clarity with respect and minimizing confusion with respect to the requirements regarding guarantees and sharing in accounts.[13] The Commission notes that the FINRA financial responsibility rules are currently in operation. For these reasons, the Commission designates the proposed rule change as operative upon filing. 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*. Please include File Number SR–NYSEAmex–2010–23 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–NYSEAmex–2010–23. 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 Section, 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 the NYSE'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–NYSEAmex–2010–23 and should be submitted on or before April 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6150 Filed 3–19–10; 8:45 am]

BILLING CODE 8011–01–P

[13] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Co-Location Service Fees

I. Introduction

On January 28, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on February 10, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is $10 per month per "U" of shelf space (which is equal to 1.75 inches).[4] A member also receives power, cooling, security and assistance with installation and connection of the equipment to the Exchange's servers, at no additional charge. This "co-location service" provides members with close physical proximity to the Exchange's electronic trading system, which helps meet their need for high performance processing and low latency.

The co-location service is available to any member that requests the service and pays the monthly fee.[5] In the Notice, the Exchange represented that it believes that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service. In addition, the Exchange represented that, other than the co-location service, the Exchange does not provide any co-locating member with any advantage over any other co-locating member or any non-co-locating member with respect to access to the Exchange's trading system. Further, the Exchange represented that its systems are designed to minimize, to the extent possible, any advantage for one member over another. The Exchange noted that the above representations apply equally to both inbound and outbound data.

The proposal clarifies the Exchange's Fee Schedule relating to co-location fees in two respects. First, the Exchange proposes to move the co-location fees from Section 17 of the Fees Schedule (Hybrid Fees) to Section 8 (Facility Fees) because it believes that these fees are more accurately described as facility fees. Second, the Exchange proposes to clarify that the co-location fees are charged in increments of 4 "U" (which is equal to 7 inches) because the cabinet space is available in 4 U increments.

III. Discussion and Commission's Findings

After careful review, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61489 (February 4, 2010), 75 FR 6764 ("Notice").

[4] *See* Securities Exchange Act Release No. 57191 (January 24, 2008), 73 FR 5611 (January 30, 2008). The fee for a Sponsored User is $20 per month per "U." *See* Securities Exchange Act Release No. 58189 (July 18, 2008), 73 FR 43274 (July 24, 2008).

[5] A member using the co-location service may also pay certain CBOEdirect Connectivity Charges that are set forth in Section 16 of the Fee Schedule. The Exchange represents that these fees are charged for member connectivity to CBOEdirect regardless of whether or not a member is using the co-location service. These fees include a $40 per month "CMi Application Server" fee for server hardware used to connect to the CBOE CMi API, a $40 per month "Network Access Port" fee for use of the CMi API, and a $40 per month "FIX Port" fee for use of the FIX API. *See* Securities Exchange Act Release No. 57191, *supra* note 1. Each of the foregoing fees is $80 per month for a Sponsored User. *See* Securities Exchange Act Release No. 58189, *supra* note 1.

securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all members who request them and pay the appropriate fees; (2) as represented by CBOE, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that for the foreseeable future, it has sufficient space to accommodate all members who may request the co-location service.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2010–008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6184 Filed 3–19–10; 8:45 am]

BILLING CODE 8011–01–P

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

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61715; File No. SR–CBOE–2010–028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Market-Maker Joint Accounts

March 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2010, the 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 filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 is proposing to amend CBOE Rule 6.55, *Multiple Representation Prohibited,* and to eliminate related Regulatory Circulars pertaining to joint account activity. The Exchange is also proposing related amendments to CBOE Rule 8.9, *Securities Accounts and Orders of Market-Makers.* 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'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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

CBOE Rule 6.55 pertains to multiple representation by an individual Market-Maker in open outcry. Currently, the rule provides in relevant part that, except in accordance with procedures established by the Exchange or with respect the Exchange's permission in individual cases, no Market-Maker shall enter or be present in a trading crowd while a Floor Broker present in the trading crowd is holding an order on behalf of the Market-Maker's individual account or an order initiated by the Market-Maker for an account in which the Market-Maker has an interest.

In addition, Interpretation and Policy .02 to CBOE Rule 6.55 advises members to consult CBOE's Regulatory Circulars for procedures governing the simultaneous presence in a trading crowd of participants in and orders for the same joint account. The relevant circulars, RG01–60 and RG01–128, set forth Exchange procedures and requirements for trading in joint accounts that vary depending upon whether the particular trading occurs in equity options or in index options and options on exchange-traded funds ("ETFs").[5] While certain restrictions apply to joint account activity in equity options,[6] there are generally no

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Regulatory Circular governing joint account trading in equity products, RG01–60, was last amended through Securities Exchange Act Release No. 44152 (April 5, 2001), 66 FR 19262 (April 13, 2001) (SR–CBOE–00–13). The Regulatory Circular governing joint account trading in certain index options and options on ETFs was last amended through Securities Exchange Act Release No. 44433 (June 15, 2001), 66 FR 33589 (June 22, 2001) (SR–CBOE–2001–30).

[6] For equity option classes, RG01–60 currently provides in part that: (i) A joint account may be simultaneously represented in a trading crowd only by participants trading in-person; orders for a joint account may not be entered in a crowd where a participant of the joint account is trading in-person for the joint account; however, if no participant is trading in-person for the joint account, orders may be entered via Floor Broker so long as the same option series in not represented by more than one Floor Broker; (ii) members may alternate trading in-person between their individual and joint accounts while in the crowd; members who alternate trading between accounts must ensure that while trading the joint account another participant does not enter orders through a Floor Broker for the joint account in the same crowd or that an order is not being continuously represented for the joint account in