

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57593; File No. SR-CBOE-2008-38)

April 1, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for the CBOE Stock Exchange

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 March 31, 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 Exchange. The Exchange has designated this proposal as one establishing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders it 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 modify its fees applicable to the CBOE Stock Exchange (“CBSX”). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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).

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 Exchange 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 Exchange 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 CBSX fee schedule lists the fees applicable to trading on CBSX. The CBOE Complex Order Auction system ("COA") and Complex Order Book ("COB"), governed by CBOE Rule 6.53C, facilitate the handling and execution of complex orders by allowing for complex orders to rest in the system and allowing for inbound complex orders to trigger an auction where auction participants may submit complex order responses to trade with the order that is being auctioned. Until recently, Rule 6.53C applied only to complex orders containing only options components. In recent months, CBOE implemented an enhancement to the Rule 6.53C COA/COB system to facilitate the execution of complex orders containing a stock component (e.g., a buy-write order).⁵ As detailed in that filing, the stock component of a stock-option complex order handled by the system is executed on CBSX. The present filing seeks to adopt special charges for the stock executions that result from stock-option orders trading pursuant to Rule 6.53C.

The CBSX transaction fees for these orders will be based on whether the stock-option order that initiated an execution pursuant to Rule 6.53C ultimately trades against another stock-option

⁵ See Securities Exchange Act Release No. 56903 (December 5, 2007), 72 FR 70356 (December 11, 2007) (SR-CBOE-2007-68).

order or against unrelated orders in the respective markets (CBOE and CBSX). By way of example, a buy-write order auctioned by the system may trigger responses to trade against the entire buy-write order as a package—this is a stock-option order trading against another stock-option order. On the other hand, a buy-write order processed by the system could also ultimately be filled by: (i) the option component (an order to sell a call) trading against a straight order to buy that call resting in the CBOE Hybrid book, and (ii) the stock component (an order to buy stock) trading against a straight sell order in the CBSX book.

A stock trade on CBSX consisting of the stock component of two stock-option orders trading against each other pursuant to Rule 6.53C shall be charged as follows: the order that triggered a COA or that triggered a trade with a resting COB order shall be charged \$0.0005 per share subject to a \$1.00 minimum charge and a \$25.00 maximum charge. The order that responded to the auction or that was resting in the COB prior to the trade shall not be charged and shall not receive a rebate.

A stock trade on CBSX consisting of the stock component of a stock-option order handled pursuant to Rule 6.53C trading against a resting stock order on the CBSX book shall be charged as follows: the resting order is considered a Maker of liquidity and receives the applicable Maker rebate pursuant to the CBSX fee schedule, and the non-resting stock order is charged the standard Taker rate pursuant to the CBSX fee schedule.

The changes take effect on Tuesday, April 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act⁶ in general, and furthers the objectives of Section 6(b)(4) of the Act⁷ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using its facilities.

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

The Exchange 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 proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2) thereunder.⁹ 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.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 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 No. SR-CBOE-2008-38 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-2008-38. 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 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 Number SR-CBOE-2008-38 and should be submitted on or before [insert date 21 days from the date of publication in the Federal Register].

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

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).