

Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-12 with respect to the original Temporary Member access fee.<sup>7</sup> Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-77 with respect to the original ITP access fee.<sup>8</sup>

Each of the proposed access fees 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>9</sup> to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated.

Accordingly, the Exchange may, and likely will, further adjust the proposed access fees 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 each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>11</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.

### **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>12</sup> and subparagraph (f)(2) of Rule 19b-4<sup>13</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-2008-93 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-2008-93. 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 a.m. and 3 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 No. SR-CBOE-2008-93 and should be submitted on or before October 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58460; File No. SR-CBOE-2008-90]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Related to Trades in Restricted Classes**

September 4, 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 August 29, 2008, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<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 Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

<sup>8</sup> See Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR-CBOE-2008-77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.25, *Nullification and Adjustment of Equity Options Transactions*, and Rule 24.16, *Nullification and Adjustment of Transactions in Index Options, Options on ETFs and Options on HOLDRS*. The Exchange is proposing to amend the rules to permit the nullification of opening transactions that do not satisfy the requirements of Rule 5.4, *Withdrawal of Approval of Underlying Securities*. The Exchange is also proposing to amend Rule 5.4 to make clear that its restrictions on opening transactions, which apply to previously opened options series of a class that no longer meets the then current requirements for trading, apply to both opening purchase transactions and opening sell transactions. Currently the rule text only references opening purchase transactions. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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.

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

#### 1. Purpose

The Exchange is proposing to amend its obvious error rules to permit the nullification of opening transactions in "restricted series" that do not satisfy the requirements of Rule 5.4.<sup>3</sup> Currently,

<sup>3</sup> In relevant part, Rule 5.4 provides that, whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore two floor officials, in consultation with a designated senior executive officer of the Exchange, may prohibit any opening purchase transactions in

when the Exchange makes a determination that trading in a series is restricted pursuant to Rule 5.4, the Exchange notifies the membership of that determination through issuance of a regulatory circular. In addition, the Exchange's systems are programmed to automatically restrict the entry of electronic opening transactions. However, opening orders entered in open outcry are not systemically prevented and, in addition, opening market-maker activity is still permitted both electronically and in open outcry. As a result, it is possible that an opening transaction that does not satisfy the requirements of Rule 5.4 may occur inadvertently.

In order to address these scenarios, the Exchange is proposing to permit the nullification of opening transactions in a Rule 5.4 restricted series provided notification is received by designated personnel in the Exchange's control room from any member or person associated with a member that believes it participated in such transaction within the timeframes prescribed in Rules 6.25(b)(1) and 24.16(b)(1). In addition, absent unusual circumstances, designated personnel in the control room (either on their own motion or upon request of a member) would initiate action within sixty (60) minutes of such a transaction. Such actions would be reviewed and determinations rendered by the senior official in the control room. The Exchange believes it is reasonable and appropriate for the senior official to render these decisions given the simple and objective nature of this particular type of proposed obvious error, which involves opening transactions in a series in which the Exchange has restricted opening trading activity pursuant to Rule 5.4.<sup>4</sup> The

series of options of that class previously opened (except that (i) opening transactions by Market-Makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with paragraph (b) or (d) of Rule 6.74, *Crossing Orders*, may be permitted), to the extent it deems such action necessary or appropriate (such series are referred to herein and in the proposed new text in Rules 6.25 and 24.16 as "restricted series"); provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering that underlying security.

<sup>4</sup> The senior official in the control room has authority to render other determinations elsewhere in our rules. For example, if the Hybrid Trading

Exchange also notes that any determinations rendered by the senior official would be subject to the same review procedures as determinations rendered by Trading Officials.

In connection with this rule change, the Exchange is proposing to clarify that an obvious error rule action may be initiated by a member through contacting either a Trading Official or designated personnel in the control room.<sup>5</sup> Currently the rule simply references Trading Officials, which includes several of the Exchange staff in our control room. Thus, for administrative convenience, we wish to clarify that simply contacting Trading Officials or designated personnel in the control room is sufficient to initiate action. Once either a Trading Official or a control room designee is contacted, all reviews and determinations shall continue to be rendered by the Trading Officials except that, as proposed herein, actions to nullify an opening trade in a restricted series shall be reviewed and determinations rendered by the senior official in the control room.

Lastly, the Exchange is proposing to clarify in the text of Rule 5.4 that the restrictions on opening transactions contained in the rule, as well as the related exceptions, apply to both opening purchases and opening sales in restricted series. Currently, the rule text indicates that the restrictions are applicable only to opening purchase transactions; however, it is the Exchange's intention that the restriction, and related exceptions, should also apply to opening sales. Proposed changes to the rule text make this clear.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act<sup>6</sup> and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the

System has not opened a series of a class because there is no quote present that complies with the legal width requirements or the opening price is not within an acceptable range, the senior official in the control room may authorize the opening of the affected series where necessary to ensure a fair and orderly market. See paragraph (f) of Rule 6.2B, *Hybrid Opening System ("HOSS")*.

<sup>5</sup> We note that the procedures of other markets currently allow for the initiation of an obvious error review by contacting designated personnel in their respective control rooms. See, e.g., International Securities Exchange ("ISE") Rule 720, *Obvious and Catastrophic Errors* (which provides that ISE members who believe they participated in a transaction that was an obvious error must notify designated personnel in ISE's market control center to initiate a review).

<sup>6</sup> 15 U.S.C. 78f(b)(1).

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

proposed rule change is consistent with the section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would help the Exchange more efficiently address scenarios where an opening transaction that does not satisfy the requirements of Rule 5.4 may occur inadvertently.

#### *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 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-2008-90 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-2008-90. 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 a.m. and 3 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-2008-90 and should be submitted on or before September 29, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58462; File No. SR-CBOE-2008-91]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Amending CBOE Rule 52.3**

September 4, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 27, 2008, Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, and II below, which Items have been prepared by the Exchange. 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 amend CBOE Rule 52.3 in order to clarify a circumstance under which the Exchange will commence a trading halt in Derivative Securities Products listed and trading on the Exchange.

#### **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 self-regulatory organization 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 parts of such statements.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

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