

were influenced by the investment by the Fund of Funds in the Unaffiliated Management Company. The Board of the Unaffiliated Management Company will consider, among other things: (a) Whether or not the purchases were consistent with the investment objectives and policies of the Unaffiliated Management Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether or not the amount of securities purchased by the Unaffiliated Management Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Management Company will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

7. Each Unaffiliated Management Company will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Management Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth the: (a) Party from whom the securities were acquired; (b) identity of the underwriting syndicate's members; (c) terms of the purchase; and (d) information or materials upon which the determinations of the Board of the Unaffiliated Management Company were made.

8. Prior to its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Fund will execute a Participation Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities

under the order. At the time of its investment in shares of an Unaffiliated Management Company in excess of the limit set forth in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Management Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Management Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Management Company of any changes to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Management Company and the Fund of Funds will maintain and preserve a copy of the order, the Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under the advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the appropriate Fund of Funds.

10. Each Manager will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Fund pursuant to rule 12b-1 under the Act) received from an Unaffiliated Fund by the Manager, or an affiliated person of the Manager, other than any advisory fees paid to the Manager or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Sub-Adviser, or an affiliated person of the Sub-Adviser, from an Unaffiliated Fund, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Unaffiliated Fund, in connection with the investment by the Fund of Funds in the Unaffiliated Underlying Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Fund of Funds.

11. With respect to Registered Separate Accounts that invest in a Fund of Funds, no sales load will be charged at the Fund of Funds level or at the Underlying Fund level. Other sales charges and service fees, as defined in NASD Conduct Rule 2830, if any, will only be charged at the Fund of Funds level or at the Underlying Fund level, not both. With respect to other investments in a Fund of Funds, any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to funds of funds set forth in NASD Conduct Rule 2830.

12. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to: (i) Acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59690; File No. SR-CBOE-2009-019]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cancellation Fees

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

“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 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

CBOE proposes to amend its Fees Schedule regarding its cancellation fee. 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.

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 Exchange currently charges an executing clearing member \$1.50 for each cancelled public customer Order Routing System (“ORS”) order in excess of the number of public customer orders that the executing clearing member executes in a month for itself or for a correspondent firm. The purpose of the fee is to ease order backlogs on ORS and related systems and help the Exchange recoup its increased costs in processing increased order flow traffic. The fee is not charged if less than 500 public customer orders are cancelled in a month by the executing clearing member for itself or for a correspondent firm. The Exchange aggregates and counts as one executed order for purposes of the fee all public customer options orders from the same executing clearing member for itself or for a correspondent firm that are executed in the same series on the same side of the market at the same price within a 30 second period. The following ORS order activity is exempt from the fee: (i)

Cancelled ORS orders that improve the Exchange’s prevailing bid-offer (BBO) market when received; (ii) fill and cancellation activity occurring within the first one minute of trading following the opening of each options class; (iii) complex order fills and cancels; (iv) unfilled Fill-or-Kill (“FOK”) orders; (v) unfilled Immediate-or-Cancel (“IOC”) orders, and (vi) fill and cancellation activity in Mini-SPX Index Options (XSP).

The level of canceled orders continues to remain quite high. Some customers are seeking to avoid the fee by executing large quantities of small orders in out-of-the-money options to offset their cancellation activity in more actively traded options.

The Exchange proposes the following changes to the fee to help ease system congestion resulting from such activity. First, the Exchange proposes to amend the manner by which it calculates the fee by aggregating together and counting as one cancelled order orders that are executed at the same price in the same underlying symbol, instead of aggregating orders that are executed at the same price in the same series on the same side of the market. The Exchange believes this change should prevent customers from breaking up their orders into a range of options series in the same underlying symbol that trade at the same premium in order to avoid the fee.

Second, the Exchange proposes to extend the current 30 second aggregation interval to 300 seconds. The Exchange believes that extending the aggregation interval to 300 seconds should result in a reduction in the number of orders that are sent to create offsetting trades.

Third, the Exchange proposes to increase the fee from \$1.50 to \$2.00 per cancelled order. The proposed cancellation fee is similar to the cancellation fee of the International Securities Exchange.³

In addition, the Exchange proposes to eliminate the exemption for fill and cancellation activity in XSP options. The Exchange had exempted activity in XSP options from the fee for an indefinite time period in conjunction with a marketing “re-launch” of the XSP product.⁴ The Exchange has reevaluated the exemption and determined to

reapply the fee to activity in XSP options.

Finally, the Exchange proposes to change the name of the fee from “ORS (Order Routing System) Cancellation Fee” to “OHS (Order Handling System) Cancellation Fee”, to reflect the fact that the ORS functionality has been replaced by new OHS functionality built on the CBOEdirect platform.

The proposed fee changes will be operative on April 1, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(4)⁶ 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. In particular, the Exchange believes the proposed fee change is justified to address the current level of cancellation activity and its effect on system congestion and Exchange systems costs.

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.

Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Because the foregoing proposed 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 Act⁷ and Rule 19b-4(f)(2)⁸ thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed 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.

³ See Securities Exchange Act Release Nos. 58692 (September 30, 2008), 73 FR 59006 (October 8, 2008); 58898 (November 4, 2008), 73 FR 67238 (November 13, 2008); and 59072 (December 10, 2008), 73 FR 76689 (December 17, 2008).

⁴ See Securities Exchange Act Release No. 56937 (December 10, 2007), 72 FR 71465 (December 17, 2007).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 19b-4(f)(2).

III. 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-2009-019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2009-019. 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 CBOE. 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-2009-019 and should be submitted on or before April 30, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-7998 Filed 4-8-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59694; File No. SR-CBOE-2009-023]

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

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 31, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 (i) 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 (ii) 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.

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 3.19.02² and the current access fee for ITP holders under Rule 3.27³ are both \$9,809 per month. Both access fees are currently set at the indicative lease rate (as defined below) for March 2009. The Exchange proposes to adjust both access fees effective at the beginning of April 2009 to be equal to the indicative lease rate for April 2009 (which is \$8,817). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$8,817 per month commencing on April 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate⁴ of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.⁵ The Exchange determined the indicative lease rate for April 2009 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 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 April 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of March 2009 as was used to set the current access fees) in order to take into account changes in clearing firm

² 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.

³ 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.

⁴ 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.

⁵ 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.

⁹ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).