SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59690; File No. SR-CBOE-2009-019)

April 2, 2009

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

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 18, 2009, the 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

CBOE proposes to amend its Fees Schedule regarding its cancellation fee. 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

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

2 17 CFR 240.19b-4.

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

The Exchange currently charges an executing clearing member $1.50 for each cancelled public customer Order Routing System ("ORS") order in excess of the number of public customer orders that the executing clearing member executes in a month for itself or for a correspondent firm. The purpose of the fee is to ease order backlogs on ORS and related systems and help the Exchange recoup its increased costs in processing increased order flow traffic. The fee is not charged if less than 500 public customer orders are cancelled in a month by the executing clearing member for itself or for a correspondent firm. The Exchange aggregates and counts as one executed order for purposes of the fee all public customer options orders from the same executing clearing member for itself or for a correspondent firm that are executed in the same series on the same side of the market at the same price within a 30 second period. The following ORS order activity is exempt from the fee: (i) cancelled ORS orders that improve the Exchange's prevailing bid-offer (BBO) market when received; (ii) fill and cancellation activity occurring within the first one minute of trading following the opening of each options class; (iii) complex order fills and cancels; (iv) unfilled Fill-or-Kill ("FOK") orders; (v) unfilled Immediate-or-Cancel ("IOC") orders, and (vi) fill and cancellation activity in Mini-SPX Index Options (XSP).

The level of canceled orders continues to remain quite high. Some customers are seeking to avoid the fee by executing large quantities of small orders in out-of-the-money options to offset their cancellation activity in more actively traded options.

The Exchange proposes the following changes to the fee to help ease system congestion resulting from such activity. First, the Exchange proposes to amend the manner by which it calculates the fee by aggregating together and counting as one cancelled order orders that are executed at the same price in the same underlying symbol, instead of aggregating orders that are executed at the same price in the same series on the same side of the market. The Exchange believes this change should prevent customers from breaking up their orders into a range of options series in the same underlying symbol that trade at the same premium in order to avoid the fee.

Second, the Exchange proposes to extend the current 30 second aggregation interval to 300 seconds. The Exchange believes that extending the aggregation interval to 300 seconds should result in a reduction in the number of orders that are sent to create offsetting trades.

Third, the Exchange proposes to increase the fee from $1.50 to $2.00 per cancelled order. The proposed cancellation fee is similar to the cancellation fee of the International Securities Exchange.[3]

In addition, the Exchange proposes to eliminate the exemption for fill and cancellation activity in XSP options. The Exchange had exempted activity in XSP options from the fee for an indefinite time period in conjunction with a marketing "re-launch" of the XSP product.[4] The Exchange has reevaluated the exemption and determined to reapply the fee to activity in XSP options.

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3 See Securities Exchange Act Release Nos. 58692 (September 30, 2008), 73 FR 59006 (October 8, 2008); 58898 (November 4, 2008), 73 FR 67238 (November 13, 2008); and 59072 (December 10, 2008), 73 FR 76689 (December 17, 2008).

4 See Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007).

Finally, the Exchange proposes to change the name of the fee from “ORS (Order Routing System) Cancellation Fee” to “OHS (Order Handling System) Cancellation Fee”, to reflect the fact that the ORS functionality has been replaced by new OHS functionality built on the CBOEdirect platform.

The proposed fee changes will be operative on April 1, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] 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 and other persons using its facilities. In particular, the Exchange believes the proposed fee change is justified to address the current level of cancellation activity and its effect on system congestion and Exchange systems costs.

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.

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

[6] 15 U.S.C. 78f(b)(4).

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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b-4(f)(2)[8] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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-2009-019 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.

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7 15 U.S.C. 78s(b)(3)(A).

8 17 CFR 19b-4(f)(2).

All submissions should refer to File Number SR-CBOE-2009-019. 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 the 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-2009-019 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.[9]

Florence E. Harmon
Deputy Secretary

[9] 17 CFR 200.30-3(a)(12).