

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59073; File No. SR-CBOE-2008-122)

December 10, 2008

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

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 November 28, 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. 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

Chicago Board Options Exchange, Incorporated (“CBOE” or “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 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, 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.

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<sup>1</sup> 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

The CBSX Fees Schedule lists the fees applicable to trading on CBSX. Those fees include transaction fees, which are based on whether the executing member is “taking” liquidity or “making” liquidity in connection with the transaction. The CBSX Fees Schedule also sets forth market quality bid/ask standards called Liquidity Provider Guidelines (“LPGs”). If the LPGs are met 90% of the time each day, then all CBSX Designated Primary Market-Makers<sup>3</sup> (“CBSX DPMs”) and CBSX Remote Market-Makers<sup>4</sup> (“CBSX RMMs”) receive enhanced maker rebates as set forth in the CBSX Fees Schedule. Specifically, CBSX RMMs that meet LPGs receive a maker rebate of \$0.0027 per share, while CBSX DPMs that meet LPGs receive a maker rebate of \$0.0029 per share. This filing proposes to make four changes to the CBSX fee schedule.

First, the filing establishes a uniform qualifying Market-Maker maker rebate of \$0.0027 per share that would apply to all CBSX Market-Makers<sup>5</sup> when the LPGs are met. Second, the filing proposes to lower the general maker rebate from \$0.0026 to \$0.0025 per share. Third, the filing proposes to adopt fees for stock orders that are executed pursuant to CBOE’s Automated Improvement Mechanism and Solicitation Auction Mechanism (Rules 6.74A.07 and 6.74B.01). These CBOE rules govern crossing orders pursuant to electronic auctions. Recently, CBOE adopted changes to those rules to allow those mechanisms to process complex orders (including stock-option orders). This filing proposes to establish a \$0.0005 per share fee for these stock

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<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See CBOE Rule 50.3(4).

<sup>4</sup> See CBOE Rule 50.3(2).

<sup>5</sup> See CBOE Rule 50.3(1).

executions subject to a \$1 minimum and \$25 maximum charge. Fourth, the filing proposes to establish a fee for shares routed to other markets in connection with the execution of a CBSX Cross and Sweep order. The fee would be \$0.0040 per share. Cross and Sweep orders (See CBSX Rule 51.8(r)) allow users to cross orders on CBSX at prices outside of the NBBO while the CBSX system contemporaneously sweeps all protected quotes on other markets and all better priced interest on CBSX in connection with the cross.

The proposed changes will take effect on December 1, 2008.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (“Act”)<sup>6</sup>, in general, and furthers the objectives of Section 6(b)(4)<sup>7</sup> 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.

### 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.

## 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>8</sup>

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

and subparagraph (f)(2) of Rule 19b-4<sup>9</sup> 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-122 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-2008-122. 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

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<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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, 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 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-2008-122 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>10</sup>

Florence E. Harmon  
Acting Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).