

Committee may devise alternative cost-allocation methodology with respect to special non-initial development projects.

#### VI. Confidentiality

The Processor will maintain in the strictest confidence all of the information it receives from the parties. The only information the Processor will make available to the parties is the Database. The Processor will not make the Database available to any person other than the parties or the Commission, except to the extent required by applicable law.

#### VII. Term of Plan Withdrawal; Non-Transferability of Rights Under the Plan

The Plan shall remain in effect so long as there are two or more parties to the Plan. Any party may withdraw from the Plan at any time on not less than six months prior written notice to each of the other parties. Any party withdrawing from the Plan shall remain liable for its proportionate share of costs and expenses allocated to it pursuant to Section V above for the period during which it was a party, but it shall have no further obligations under the Plan or to any of the other parties with respect to the period following the effectiveness of its withdrawal. The right of a party to participate in the Symbol Reservation System under the Plan shall not be transferable without the consent of the other parties, provided, however, that if a party is subject to a merger, combination or other reorganization or the sale of all or substantially all of its assets, including its registration as an SRO, the surviving or acquiring entity shall automatically become subject to the Plan and may use the Symbol Reservation System instead of the prior party and with its rights and subject to its liabilities under the Plan.

#### VIII. Amendments to the Plan

The Plan may be amended from time to time when authorized by the affirmative vote of all of the parties subject to any required approval of the Commission.

#### IX. Applicability of Exchange Act

The rights and obligations of the parties to the Plan shall at all times be subject to any applicable provisions of the Exchange Act and any rules and regulations promulgated hereunder.

#### X. Notices

Any notice given to any of the parties or to ISRA for purposes of the Plan shall be via electronic mail. All notices shall be deemed given immediately, unless the sender receives notification of a failure to deliver the electronic mail. Alternatively, a party may give notice in writing, and shall be deemed given 48 hours after being sent if sent by prepaid registered or certified United States mail, return receipt requested (if available), or by overnight mail with a nationally recognized overnight mail courier, addressed to the party at its address indicated below in the case of notice to one or more parties, or addressed to all of the parties at their addresses listed in Section I above.

#### XI. Counterparts and Signatures

The Plan may be executed in any number of counterparts, no one of which need

contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Plan has been executed as of the \_\_\_ day of \_\_\_ by each of the parties hereto.

CHICAGO STOCK EXCHANGE, INC.

By: \_\_\_\_\_  
FINANCIAL INDUSTRY REGULATORY  
AUTHORITY, INC.

By: \_\_\_\_\_  
THE NASDAQ STOCK MARKET, LLC

By: \_\_\_\_\_  
NATIONAL STOCK EXCHANGE, INC.

By: \_\_\_\_\_  
PHILADELPHIA STOCK EXCHANGE, INC.

By: \_\_\_\_\_  
[FR Doc. E8-26880 Filed 11-12-08; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58902; File No. SR-CBOE-2008-112]

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

November 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 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 by the CBOE. 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 (1) 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") and (2) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. 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.

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

#### 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. The 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>2</sup> and the current access fee for ITP holders under Rule 3.27<sup>3</sup> are both \$10,118 per month. Both access fees are currently set at the indicative lease rate (as defined below) for October 2008. The Exchange proposes to adjust both access fees effective at the beginning of November 2008 to be equal to the indicative lease rate for November 2008 (which is \$9,937). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$9,937 per month commencing on November 1, 2008.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate<sup>4</sup> of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.<sup>5</sup> The Exchange determined the indicative lease rate for November 2008 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member

<sup>2</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>3</sup> See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR-CBOE-2008-40) for a description of the Interim Trading Permits under Rule 3.27.

<sup>4</sup> Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

<sup>5</sup> The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of November 2008 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of October 2008 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of November 2008.

The Exchange believes that the process used to set the proposed 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>6</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>7</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>8</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.

<sup>6</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>7</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>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

## 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.

## 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-2008-112 on the subject line.

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

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

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

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

## 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-2008-112. 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-2008-112 and should be submitted on or before December 4, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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