

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57668; File No. SR-CBOE-2008-36)

April 15, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

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 March 28, 2008, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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 substantially prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the 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

The Exchange proposes to amend the Hybrid 3.0 book execution fee. The text of the proposed rule change is available on the Exchange’s Web site ([www.cboe.org/legal](http://www.cboe.org/legal)), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<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).

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 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. The 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

On November 1, 2007, the Exchange implemented a fee of \$.18 per contract applicable to orders in Hybrid 3.0 classes resting in the electronic book that are executed.<sup>5</sup> The classes that trade on the Hybrid 3.0 platform are options on the S&P 100 Index ("OEX"), options on the S&P 500 Index ("SPX") and options on the Morgan Stanley Retail Index ("MVR"). The fee does not apply to orders in SPX options resting in the SPX electronic book that are executed during opening rotation on the final settlement date of CBOE Volatility Index ("VIX") options and futures. On February 1, 2008, the Exchange extended the fee to apply to orders in Hybrid 3.0 classes that are executed by the Hybrid Agency Liaison ("HAL") system.<sup>6</sup>

The Exchange now proposes to adopt three additional exceptions to the Hybrid electronic execution fee. Specifically, the Exchange will assess \$.18 per contract to all electronic executions in Hybrid 3.0 classes except: (i) orders in SPX options in the SPX

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<sup>5</sup> See Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007) (SR-CBOE-2007-127).

<sup>6</sup> See Securities Exchange Act Release No. 57374 (February 22, 2008), 73 FR 10845 (February 28, 2008) (SR-CBOE-2008-13). HAL is governed by CBOE Rule 6.14.

electronic book that are executed during opening rotation on the final settlement date of VIX options and futures (which orders are currently exempt from the fee); (ii) executions by market-makers against orders in the complex order auction ("COA") and Simple Auction Liaison ("SAL") systems<sup>7</sup> in their appointed classes; (iii) executions by market-makers against orders in the electronic book, HAL and the complex order book ("COB") in their appointed classes; and (iv) orders executed by a broker. The fee will be renamed "Hybrid 3.0 execution fee."

In pre-Hybrid 3.0 trading, market-makers that provided liquidity by trading against orders on the Retail Automatic Execution System ("RAES") in their appointed classes did not pay the RAES Access Fee. Likewise, the Exchange believes it is appropriate to exempt from the Hybrid 3.0 execution fee executions by market-makers against orders in COA and SAL in their appointed classes.

Market-makers in pre-Hybrid 3.0 trading did not pay an execution fee (other than standard transaction fees) to trade against orders resting in the electronic book in their appointed classes. Likewise, the Exchange believes it is appropriate to exempt from the Hybrid 3.0 execution fee executions by market-makers against orders in the electronic book, HAL and COB in their appointed classes.

In addition, the Exchange does not believe it would be appropriate to charge the fee to orders that are executed electronically by a broker since such orders are already

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<sup>7</sup> COA and SAL are governed by CBOE Rules 6.53C and 6.13A, respectively.

subject to brokerage fees by a broker. A similar exemption existed for the RAES Access Fee.<sup>8</sup> In addition, the Exchange is deleting Section 4 of the CBOE Fees Schedule regarding the RAES access fee, and revising accompanying footnotes accordingly, because the RAES system is no longer in use.

Hybrid 3.0 execution systems benefit market participants by improving execution time, service, efficiency, and in some cases providing price improvement. The Hybrid 3.0 execution fee is designed to help the Exchange recover its costs of developing these systems and offset the cost of maintaining and enhancing these systems in the future.<sup>9</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among CBOE members and other persons using CBOE facilities.

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

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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<sup>8</sup> Orders received by and executed on the RAES were assessed the RAES Access Fee that was set forth in Section 4 of the CBOE Fees Schedule, with one exception that was set forth in footnote 9 of the Fees Schedule.

<sup>9</sup> In pre-Hybrid 3.0 trading, orders resting in the electronic book that were executed paid an Order Book Official execution fee.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing 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>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> thereunder. At any time within 60 days of the filing of such 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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 19b-4(f)(2).

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 No. SR-CBOE-2008-36 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-36. 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 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2008-36 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>14</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).