

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number 4-533 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 4-533. 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, 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 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 4-533 and should be submitted on or before January 28, 2009.

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

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E9-11 Filed 1-6-09; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59182; File No. SR-CBOE-2008-130]

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

December 30, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 24, 2008, 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 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 relating to the Options Regulatory 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

###### (a) Purpose

The Exchange recently filed a proposed rule change with the Commission to eliminate Registered Representative Fees and establish a

transaction-based "Options Regulatory Fee" ("ORF").<sup>3</sup> Effective January 1, 2009, the Exchange would assess \$.0045 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (*i.e.*, that clear in a customer account at OCC), excluding Options Intermarket Linkage Plan ("Linkage") orders. The ORF would be imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF would be collected indirectly from members through their clearing firms by OCC on behalf of the Exchange.

The Exchange proposes to waive the fee until February 1, 2009. The purpose for the fee waiver is to allow additional time for the Exchange and OCC to implement the procedures to be used by OCC to bill and collect the ORF.

###### (b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>4</sup> [sic], in general, and furthers the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes it is appropriate to waive the ORF pending the implementation of the billing and collection procedures for the ORF.

##### 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.

<sup>3</sup> See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008). The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities.

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

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</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-2008-130 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-2008-130. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-130 and should be submitted on or before January 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Acting Secretary.*

[FR Doc. E9-7 Filed 1-6-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59189; File No. SR-FINRA-2007-021]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Amendments to the Code of Arbitration Procedure for Customer Disputes and the Code of Arbitration Procedure for Industry Disputes To Address Motions To Dismiss and To Amend the Eligibility Rule Related to Dismissals

December 31, 2008.

#### I. Introduction

The Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on November 2, 2007, and amended on February 13, 2008 (Amendment No. 1), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to amendments to the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and the Code of Arbitration Procedure for Industry Disputes ("Industry Code," and together with the Customer Code, the "Codes") to address motions to dismiss and to amend the eligibility rule related to dismissals. The proposed rule change was published for comment in the **Federal Register** on March 20,

2008.<sup>3</sup> The Commission received 119 comments in response to the proposed rule change.<sup>4</sup> This order approves the

<sup>3</sup> See Securities Exchange Act Release No. 57497 (March 14, 2008), 73 FR 15019 (March 20, 2008) (SR-FINRA-2007-021) (notice).

<sup>4</sup> See Joseph C. Korsak, Esq., dated November 4, 2007 ("Korsak Letter"); Will Struyk, dated December 10, 2007 ("Struyk Letter"); Michael Thurman, Esq., Loeb & Loeb LLP, dated February 29, 2008 ("Thurman Letter"); Prof. Seth E. Lipner, Esq., Baruch College dated March 18, 2008 ("Lipner Letter"); Leonard Steiner, Esq., dated March 18, 2008 ("Steiner Letter"); Laurence S. Schultz, Esq., Public Investors Arbitration Bar Association, dated March 18, 2008 ("PIABA Letter"); Steven J. Gard, Esq., Gard Law Firm, dated March 20, 2008 ("Gard Letter"); Steven B. Caruso, Esq., Maddox Hargett Caruso, P.C., dated March 20, 2008 ("Caruso Letter"); Phillip M. Aidikoff, Esq., dated March 21, 2008 ("Aidikoff Letter"); Charles W. Austin, Jr., Esq., dated March 21, 2008 ("Austin Letter"); Gail E. Boliver, dated March 22, 2008 ("Boliver Letter"); Steve A. Buchwalter, Esq., dated March 23, 2008 ("Buchwalter Letter"); Ryan K. Bakhtiari, Esq., Uhl and Bakhtiari, dated March 24, 2008 ("Bakhtiari Letter"); Mark E. Maddox, Esq., Maddox Hargett Caruso, P.C., dated March 24, 2008 ("Maddox Letter"); Robert W. Goehring, Esq., dated March 24, 2008 ("Goehring Letter"); John J. Miller, Esq., Swanson Midgley, LLC, dated March 24, 2008 ("Miller Letter"); Richard A. Lewins, dated March 24, 2008 ("Lewins Letter"); Howard Rosenfield, Esq., dated March 24, 2008 ("Rosenfield Letter"); Sam Edwards, Esq., dated March 24, 2008 ("Edwards Letter"); Noah H. Simpson, Esq., Simpson Woolley, LLP, dated March 24, 2008 ("Simpson Letter"); Robert A. Uhl, Esq., March 25, 2008 ("Uhl Letter"); David Harrison, Esq., dated March 26, 2008 ("Harrison Letter"); Jeffrey Sonn, Esq., Sonn Erez, PLC, dated March 26, 2008 ("Sonn Letter"); Brian N. Smiley, Esq., Smiley Bishop Porter LLP, dated March 26, 2008 ("Smiley Letter"); Thomas A. Hargett, Esq., dated March 27, 2008, ("Hargett Letter"); Jay Salamon, Esq., Hermann, Cahn and Schneider LLP, dated March 27, 2008 ("Salamon Letter"); J. Pat Sadler, Esq., dated March 31, 2008 ("Sadler Letter"); Keith L. Griffin, Esq., Maddox Hargett Caruso, P.C., dated April 1, 2008 ("Griffin Letter"); Scott R. Shewan, Esq., Born, Pape & Shewan LLP, dated April 1, 2008 ("Shewan Letter"); Alan S. Brodherson, Esq., dated April 3, 2008 ("Brodherson Letter"); W. Scott Greco, Esq., Greco & Greco, P.C., dated April 3, 2008 ("Greco Letter"); David P. Neuman, Esq., Stoltmann Law Offices, P.C., dated April 4, 2008 ("Neuman Letter"); Edward G. Turan and Martha E. Solinger, Securities Industry and Financial Markets Association, dated April 7, 2008 ("SIFMA Letter"); Curt H. Mueller, Esq., Schwab & Co., Inc., dated April 7, 2008 ("Schwab Letter"); Erin Linehan, Esq., Raymond James Financial, Inc., dated April 8, 2008 ("Raymond James Letter"); Barry D. Estell, Esq., dated April 8, 2008 ("Estell Letter"); Robert C. Port, Esq., dated April 8, 2008 ("Port Letter"); Jonathan W. Evans, Esq., dated April 8, 2008 ("Evans Letter"); Kevin A. Carreno, dated April 8, 2008 ("Carreno Letter"); Vincent J. Imbesi, Esq., The Avelino Law Firm, dated April 9, 2008 ("Imbesi Letter"); John E. Lawlor, Esq., dated April 9, 2008 ("Lawlor Letter"); Jonathan Schwartz, Esq., dated April 9, 2008 ("Schwartz Letter"); Andrew Dale Ledbetter, dated April 9, 2008 ("Ledbetter Letter"); Theodore A. Krebsbach, Esq., Krebsbach & Snyder, dated April 9, 2008 ("Krebsbach Letter"); Raymond W. Henney, Esq., Honigman Miller Schwartz and Cohn LLP, dated April 9, 2008 ("Henney Letter"); Randall R. Heiner, Esq., dated April 9, 2008 ("Heiner Letter"); Inge Selden III, Esq., Maynard Cooper & Gale PC, dated April 9, 2008 ("Selden Letter"); Eric G. Wallis, Esq., Reed Smith LLP, dated April 9, 2008 ("Wallis Letter"); Robert H. Rex, Esq.,

Continued

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

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.