

Number SR-BSECC-2008-01 and should be submitted on or before June 3, 2008.

For the Commission by the Division of Trading and Markets pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57793; File No. SR-CBOE-2008-52]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

May 7, 2008.

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 April 30, 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 Exchange. 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),<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 adjust the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02"). 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

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

The current access fee for Temporary Members under Rule 3.19.02<sup>5</sup> is \$8,260 per month and took effect on April 1, 2008. The Exchange proposes to revise the access fee to be \$10,079 per month commencing on May 1, 2008.

The Exchange used the following process to set the proposed access fee: The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable CBOE membership leases and obtained the Clearing Firm Floating Monthly Rate<sup>6</sup> designated by each of these clearing firms for the month of May 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates.

The Exchange used the same process to set the proposed access fee that it used to set the current access fee. The only difference is that the Exchange used Clearing Firm Floating Monthly Rate information for the month of May 2008 to set the proposed access fee (instead of Clearing Firm Floating Monthly Rate information for the month of April 2008 as was used to set the current access fee) in order to take into account changes in Clearing Firm Floating Monthly Rates for the month of May 2008.

The Exchange believes that the process used to set the proposed access fee and the proposed access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-

2008-12 in support of that process and the original access fee for Temporary Members under Rule 3.19.02.<sup>7</sup>

The proposed access fee will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> to modify the proposed access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange may further adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions regarding the assessment of the current access fee. However, the Exchange is proposing to delete the current reference in the Fee Schedule which notes that the first month for which an access fee will be assessed to Temporary Members under Rule 3.19.02 is February 2008 because the commencement of the assessment of this access fee is now past.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> 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.

<sup>7</sup> See Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE-2008-12), which established the original access fee for Temporary Members under Rule 3.19.02, for detail regarding the rationale in support of the original access fee and the process used to set that fee, which is also applicable to this proposed rule change as well.

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

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

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

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

<sup>5</sup> See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

<sup>6</sup> The term "Clearing Firm Floating Monthly Rate" refers to the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

### 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>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</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-2008-52 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-2008-52. 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 am and 3 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-2008-52 and should be submitted on or before June 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57765; File No. SR-FINRA-2007-041]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend NASD Rule 7001B To Increase the Percentage of Market Data Revenue Shared With NASD/Nasdaq TRF Participants

May 1, 2008.

#### I. Introduction

On December 21, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA"), filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to adjust the percentage of market data revenue shared with participants in the NASD/Nasdaq Trade Reporting Facility ("NASD/Nasdaq TRF"). The proposed rule change was published for comment in the **Federal Register** on January 24, 2008.<sup>3</sup> The Commission received one comment letter regarding the proposal.<sup>4</sup>

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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

<sup>3</sup> See Securities Exchange Act Release No. 57164 (January 17, 2008), 73 FR 4295.

<sup>4</sup> See letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, to Nancy M. Morris, Secretary, Commission, dated February 14, 2008 ("SIFMA letter").

On March 27, 2008, FINRA submitted its response to the comment letter.<sup>5</sup> This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

FINRA proposes to amend NASD Rule 7001B (Securities Transaction Credit) to modify the percentage of market data revenue that is shared with FINRA members that report trades to the NASD/Nasdaq TRF for transactions on the New York Stock Exchange ("Tape A"), American Stock Exchange and regional exchanges ("Tape B"), and Nasdaq Exchange ("Tape C"). At present, FINRA members that report trades in Tape A, Tape B, and Tape C securities to the NASD/Nasdaq TRF receive a 50% *pro rata* credit on market data revenue that is earned by the NASD/Nasdaq TRF.<sup>6</sup>

The proposed rule change establishes a tiered rebate schedule whereby a participant in the NASD/Nasdaq TRF will receive from 0% to 100% of attributable market data revenue, depending upon the tape and the participant's market share. For example, a participant will receive 100% of the attributable market data revenue for trades in Tape A-listed stocks if its trade reports for those stocks are greater than or equal to 0.25% of the total consolidated volume of those stocks. In contrast, a participant will receive 100% of the attributable market data revenue for trades in Tape C-listed stocks if its trade reports for those stocks are greater than or equal to 0.75% of the total consolidated volume of those stocks. Similarly, a participant will receive 80% of the attributable market data revenue for trades in Tape A-listed stocks if its trade reports for those stocks are less than 0.25%, but greater than or equal to 0.15%, of the total consolidated volume of those stocks. A participant will receive 80% of the attributable market data revenue for trades in Tape C-listed stocks if its trade reports for those stocks are less than 0.75%, but greater than or equal to 0.25% of the total consolidated volume of those stocks.

In its filing with the Commission, FINRA stated that according to Nasdaq, it based the percentage of revenue that

<sup>5</sup> See letter from Lisa C. Horrigan, Associate General Counsel, FINRA, to Nancy M. Morris, Secretary, Commission, dated March 27, 2008 ("FINRA letter").

<sup>6</sup> The market data revenue consists of the revenue received by the NASD/Nasdaq TRF from the Consolidated Tape Association or the Nasdaq Securities Information Processor minus any charge for capacity usage. The proposed rule eliminates the deduction for capacity usage.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).