⁴ Member dues are \$450 per month. See CBOE Fees Schedule, Section 10.

and ITPs are outstanding.⁵ The goal of this component of the ITP program is to put the lessor in a similar position as if the lessor's membership was leased. The Exchange asserts that this goal would be frustrated if the lessor is charged dues, because the lessor would be subject to an obligation the lessor would otherwise not be subject to if the lessor's membership was leased.

In a separate proposed rule change, the Exchange instituted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective as of May 1, 2009.⁶ The Exchange now proposes to rebate dues to any lessor member who received such a payment from the Exchange during the period of August 1, 2008 through April 30, 2009.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,⁸ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities.

As note above, CBOE recently adopted a waiver of member dues for any month that a lessor member receives a payment from the Exchange for an open lease under the ITP program, effective May 1, 2009.⁹ The current proposal will effectively allow CBOE to apply this same waiver retroactively by rebating to a lessor member its member dues for any month in which the lessor member received a payment from the Exchange for an open lease under the ITP program for the period August 1, 2008 through April 30, 2009.

The Commission believes that the rebate will put lessor members who

received compensation from the Exchange for an open lease under the ITP program but who paid member dues since August 1, 2008 in the same position as those lessor members who are currently having their member dues waived pursuant to the fee waiver adopted as of May 1, 2009.¹⁰ The Commission also believes that the proposed rebate will further the goal of the Exchange's ITP program to put the lessor of an "open lease" in the same position as if the lessor's membership had been leased. The Commission notes that the Exchange represented that lease agreements typically provide that the lessee member is responsible for all dues and thus the lessor would generally not have to pay such dues. Accordingly, the Commission finds that the proposed fee rebate is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CBOE-2009-028), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy,
Secretary.

[FR Doc. E9-15901 Filed 7-6-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60192; File No. SR-ISE-2009-42]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

June 30, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on June 26, 2009, International Securities Exchange, LLC ("ISE" 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 ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

¹⁰ *Id.*

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹³ 15 U.S.C. 78s(b)(1).

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

The ISE is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.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, ISE 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 ISE 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 purpose of this proposed rule change is to amend the Exchange's Schedule of Fees. First, ISE currently waives most customer transaction fees, with such waiver scheduled to expire on June 30, 2009.² Zero customer transaction fees in options are part of the competitive pricing landscape. Since its inception, ISE has not charged fees for customer transactions for most products by way of a fee waiver. Despite having an effective rate of \$0.00 per contract for customer transactions in these products, ISE's fee schedule reflects a customer fee of \$0.05 with a waiver to offset the fee. Instead of extending the waiver on a year-to-year basis, the Exchange proposes to remove the fee waiver language from its fee schedule and replace the \$0.05 fee with \$0.00 for First Market options, effective July 1, 2009. ISE believes this change will make its customer fees easier for market participants to understand. The Exchange will continue to charge \$0.05 per contract for customer transactions in Second Market options and proposes to create a new line item to reflect this.

Second, the Exchange currently has a fee cap for large-size foreign currency ("FX") options orders. This fee discount applies for orders of 5,000 contracts or more and waives fees on incremental

² See Securities Exchange Act Release No. 58139 (July 10, 2008), 73 FR 41142 (July 17, 2008).

⁵ 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.

⁶ See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009) (SR-CBOE-2009-027).

⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(4).

⁹ See *supra*, note 5.