

|  |                 |
|--|-----------------|
| OMB APPROVAL                                     |                 |
| OMB Number:                                      | 3235-0045       |
| Expires:   | August 31, 2011 |
| Estimated average burden hours per response..... | 38              |

|   |  |  |
|---|--|--|
| Page 1 of <input type="text" value="12"/> | SECURITIES AND EXCHANGE COMMISSION<br>WASHINGTON, D.C. 20549<br>Form 19b-4 | File No. SR - <input type="text" value="2010"/> - <input type="text" value="033"/><br>Amendment No. <input type="text" value="2"/> |
|---|--|--|

Proposed Rule Change by **Chicago Board Options Exchange**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|                                     |   |  |   |  |   |
|-------------------------------------|---|--|---|--|---|
| Initial<br><input type="checkbox"/> | Amendment<br><input checked="" type="checkbox"/>                                      | Withdrawal<br><input type="checkbox"/> | Section 19(b)(2)<br><input type="checkbox"/>    | Section 19(b)(3)(A)<br><input checked="" type="checkbox"/> | Section 19(b)(3)(B)<br><input type="checkbox"/> |
|                                     |   |  | Rule  |  |   |
| Pilot<br><input type="checkbox"/>   | Extension of Time Period for Commission Action<br><input checked="" type="checkbox"/> | Date Expires<br><input type="text"/>   | <input type="checkbox"/> 19b-4(f)(1)            | <input type="checkbox"/> 19b-4(f)(4)                       | <input type="checkbox"/> 19b-4(f)(6)            |
|                                     |   |  | <input checked="" type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5)                       |   |
|                                     |   |  | <input type="checkbox"/> 19b-4(f)(3)            | <input type="checkbox"/> 19b-4(f)(6)                       |   |

|   |   |
|---|---|
| Exhibit 2 Sent As Paper Document<br><input checked="" type="checkbox"/> | Exhibit 3 Sent As Paper Document<br><input checked="" type="checkbox"/> |
|---|---|

**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

|            |  |           |   |
|------------|--|-----------|---|
| First Name | <input type="text" value="Jaime"/>               | Last Name | <input type="text" value="Galvan"/>         |
| Title      | <input type="text" value="Assistant Secretary"/> |           |   |
| E-mail     | <input type="text" value="galvanj@cboe.com"/>    |           |   |
| Telephone  | <input type="text" value="(312) 786-7058"/>      | Fax       | <input type="text" value="(312) 786-7919"/> |

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,  
  
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date

By  Assistant Secretary  
(Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Jaime Galvan, galvanj@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

[Add](#) [Remove](#) [View](#)

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

[Add](#) [Remove](#) [View](#)

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

[Add](#) [Remove](#) [View](#)

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

[Add](#) [Remove](#) [View](#)

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

[Add](#) [Remove](#) [View](#)

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

[Add](#) [Remove](#) [View](#)

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

## **PARTIAL AMENDMENT**

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") hereby submits this Partial Amendment, constituting Amendment No. 2 to its rule filing SR-CBOE-2010-033, filed on March 26, 2010, in which the Exchange proposes to amend its strategy fee cap program.

The Exchange proposes several clarifications to the proposed rule text and corresponding changes to the purpose section of the proposed rule change. The proposed rule text set forth below shall replace and supersede the proposed rule text in Item 1(a) of Form 19b-4 in its entirety. The attached Exhibit 1 shall replace and supersede Exhibit 1 of the original filing in its entirety.

The Exchange proposes to add the following sentence as a footnote at the end of the second paragraph in Item 3(a) of Form 19b-4 and Item II.A.(a) of Exhibit 1:

"In addition, the Exchange proposes to amend Footnote 13 of the Fees Schedule to clarify that "license fees" has the same meaning as "Surcharge Fees" and that the pass-through of Surcharge Fees is only applicable to the cap on dividend, merger and short stock interest strategies since the cap on reversals, conversions and jelly roll strategies excludes any option class on which the Exchange assesses the Surcharge Fee."

The Exchange proposes to add the following paragraph at the end of Item 3(a) of Form 19b-4 and Item II.A.(a) of Exhibit 1:

"The Exchange proposes to amend Footnote 6 of the Fees Schedule in conjunction with the proposed expansion of the strategy fee cap to include reversals, conversions and jelly roll strategies. Specifically, the Exchange proposes to amend Footnote 6 to clarify that the marketing fee will not apply to any of the strategies identified and/or defined in Footnote 13."

The Exchange proposes to delete the second sentence of the Statutory Basis in Item 3(b) of Form 19b-4 and Item II.A.(b) of Exhibit 1 and replace it with the following:

"The Exchange believes excluding member firm transaction fees from the proposed fee cap is consistent with the Act because member firm transaction fees are reduced under the Member Firm Proprietary Sliding Scale program. Market-maker transaction fees are reduced under the Liquidity Provider Sliding Scale, however market-makers are required to prepay annual fees for the first two tiers of the sliding scale in order to be eligible for the fee rates in the lowest tiers while there is no similar requirement for firms under the Member Firm Proprietary Sliding Scale. Also, member firm transaction fees are lower than broker-dealer transaction fees."

With the exception of these changes, the rest of the proposed rule change, as contained in the original rule filing, remains unchanged.

(Changes are indicated by underlining additions and [bracketing deletions]. Only those fees that are affected are shown.)

**CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**  
**FEES SCHEDULE**  
**MARCH [16] 29, 2010**

1. – 4. Unchanged.

Footnotes: (1) – (5) Unchanged.

- (6) The marketing fee will be 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 at the per contract rate provided above on all classes of equity options, options on HOLDRs, options on ETFs, and index options; except that the marketing fee shall not apply to DJX, DXL, EEM, EWC, EWT, IWM, MNX, MVR, OEX, QQQQ, RSP, SPX, VIX, VPL, VWO, XBI, XEO, DVS, binary options, credit default options, and credit default basket options. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from [dividend strategies, merger strategies, and short stock interest strategies as] 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. A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed.

Rebate/Carryover Process. If less than 80% of the marketing fee funds collected in a given month is paid out by the DPM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, e-DPMs, and DPMs in that month. However, if 80% or more of the funds collected in a given month is paid out by the DPM or Preferred Market-Maker, there will not be a rebate for that month unless the DPM or Preferred Market-Maker elects to have funds rebated. In the absence of such election, any excess funds will be included in an Excess Pool of funds to be used by the DPM or Preferred Market-Maker in subsequent months. The total balance of the Excess Pool of funds for a DPM or a Preferred Market-Maker cannot exceed \$100,000. If in any month the Excess Pool balance were to exceed \$100,000, the funds in excess of \$100,000 would be refunded on a pro rata basis based upon contributions made by the Market-Makers, DPMs, and e-DPMs in that month. In addition, in any month, a DPM or a Preferred Market-Maker can elect to have any funds in its Excess Pool refunded on a pro rata basis based upon contributions made by the Market-Makers, DPMs, and e-DPMs in that month.

Each month, the Exchange assesses an administrative fee of .45% on the total amount of the funds collected each month; provided, however, that beginning on October 1, 2007, no Market-Maker, e-DPM or DPM would contribute more than 15% of the total amount of funds raised by the .45% administrative fee.

(7) – (12) Unchanged.

- (13) Market-maker, firm and broker-dealer transaction fees are capped at \$1,000 for all (i) dividend strategies, (ii) merger strategies and (iii) short stock interest strategies executed on the same trading day in the same options class. In addition, market-maker and broker-dealer transaction fees are capped at \$1,000 for all reversals, conversions and jelly roll strategies executed on the same trading day in the same FLEX option class, excluding any option class on which the Exchange charges the Surcharge Fee under footnote 14 of this Fees Schedule. Such transaction fees for these strategies are further capped at \$25,000 per month per initiating member or firm. [License fees] Surcharge Fees associated with [these] dividend, merger and short stock interest strategies will be passed through to trading participants on these strategies on a pro-rata basis. [These license fees] Surcharge Fees will

not be included in the calculation of the \$1,000 per day per class fee cap or the \$25,000 per month fee cap for dividend, merger and short stock interest strategies. Floor brokerage fees assessed on any of these strategies are eligible for a full rebate (see below). A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock. A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class. To qualify transactions for the cap and floor brokerage fees rebate, a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions.

(14) – (17) Unchanged.

**Remainder of Fees Schedule – Unchanged.**

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_ ; File No. SR-CBOE-2010-033)

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated:  
Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the  
Strategy Fee Cap Program.**

---

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on \_\_\_\_\_, 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, II and III below, which Items have been prepared by CBOE. 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 strategy fee cap program. The text of the proposed rule change is available on the Exchange's website (<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, Proposed Rule Change**

**(a) Purpose**

The Exchange caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). Specifically, market-maker, firm and broker-dealer transaction fees are capped at \$1,000 for all (i) dividend strategies<sup>1</sup>, (ii) merger strategies<sup>2</sup> and (iii) short stock interest strategies<sup>3</sup> executed on the same trading day in the same options class. In addition, such transaction fees for these strategies are further capped at \$25,000 per month per initiating member or firm.

The Exchange proposes a limited expansion of the Strategy Fee Cap program. Specifically, the Exchange proposes to cap market-maker and broker-dealer transaction fees at \$1,000 for all reversals, conversions and jelly roll strategies (as defined below) executed on the same trading day in the same Flexible Exchange (FLEX) option class, excluding any option class on which the Exchange charges the surcharge fee under Footnote 14 of the CBOE Fees Schedule. As under the current program, such transaction fees would be further capped at \$25,000 per month per initiating member or firm, and to

---

<sup>1</sup> A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.

<sup>2</sup> A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

<sup>3</sup> A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

qualify transactions for the cap a rebate request with supporting documentation must be submitted to the Exchange within 3 business days of the transactions.<sup>4</sup>

Reversals, conversions and jelly roll strategies are included in the strategy fee cap programs of other exchanges.<sup>5</sup> Reversals and conversions are transactions that employ calls, puts and the underlying security to lock in a nearly risk free profit. Reversals are established by combining a short security position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying security that accompany long puts and short calls sharing the same strike and expiration.

A Jelly Roll is a long calendar call spread combined with the same short calendar put spread, or vice versa. This option strategy aims to profit from a time value spread through the purchase and sale of two call and two put options, each with different expiration dates. A Jelly Roll is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but a different expiration from the first position. Below is an example of a Jelly Roll strategy execution.

XYZ Jun / Oct 25 Jelly Roll:

- Buy XYZ Jun 25 put and sell XYZ Jun 25 call
- Sell XYZ Oct 25 Put and buy XYZ Oct 25 call

---

<sup>4</sup> In addition, the Exchange proposes to amend Footnote 13 of the Fees Schedule to clarify that "license fees" has the same meaning as "Surcharge Fees" and that the pass-through of Surcharge Fees is only applicable to the cap on dividend, merger and short stock interest strategies since the cap on reversals, conversions and jelly roll strategies excludes any option class on which the Exchange assesses the Surcharge Fee.

<sup>5</sup> See the options fee schedules of NYSE Amex, LLC and NYSE Arca, LLC.

Market BBO:

Jun 25 call .51 at .53 2

Jun 25 put .72 at .74

Oct 25 call 1.52 at 1.55

Oct 25 put 2.35 at 2.39

$.74(\text{long Jun put}) + 1.52(\text{long Oct call}) - .51(\text{short Jun call}) - 2.35(\text{short Oct put}) =$   
.60 credit received for the Jelly roll.

The proposed fee change would become operative on March 29, 2010.

The Exchange proposes to amend Footnote 6 of the Fees Schedule in conjunction with the proposed expansion of the strategy fee cap to include reversals, conversions and jelly roll strategies. Specifically, the Exchange proposes to amend Footnote 6 to clarify that the marketing fee will not apply to any of the strategies identified and/or defined in Footnote 13.

(b) 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 members and other persons using its facilities. The Exchange believes excluding member firm transaction fees from the proposed fee cap is consistent with the Act because member firm transaction fees are reduced under the Member Firm Proprietary Sliding Scale program. Market-maker transaction fees are reduced under the Liquidity Provider Sliding Scale, however market-

---

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

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

makers are required to prepay annual fees for the first two tiers of the sliding scale in order to be eligible for the fee rates in the lowest tiers while there is no similar requirement for firms under the Member Firm Proprietary Sliding Scale. Also, member firm transaction fees are lower than broker-dealer transaction fees. In addition, the Exchange believes expansion of the Strategy Fee Cap program would benefit market participants who trade these strategies by lowering their fees and allow the Exchange to remain competitive with other exchanges that offer similar fee cap programs.

**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 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 foregoing rule change 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 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.

---

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

<sup>9</sup> 17 C.F.R. 240.19b-4(f)(2).

**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-2010-033 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.

All submissions should refer to File Number SR-CBOE-2010-033. 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 10:00 a.m. and 3:00 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-2010-033 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Florence E. Harmon

Deputy Secretary

---

<sup>10</sup> 17 CFR 200.30-3(a)(12).