

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58200; File No. SR-CBOE-2008-77)

July 21, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Interim Trading Permit Access Fee

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 18, 2008, the Chicago Board Options Exchange, Incorporated (“CBOE” or “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 the CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),³ and Rule 19b-4(f)(2) thereunder,⁴ 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 parties.

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

CBOE proposes to adopt a monthly access fee for Interim Trading Permit holders. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

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, the Proposed Rule Change

1. Purpose

CBOE Rule 3.27(f)(ii) provides that Interim Trading Permit holders shall pay to the Exchange a monthly access fee set by the Exchange and that the access fee shall be implemented through the submission of a proposed rule change to the Commission under Section 19(b)(3)(A) of the Act.⁵ The purpose of this rule filing is to propose that the access fee for Interim Trading Permit holders be set at \$12,387 per month.

The amount of the proposed access fee is equal to the current indicative lease rate. Under Rule 3.27(b), the “indicative lease rate” is the highest clearing firm floating monthly rate⁶ of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases. The Exchange determined the current indicative lease rate by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for the month of July 2008.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ Rule 3.27(b) defines the term “clearing firm floating monthly rate” as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

The Exchange believes that the proposed access fee constitutes an equitable allocation of reasonable dues, fees, and other charges among persons using its facilities because it is equivalent to the current lease rate paid by a large percentage of lessees of CBOE transferable memberships and is equivalent to the current access fee assessed by the Exchange to persons granted temporary CBOE membership status (“Temporary Members”) pursuant to Interpretation and Policy .02 under CBOE Rule 3.19.⁷ Additionally, by setting the proposed access fee at the indicative lease rate, the Exchange is utilizing a benchmark that is used for other purposes under various provisions of Rule 3.27. For example, the Exchange may issue Interim Trading Permits under Rule 3.27(b) only if, among other things, the Exchange determines that there are insufficient transferable memberships available for lease at that time at a rate reasonably related to the indicative lease rate. In addition, Rule 3.27(d) provides that, under specified circumstances, the Exchange will make a payment to lessors of CBOE transferable memberships that notify the Exchange that their memberships remain unleased while Interim Trading Permits are outstanding, and the amount of that payment is the indicative lease rate (assuming the number of Interim Trading Permits exceeds the number of these open leases). Setting the proposed access fee equal to the indicative lease rate therefore is consistent with these other provisions.⁸

⁷ See Securities Exchange Act Release No. 58073 (July 1, 2008), 73 FR 39357 (July 9, 2008) (SR-CBOE-2008-71), which set the current access fee for Temporary Members at \$12,387 per month.

⁸ Because Interim Trading Permit holders possess a feature that does not exist in the typical lease arrangement for a CBOE transferable membership, the Exchange also believes that it would be equitable to assess Interim Trading Permit holders an access fee that is higher than the indicative lease rate if the Exchange chose to do so in the future through the submission of a subsequent proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii). Under Rule 3.27(c), an Interim Trading Permit can be terminated only (1) if the holder terminates the Interim Trading Permit, (2) as a result of regulatory action against the holder, (3) in the event of a demutualization, or (4)

The Exchange may, and likely will, further adjust the proposed access fee in the future through the submission of a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁹ if the Exchange determines that it would be appropriate to do so, such as to take into consideration changes in the indicative lease rate.

Rule 3.27(f)(ii) provides that the access fee for Interim Trading Permit holders shall be due and payable in accordance with the provisions of the Exchange Fee Schedule and shall be the same for all Interim Trading Permit holders.

The Exchange proposes to include in the Exchange Fee Schedule the following procedural provisions related to the assessment of the proposed access fee. The proposed access fee will be assessed to each Interim Trading Permit holder for each Interim Trading Permit issued to the holder. Consistent with Rule 3.27(c), the proposed access fee and any other applicable monthly fees will be assessed for each calendar month unless an Interim Trading Permit holder provides written notice to the CBOE Membership Department on or before the fifteenth day of the preceding calendar month that the holder is terminating the Interim Trading Permit effective no later than the last day of that preceding calendar month.¹⁰ The proposed access fee will be due and payable for each calendar month on the first day of that calendar month. If an Interim Trading Permit is issued during a calendar month after the first day of the

through a rule change approved by the Commission. On the other hand, the typical lease arrangement for a transferable membership can be terminated by the lessor upon a month's notice to the lessee. As a result, Interim Trading Permit holders enjoy more certainty than lessees with respect to their trading access to the Exchange and the Exchange could determine to assess them a higher access fee to reflect that certainty.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁰ For example, an Interim Trading Permit holder that did not wish to be assessed the proposed access fee and any other applicable monthly fees for the month of September 2008 would need to provide notice to the Membership Department on or before August 15, 2008 that the holder was terminating the Interim Trading Permit effective no later than August 31, 2008.

month, the proposed access fee for that calendar month will be prorated and will be assessed as of the date of the issuance of the Interim Trading Permit. The proposed access fee will be non-refundable and will be assessed through the integrated billing system.

2. Statutory Basis

For the reasons described above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

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 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 rule change.

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 Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ 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.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 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. Please include File Number SR-CBOE-2008-77 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2008-77. 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 Exchange. 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 No. SR-CBOE-2008-77 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon
Acting Secretary

¹⁵ 17 CFR 200.30-3(a)(12).