

and the rights of the Contract owners in connection with the Substitutions, and (iii) within five (5) days after the Substitutions occur, a notice informing Contract owners affected by the Substitutions that the Substitutions were carried out and restating the information set forth in the Pre-Substitution Notice.

3. The Companies shall have satisfied themselves that (i) the Contracts allow the substitution of the Portfolios in the manner contemplated by the Substitutions and related transactions described herein, (ii) the transactions can be consummated as described in the application under applicable insurance laws, and (iii) any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

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

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59052; File No. SR-CBOE-2008-119]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating to Appointment Costs

December 4, 2008.

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 November 25, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 rules relating to appointment costs in connection with CBOE's decision to trade OEX on the Hybrid Trading System. 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, 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 those 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.

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

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3 relating to the appointment costs for the OEX and XEO option classes, in connection with CBOE's decision to trade OEX on the Hybrid Trading System, and not on the Hybrid 3.0 Platform. Specifically, CBOE proposes to lower the appointment cost of OEX from .75 to .40, and lower the appointment cost of XEO from .25 to .10. The changes to the appointment costs would be effective December 9, 2008, which coincides with the date CBOE intends to trade OEX on the Hybrid Trading System. OEX would be placed in the AA Tier, which tier holds all option classes which have a fixed appointment cost. The tables in paragraphs (c)(i) and (c)(iii) of Rule 8.3 would be amended to reflect these proposed changes.

CBOE believes that amending the appointment costs of OEX and XEO as proposed promotes competition and efficiency, as members then could utilize the excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act's⁵ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, in that lowering the appointment cost of OEX and XEO promotes competition and efficiency, as members then could utilize the excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

CBOE has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request and believes that such waiver is consistent with the protection of investors and the public interest. Allowing CBOE to lower the appointment cost of OEX and XEO does not raise any novel or significant regulatory issues and should promote competition and efficiency by allowing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). The Commission notes that CBOE has satisfied the five-day pre-filing notice requirement.

members to use their excess membership capacity to hold an appointment and quote electronically in additional Hybrid option classes. Therefore, the Commission designates the proposed rule change as operative upon filing.⁸

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-2008-119 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-2008-119. 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 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-2008-119 and should be submitted on or before January 2, 2009.

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

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59046; File No. SR-OCC-2007-16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Late Exercises

December 3, 2008.

I. Introduction

On December 7, 2007, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² to amend OCC's rules relating to the submission of late items and the fees associated with filing exercise notices after the start of critical processing. The proposed rule change was published for comment in the **Federal Register** on April 7, 2008.³ No comment letters were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The rule filing will amend OCC's (1) Rule 801 to modify the fee applied to exercise notices that are accepted by OCC after the start of critical processing, (2) Rule 805 to make conforming changes to the filing fees applied to the submission of supplementary exercise notices tendered after critical

processing, and (3) Rule 205 to clarify the unusual or unforeseen circumstances when OCC may extend the cut-off time for submitting instructions to OCC.

Rule 801 addresses the exercise of options other than at expiration. Subject to specified exceptions and conditions, Rule 801(d) grants certain individuals⁴ the discretion to permit a clearing member to file, revoke, or modify any exercise notice after the prescribed deadline for the purpose of correcting a bona fide error. However, the requesting clearing member is liable to OCC for a late filing fee in escalating increments and time segments. Prior to this rule change, these fees were:

(i) A fee of \$5,000 for any request accepted between the prescribed deadline and the start of critical processing (provided that the request did not materially affect such start time)⁵ and

(ii) a filing fee of \$20,000 per line item listed on any exercise notice accepted for filing after the start of critical processing, with 50% of the fee to be distributed to the assigned clearing member or on a pro rata basis if more than one clearing member is assigned.⁶

Clearing members with short positions that had been assigned a late exercise were to receive notification thereof by 8 a.m. CT.

Under this rule change, OCC will eliminate the \$5,000 filing fee for late exercise requests filed prior to the start of critical processing but will raise the filing fee for late exercise requests submitted after the start of critical processing from \$20,000 to \$75,000 per line item. For consistency, OCC also will modify the fees applicable to the submission of supplementary exercise notices at expiration as set forth in Rule 805.⁷ Accordingly, OCC will amend Rule 805's filing fees to conform them to the changes being made in Rule 801.

By increasing the cost of filing late exercise requests after the start of critical processing, OCC intends to provide an incentive for firms to improve back office processing as well as to provide greater compensation to clearing members receiving "late assignments" while at the same time

⁴ Those individuals are OCC's Chairman, Management Vice Chairman, President, or a designee of such officer.

⁵ The current deadline for submitting exercise notices is 7 p.m. CT.

⁶ OCC will accept exercises until as late as 6:30 a.m. However, OCC will not accept a request to revoke or modify an exercise after the start of critical processing.

⁷ It has been at least five years since a supplementary exercise notice has been submitted for processing.

⁸ For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 57584 (Mar. 31, 2008), 73 FR 18844.