

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58321; File No. SR-CBOE-2008-78)

August 6, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market-Maker Transaction Fees

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934¹, notice is hereby given that on July 25, 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 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 the Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule relating to market-maker transaction fees. 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.

¹ 15 U.S.C. 78s(b)(1).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's "Liquidity Provider Sliding Scale" program, the Exchange reduces Liquidity Provider (CBOE Market-Maker, DPM, e-DPM and LMM) per contract transaction fees based on the number of contracts a Liquidity Provider trades in a month. The sliding scale applies to Liquidity Provider transaction fees in all products.²

A Liquidity Provider's standard \$.20 per contract transaction fee is reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee decreases. The first 75,000 contracts traded in a month (first tier) are assessed at \$.20 per contract. The next 1,125,000 contracts traded (up to 1.2 million total contracts traded – second tier) are assessed at \$.18 per contract. The next 1.8 million contracts traded (up to 3 million total contracts traded – third tier) are assessed at \$.15 per contract and the next 1.8 million contracts traded (up to 4.8 million total contracts traded – fourth tier) are assessed at \$.10 per contract. All contracts above 4.8 million contracts traded in a month (fifth tier) are assessed at \$.03 per contract.³

² Contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 of the Fees Schedule does not apply towards reaching the sliding scale volume thresholds.

³ The Exchange aggregates the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. A Liquidity Provider's monthly contract volume is determined at the firm affiliation level, e.g., if five Liquidity Provider individuals are affiliated with the same member firm as reflected by Exchange records for the entire month, all of the volume from those five individual Liquidity Providers count towards that firm's sliding scale transaction fees for that month. See CBOE Fees Schedule, Footnote 10.

The Exchange proposes to add a sixth tier in order to provide an additional fee reduction at higher volume levels. Specifically, the Exchange proposes to assess \$.01 per contract for all contracts above 10 million contracts traded by a Liquidity Provider in a month. Accordingly, the fifth tier would be revised to reflect that all contracts above 4.8 million up to 10 million contracts traded in a month would be assessed \$.03 per contract.

No other changes to the program are proposed. The Exchange plans to implement the proposed fee change on August 1, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")⁴, in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members. The proposed fee change would provide an additional fee reduction to Liquidity Providers at higher monthly volume levels.

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.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

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 Act⁶ and subparagraph (f)(2) of Rule 19b-4 thereunder.⁷ 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-CBOE-2008-78 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-2008-78. This file number should be included on the subject line if e-mail is used. To help the Commission process

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(2).

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-2008-78, 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.⁸

Florence E. Harmon
Acting Secretary

⁸ 17 CFR 200.30-3(a)(12).