

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57293; File No. SR-CBOE-2008-12)

February 8, 2008

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

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 January 31, 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 substantially 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),³ and Rule 19b-4(f)(2) thereunder,⁴ 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 persons.

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

CBOE proposes to adopt a monthly access fee for persons granted temporary CBOE membership status pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (“Rule 3.19.02”). The text of the proposed rule change is provided below. Additions are indicated by underline, and deletions are [bracketed].

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).

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CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

FEES SCHEDULE

FEBRUARY 1, 2008 [JANUARY 1, 2008]

1. – 21. Unchanged.

22. TEMPORARY MEMBERSHIP STATUS ACCESS FEE \$7,354 [4,700] per month*

* This access fee is assessed to each person granted temporary CBOE membership status under CBOE Rule 3.19.02 [3.19.01]. The access fee is due and payable for each calendar month on the first day of that calendar month. The first month for which the access fee will be assessed is February 2008 [September 2007]. The access fee is non-refundable [except as specified below].

The access fee and any other applicable monthly fees will be assessed for a calendar month unless the person provides written notice to the Membership Department [at least five business days] prior to the start of that month that the person is relinquishing temporary membership status effective on a date prior to the start of that month. The access fee will be assessed through the integrated billing system. [The access fee will terminate when the SEC takes final action on SR-CBOE-2006-106. All access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the SEC takes such final action. The Exchange will retain such fees if the SEC approves SR-CBOE-2006-106, and such fees will be returned to the payor, with interest, if the SEC disapproves SR-CBOE-2006-106.]

Remainder of Fee Schedule: Unchanged.

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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 proposal. 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

Rule 3.19.02 became operative on January 15, 2008⁵ upon the approval by the Commission of CBOE rule filing SR-CBOE-2006-106.⁶ At that time, the temporary CBOE membership status (“Temporary Membership”) provided to certain former exerciser members of CBOE (“Temporary Members”) pursuant to Interpretation and Policy .01 under CBOE Rule 3.19

⁵ Rule 3.19.02 was adopted in CBOE rule filing SR-CBOE-2007-107. Although SR-CBOE-2007-107 became effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act, 15 U.S.C. 78s(b)(3)(A)(i), on September 10, 2007 when SR-CBOE-2007-107 was submitted to the Commission, SR-CBOE-2007-107 provided that it would not become operative unless and until the Commission approved CBOE rule filing SR-CBOE-2006-106. See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107).

⁶ In SR-CBOE-2006-106, CBOE proposed an interpretation of Article Fifth(b) of the CBOE Certificate of Incorporation (“Article Fifth(b)”) to address the impact of the then-proposed acquisition of The Board of Trade of the City of Chicago, Inc. (“CBOT”) by Chicago Mercantile Exchange Holdings Inc. (“CME/CBOT Transaction”) on the eligibility of persons who were members of CBOE (“exerciser members”) pursuant to Article Fifth(b). Under that interpretation, the consummation of the CME/CBOT Transaction on July 12, 2007 resulted in no person any longer qualifying as a member of the CBOT within the meaning of Article Fifth(b) and therefore resulted in the elimination of any person’s eligibility thereafter to become or remain an exerciser member of CBOE. The Commission approved SR-CBOE-2006-106 on January 15, 2008. See Securities Exchange Act Release No. 57159 (January 15, 2008), 73 FR 3769 (January 22, 2008) (SR-CBOE-2006-106).

(“Rule 3.19.01”) expired⁷ and Rule 3.19.02 granted continued Temporary Membership status to those persons under Rule 3.19.02.⁸

Specifically, Rule 3.19.02 provides that a Temporary Member shall continue in the Temporary Membership status previously granted under Rule 3.19.01 following the Commission’s approval of SR-CBOE-2006-106 as long as the person: (i) did not previously terminate that Temporary Membership status and remained in good standing as of the close of business on the trading day immediately before the date of approval of SR-CBOE-2006-106 (i.e., January 14, 2008); (ii) thereafter remains in good standing and continues to pay all applicable fees, dues, assessments, and other like charges that are assessed against CBOE members; and (iii) pays CBOE a monthly access fee set by CBOE, which shall be due and payable in accordance with the provisions of the CBOE Fee Schedule. Unlike the access fee under Rule 3.19.01, the proposed access fee to be charged under Rule 3.19.02 is to be paid directly to the Exchange and will not be escrowed.

In CBOE rule filing SR-CBOE-2007-107,⁹ which adopted Rule 3.19.02, the Exchange stated that it was going to submit a subsequent rule filing pursuant to Section 19(b)(3)(A)(ii) of

⁷ Rule 3.19.01 granted temporary CBOE membership status to Temporary Members from the date of the consummation of the CME/CBOT Transaction on July 12, 2007 until the Commission took final action on SR-CBOE-2006-106 on January 15, 2008. See Securities Exchange Act Release No. 56016 (July 5, 2007), 72 FR 38106 (July 12, 2007) (SR-CBOE-2007-77).

⁸ Rule 3.19.02 extended the Temporary Membership status provided to each Temporary Member under Rule 3.19.01 until the earlier of (i) the voluntary termination of that Temporary Membership status by the Temporary Member, (ii) the approval by the Commission of a further proposed rule change that provides for the termination of that status and the granting of trading permits or another form of trading access to Temporary Members, or (iii) the consummation of a transaction pursuant to which either CBOE is converted into a stock corporation or memberships in CBOE are converted into stock.

⁹ See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107).

the Act¹⁰ to specify the access fee to be charged under Rule 3.19.02. The Exchange also indicated in SR-CBOE-2007-107 that the access fee would be an amount reasonably related to the current lease market rate for transferable CBOE memberships.¹¹ The purpose of this rule filing is to specify that access fee.

For the reasons described below, the Exchange proposes to set the access fee under Rule 3.19.02 at \$7,354 per month.

CBOE clearing firms are currently involved in facilitating most transferable membership leases by assisting in bringing together CBOE lessors and CBOE trading members for whom these clearing firms provide clearing services. Most transferable membership leases currently have floating monthly rates. In most of these cases, the floating monthly rate is the rate designated by the clearing firm for the floating rate leases that the clearing firm assisted in facilitating and is based on a percentage of the average of the last three transferable membership sale amounts.¹²

In light of the foregoing, 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 membership leases and obtained the Clearing Firm Floating Monthly Rate designated by each of these clearing firms for the month of February, 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 highest of these amounts (instead of, for

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107).

¹² As used herein, the term “Clearing Firm Floating Monthly Rate” means 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.

example, an average of these amounts) because otherwise the Exchange would be undercutting the lease rates of a large number of transferable membership leases.

Because the clearing firms that facilitate at least 10% of the transferable membership leases facilitate in total over 80% of the transferable membership leases and because the proposed access fee is representative of the lease rate for a significant number of the transferable membership leases, the Exchange believes that the proposed access fee is reasonably related to the current lease market rate for transferable memberships consistent with SR-CBOE-2007-107.¹³

The first month for which the access fee will be assessed is February, 2008. Temporary Members already paid an access fee under Rule 3.19.01 for the month of January, 2008 that was held in escrow pending Commission action on SR-CBOE-2006-106 and was then retained by the Exchange upon the approval of SR-CBOE-2006-106 in accordance with the provisions of Rule 3.19.01. Because this access fee for the month of January, 2008 under Rule 3.19.01 is non-refundable, the Exchange is commencing assessment of the proposed access fee under Rule

¹³ As reflected in SR-CBOE-2007-107, the Exchange believes that the proposed access fee for Temporary Members under Rule 3.19.02 constitutes an equitable allocation of reasonable dues, fees, and other charges among persons using its facilities. The proposed fee is equivalent to the lease rate paid by a large percentage of lessees of transferable CBOE memberships. Accordingly, the proposed access fee eliminates the previous disparity that existed under Rule 3.19.01 between the access fee charged by the Exchange to Temporary Members (which was based upon a lease rate paid on CBOT by lessees of what CBOT denominates as a full CBOT membership) and the lease rates paid on CBOE by lessees of transferable memberships (which generally were significantly higher than the previous Temporary Member access fee). Because Temporary Members' access to the Exchange is terminable only under limited circumstances, while the Exchange access of lessees of transferable memberships is terminable by lessors, the Exchange believes that it would be equitable to assess Temporary Members an access fee higher than the current lease market rate for transferable memberships. However, at the present time, the Exchange is only seeking to eliminate the current disparity, as the Exchange committed to do in SR-CBOE-2007-107. See Email from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated February 8, 2008 (adding the preceding text to footnote 13).

3.19.02 starting with the month of February, 2008 in the interest of fairness so that Temporary Members are not charged two access fees for the same month.

The proposed access fee will remain in effect until such time that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁴ to modify the access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange will retain the flexibility to 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.

With two exceptions, the provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee under Rule 3.19.02 are the same as the provisions related to the assessment of the access fee under Rule 3.19.01. Thus, like with the access fee under Rule 3.19.01: (i) the proposed access fee under Rule 3.19.02 will be due and payable each calendar month on the first day of the calendar month; (ii) the proposed access fee will be non-refundable; and (iii) the proposed access fee will be assessed through the integrated billing system.

The two differences between the provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee under Rule 3.19.02 and the provisions related to the assessment of the access fee under Rule 3.19.01 are: (i) the provisions related to the escrowing of the access fees that were collected under Rule 3.19.01 have been removed and (ii) the proposed access fee and any other applicable monthly fees will now be assessed for a calendar month unless the Temporary Member provides written notice to the Membership Department prior to the start of that month (instead of five business days prior to the start of that month as was previously the case) that the Temporary Member is relinquishing Temporary Membership

¹⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

status effective on a date prior to the start of that month. With respect to the second change, the Exchange has found in this context that it presently does not need the additional lead time to process these relinquishments of Temporary Membership status.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁶ 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 Act¹⁷ and subparagraph (f)(2) of Rule 19b-4¹⁸ 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.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-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 Number SR-CBOE-2008-12 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-2008-12. 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 am and 3:00 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-2008-12 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Florence E. Harmon
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).