

rule change operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of such 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. Please include File Number SR-CBOE-2008-76 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-2008-76. 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

¹⁴ Rule 19b-4(f)(6)(iii) requires the Exchange to provide the Commission with written notice of its intention to file the proposed rule change along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Commission has determined to waive the five business day period in this case.

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 Number SR-CBOE-2008-76 and should be submitted on or before August 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58200; File No. SR-CBOE-2008-77]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Interim Trading Permit Access Fee

July 21, 2008.

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 July 18, 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. 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 parties.

¹⁵ 17 CFR 200.30-3(a)(12).

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).

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 Interim Trading Permit holders. 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

CBOE Rule 3.27(f)(ii) provides that Interim Trading Permit holders shall pay to the Exchange a monthly access fee set by the Exchange and that the access fee shall be implemented through the submission of a proposed rule change to the Commission under section 19(b)(3)(A) of the Act.⁵ The purpose of this rule filing is to propose that the access fee for Interim Trading Permit holders be set at \$12,387 per month.

The amount of the proposed access fee is equal to the current indicative lease rate. Under Rule 3.27(b), the "indicative lease rate" is the highest clearing firm floating monthly rate⁶ of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases. The Exchange determined the current indicative lease rate by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for the month of July 2008.

The Exchange believes that the proposed access fee constitutes an equitable allocation of reasonable dues,

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ Rule 3.27(b) defines the term "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.

fees, and other charges among persons using its facilities because it is equivalent to the current lease rate paid by a large percentage of lessees of CBOE transferable memberships and is equivalent to the current access fee assessed by the Exchange to persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19.⁷ Additionally, by setting the proposed access fee at the indicative lease rate, the Exchange is utilizing a benchmark that is used for other purposes under various provisions of Rule 3.27. For example, the Exchange may issue Interim Trading Permits under Rule 3.27(b) only if, among other things, the Exchange determines that there are insufficient transferable memberships available for lease at that time at a rate reasonably related to the indicative lease rate. In addition, Rule 3.27(d) provides that, under specified circumstances, the Exchange will make a payment to lessors of CBOE transferable memberships that notify the Exchange that their memberships remain unleased while Interim Trading Permits are outstanding, and the amount of that payment is the indicative lease rate (assuming the number of Interim Trading Permits exceeds the number of these open leases). Setting the proposed access fee equal to the indicative lease rate therefore is consistent with these other provisions.⁸

The Exchange may, and likely will, further adjust the proposed access fee in the future through the submission of a further rule filing pursuant to section 19(b)(3)(A)(ii) of the Act⁹ if the Exchange determines that it would be appropriate to do so, such as to take into

⁷ See Securities Exchange Act Release No. 58073 (July 1, 2008), 73 FR 39357 (July 9, 2008) (SR-CBOE-2008-71), which set the current access fee for Temporary Members at \$12,387 per month.

⁸ Because Interim Trading Permit holders possess a feature that does not exist in the typical lease arrangement for a CBOE transferable membership, the Exchange also believes that it would be equitable to assess Interim Trading Permit holders an access fee that is higher than the indicative lease rate if the Exchange chose to do so in the future through the submission of a subsequent proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act, 15 U.S.C. 78s(b)(3)(A)(ii). Under Rule 3.27(c), an Interim Trading Permit can be terminated only (1) if the holder terminates the Interim Trading Permit, (2) as a result of regulatory action against the holder, (3) in the event of a demutualization, or (4) through a rule change approved by the Commission. On the other hand, the typical lease arrangement for a transferable membership can be terminated by the lessor upon a month's notice to the lessee. As a result, Interim Trading Permit holders enjoy more certainty than lessees with respect to their trading access to the Exchange and the Exchange could determine to assess them a higher access fee to reflect that certainty.

⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

consideration changes in the indicative lease rate.

Rule 3.27(f)(ii) provides that the access fee for Interim Trading Permit holders shall be due and payable in accordance with the provisions of the Exchange Fee Schedule and shall be the same for all Interim Trading Permit holders.

The Exchange proposes to include in the Exchange Fee Schedule the following procedural provisions related to the assessment of the proposed access fee. The proposed access fee will be assessed to each Interim Trading Permit holder for each Interim Trading Permit issued to the holder. Consistent with Rule 3.27(c), the proposed access fee and any other applicable monthly fees will be assessed for each calendar month unless an Interim Trading Permit holder provides written notice to the CBOE Membership Department on or before the fifteenth day of the preceding calendar month that the holder is terminating the Interim Trading Permit effective no later than the last day of that preceding calendar month.¹⁰ The proposed access fee will be due and payable for each calendar month on the first day of that calendar month. If an Interim Trading Permit is issued during a calendar month after the first day of the month, the proposed access fee for that calendar month will be prorated and will be assessed as of the date of the issuance of the Interim Trading Permit. The proposed access fee will be non-refundable and will be assessed through the integrated billing system.

2. Statutory Basis

For the reasons described above, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹² 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.

¹⁰ For example, an Interim Trading Permit holder that did not wish to be assessed the proposed access fee and any other applicable monthly fees for the month of September 2008 would need to provide notice to the Membership Department on or before August 15, 2008 that the holder was terminating the Interim Trading Permit effective no later than August 31, 2008.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(4).

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 Act¹³ and subparagraph (f)(2) of Rule 19b-4¹⁴ 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. Please include File Number SR-CBOE-2008-77 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-2008-77. 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

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(2).

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-2008-77 and should be submitted on or before August 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58204; File No. SR-CBOE-2008-64]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Amending CBOE Rules 5.3 and 5.4 To Enable the Listing and Trading of Options on Index-Linked Securities

July 22, 2008.

On June 19, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder to amend CBOE Rules 5.3 and 5.4 to list and trade options on equity index-linked securities, commodity-linked securities, currency-linked securities, fixed income index-linked securities, futures-linked securities, and multifactor index-linked securities (collectively referred to as "Index-Linked Securities") that are principally traded on a national securities exchange

and an "NMS stock" as defined in Rule 600 of Regulation NMS.³ The proposed rule change was published for comment in the **Federal Register** on July 1, 2008 for a 15-day comment period.⁴ On July 1, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.⁵ The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified.

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing. Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one year but not greater than thirty years. Despite the fact that Index-Linked Securities are linked to at least one underlying index or asset ("Reference Asset"), each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options would apply to options on Index-Linked Securities.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁶ and, in particular, the requirements of Section 6 of the Act.⁷ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁹ for approving the proposed rule change, as modified, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes this proposed rule change, as modified, is

³ See 17 CFR 242.600(b)(47).

⁴ See Securities Exchange Act Release No. 58007 (June 23, 2008), 73 FR 37516.

⁵ Amendment No. 1 corrects a minor typographical omission. Because the amendment is technical in nature, the Commission is not publishing it for comment.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

substantively identical to that of NYSE Arca, Inc., which was published for a 21-day comment period and generated no comments.¹⁰ Therefore, the Commission does not believe that this proposal raises any new regulatory issues different from that of the NYSE Arca, Inc. proposal.

Listing and Trading of Options on Index-Linked Securities

As set out more fully in the Exchange's notice of its proposal, CBOE's proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Index-Linked Securities, and trading halts. Index-Linked Securities must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.¹¹

The Commission notes that, pursuant to the proposed Interpretation and Policy .13(3) to CBOE Rule 5.3 and Interpretation and Policy .16 to CBOR Rule 5.4, Index-Linked Securities will be subject to the initial and continuing eligibility standards for underlying securities provided in CBOE Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, an Index-Linked Security must either meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 to CBOE Rule 5.3, or alternately, the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable underlying Reference Asset, and the issuing company must be obligated to issue or repurchase the securities in aggregation units for cash or cash equivalents satisfactory to the issuer of Index-Linked Securities which underlie the option as described in the Index-Linked Securities prospectus.

To continue to be options eligible, the Index-Linked Security must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Index-Linked Securities where the Index-Linked security does not satisfy the requirements set out in proposed Interpretation and Policy .16 to CBOE Rule 5.4. These include: (1) Continued compliance with Interpretation and Policy .13 to CBOE Rule 5.3; (2)

¹⁰ See Securities Exchange Act Release No. 57950 (June 11, 2008), 73 FR 34815 (June 18, 2008) (SR-NYSEArca-2008-57).

¹¹ 17 CFR 242.600(b)(47).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.