



Regulatory Circular RG09-21

Date: February 12, 2009

To: Clearing Members and Member Firms

From: Member and Regulatory Services Division

Re: Modification to Regulatory Fee – Frequently Asked Questions

In October 2008, the Exchange filed a proposed rule change to eliminate Registered Representative Fees and replace them with a transaction-based “Options Regulatory Fee” (“ORF”).¹ This regulatory circular is intended to answer frequently asked questions regarding the fee.

Additional information about the ORF may be obtained by contacting Lawrence Bresnahan at (312) 786-7713 or (bresnahl@cboe.com) or Patrick Fay at (312) 786-7925 or (fayp@cboe.com).

Options Regulatory Fee

Frequently Asked Questions

The following sets forth various questions received by the CBOE staff and staff’s answers concerning the Options Regulatory Fee.

1) Why was the ORF implemented?

Previously, the primary source of regulatory revenue at CBOE was a fee based on the number of registered representatives that a member firm employed. CBOE implemented the Registered Representative (RR) fee almost 20 years ago, and over time nearly every options exchange implemented the same fee. CBOE believes the RR fee has become outdated. Many firms that account for a significant portion of the options business, and therefore the resultant regulatory effort, have very few RRs. For this reason and others, CBOE believes the new ORF based on transaction volume represents a fairer allocation of the costs of regulation among CBOE members.

¹ See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the fee for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. See Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009).

2) What is the effective date of the ORF?

CBOE has been in touch with many member and non-member firms concerning the work required to implement the ORF. Since last September, the Exchange has worked with firms and the SIFMA Options Committee to develop a fair and balanced replacement for the RR fee. In response to firm requests for time to implement the fee process, CBOE waived the fee for January and February and will begin collecting the fee effective March 1st.

3) What is the current amount of the ORF?

The ORF is currently \$.0045 per contract. This rate was set with the assumption that revenue would be collected during all of 2009. Since the fee was waived for the months of January and February, CBOE expects to change the rate to \$.006 per contract effective March 1st.

The amount of the ORF will be one-cent in the case of a one-contract trade, i.e., there is a minimum one-cent charge per trade.

4) How often will the ORF change?

CBOE intends to evaluate the amount of the ORF no less than annually in connection with its annual budget process. However, since the ORF is based on the number of option contracts executed, CBOE will periodically review the rate and, if necessary due to volume levels, make necessary adjustments so as to collect the appropriate level of regulatory revenue. Members and clearing firms will be given notice of any such adjustments by means of a regulatory circular. It is CBOE's intention to collect approximately the same level of revenue that would have been collected by the RR fee.

5) What transactions are subject to the ORF?

Any options transaction that clears in the customer range at OCC that was executed by a CBOE member will be subject to the ORF, regardless of the marketplace of execution. Additionally, the fee applies to all trades, both buys and sells.

6) Will transactions involving a single listed security that take place on another exchange be subject to the ORF?

Yes. The ORF will be applicable to member transactions in a single listed security. This is similar to the former method of funding regulation through RR fees, which did not differ based on the marketplace or investment products traded.

7) Are products other than options subject to the ORF?

No. The only products subject to the ORF are listed options that are cleared by OCC.

8) What is the reasoning behind CBOE applying the ORF to transactions effected on markets other than CBOE?

The Exchange has broad regulatory responsibilities with respect to its members' activities, irrespective of where their transactions take place. Many of the Exchange's surveillance programs for customer trading activity require the Exchange to look at activity across all options markets, such as surveillances for position limit violations, manipulation and insider trading. Accordingly, there is a strong nexus between the ORF and the Exchange's regulatory activities with respect to its members' customer trading activity.

9) Who is responsible for paying the ORF?

The ORF is an obligation of the CBOE member and will be enforced at the member level. The ORF will be collected by OCC on behalf of CBOE. While the ORF is an obligation of the CBOE member, due to industry request OCC on CBOE's behalf will bill the OCC clearing firm that clears the eligible trade (the vast majority of which are CBOE members). CBOE, OCC and the industry agreed to this collection method in response to comments that by collecting the ORF in this manner members and non-members could more easily pass-through the ORF to their customers.

10) Can the ORF be passed on to the customer?

In its rule filing CBOE stated that it expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligations under Section 31 of the Exchange Act. Based on its discussions with the SEC, CBOE believes the ORF can properly be characterized as a regulatory fee.

11) What if other exchanges begin to charge a similar fee?

Other exchanges are free to impose a similar fee on their member's activity, including the activity of those members on CBOE. Ultimately if all exchanges follow this approach, there would be a total options regulatory fee that would be assessed with a portion going to each exchange. The SEC would likely require each exchange to justify its proposed regulatory fee taking into consideration its regulatory costs. CBOE has committed to the SEC and to SIFMA that revenue collected from the ORF, in combination with CBOE's other regulatory fees and fines, will not exceed its regulatory costs. Therefore, the aggregate amount of revenue collected should not significantly increase and may even decrease. The ORF does not represent a fee

increase by CBOE, it is simply a change in the calculation and collection method for approximately the same aggregate level of regulatory fees.

12) How will the ORF be billed?

At month end, CBOE intends to submit to OCC a data file identifying the number of contracts executed by each CBOE member and the ORF amount to be debited from each clearing firm's account.

13) Where will the ORF appear on my OCC bill?

We anticipate that the ORF charge will be a line item on your OCC bill, appearing close to the Section 31-related charges incurred by your firm. We are, however, still working on this with OCC.

14) How are orders that are split up into multiple executions treated for purposes of the ORF?

For technical reasons, CBOE is not able to calculate the ORF on a trade-by-trade basis as intended. CBOE will calculate the ORF based on the aggregate number of contracts executed by each clearing firm every month. Due to rounding (as discussed below) and the fact that there is a minimum one-cent charge per trade, a firm charging its customers on a trade-by-trade basis may collect more or less ORF fees each month from its customers than it paid to CBOE. CBOE anticipates that this difference will be minimal or non-existent over a calendar year. If a firm collects more fees from its customers than it paid to CBOE, CBOE will expect the firm to remit any excess fees to CBOE at the end of each calendar year. CBOE will provide firms with summary reports for each month and calendar year to assist in this reconciliation process.

When calculating the ORF, firms must round to the nearest cent using pure rounding (i.e., any digit 5 and above is rounded up).

15) How are CMTA transfers handled?

At this time, CBOE cannot capture CMTA transfers. For this reason, CBOE will bill the executing CBOE member firm on the trade reported to OCC unless there is a CMTA firm number on the trade. If there is a CMTA firm number on the trade, the ORF will be billed to the CMTA firm. Ultimately CBOE expects that OCC will provide an industry wide solution that will include CMTA transfers.

A copy of the CBOE rule filing establishing the ORF, CBOE-SR-2008-105, and approval order is available on the CBOE website at www.cboe.org/legal.