

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55193; File No. SR-CBOE-2006-111)

January 30, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Exchange Fees for Fiscal Year 2007

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 22, 2006, 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 substantially prepared by the CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 the CBOE Fees Schedule (“Fees Schedule”) to make various changes for fiscal year 2007. The text of the proposed rule change is available at the CBOE, on the Exchange’s Web site at <http://www.cboe.com>, and in the Commission’s Public Reference Room.

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

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

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

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

<sup>5</sup> The Exchange has proposed that the changes to the Fees Schedule take effect on January 1, 2007.

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 Exchange 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 Exchange 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 purpose of this proposed rule change is to amend the Fees Schedule to make various fee changes. The proposed changes are the product of the Exchange's annual budget review.

The Exchange proposes to amend the fees as noted below.

a. Options Transaction Fees

The Exchange proposes to revise per contract transaction fees in order to remain competitive and to streamline its Fees Schedule.

Equity Options: The Exchange proposes to charge all CBOE liquidity providers (CBOE market-maker, Designated Primary Market-Maker ("DPM"), Electronic Designated Primary Market-Maker ("e-DPM"), Lead Market-Maker ("LMM") and Remote Market-Maker ("RMM")) (collectively, "Liquidity Providers") a \$.20 per contract transaction fee.<sup>6</sup> Currently, market-makers (including LMMs) are charged \$.22 per contract; DPMs are charged \$.16 per contract; e-DPMs are charged \$.25 per contract; and RMMs are charged \$.26 per contract.

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<sup>6</sup> The \$.20 per contract transaction fee is the standard Liquidity Provider transaction fee and will be eligible for reduction pursuant to the "Liquidity Provider Sliding Scale," described in Section II.A.1.b. below.

Member firm proprietary transaction fees are currently \$.20 per contract for facilitation of customer orders and \$.24 per contract for non-facilitation orders. The Exchange proposes to charge a flat fee of \$.20 per contract for all member firm proprietary transactions. The public customer transaction fee would remain at \$.00, but public customer transactions would be subject to the proposed Customer Complex Order Fee.<sup>7</sup> Broker-dealer and non-member market-maker transaction fees would be unchanged (at \$.25 per contract and \$.26 per contract, respectively).

The Exchange proposes to increase the Options Intermarket Linkage ("Linkage") transaction fee from \$.24 per contract to \$.26 per contract. This fee would match the Linkage transaction fee of at least one other options exchange.<sup>8</sup>

Index Options: The Exchange also proposes to charge index options<sup>9</sup> Liquidity Providers a \$.20 per contract transaction fee. Currently, those rates range from \$.15 per contract to \$.26 per contract. The member firm proprietary transaction fee (both facilitation and non-facilitation orders) is proposed to be \$.20 per contract.

Public customer fees for transactions in index, ETF, and HOLDRs options currently range from \$.15 per contract to \$.45 per contract. The Exchange proposes to charge public customers \$.18 per contract, with the following exceptions. The Exchange proposes to charge customers a flat \$.30 per contract for transactions in options on the S&P 100 Index ("OEX" and "XEO") instead of the current rates of \$.35 and \$.20 per contract rates depending on the premium. The Exchange proposes to charge customers for transactions in options on the S&P 500 Index ("SPX") \$.44 per

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<sup>7</sup> See infra Section II.A.1.e.

<sup>8</sup> See Securities Exchange Act Release No. 54430 (September 12, 2006), 71 FR 55257 (September 21, 2006) (SR-NYSEArca-2006-20).

<sup>9</sup> The index options transaction fee schedule includes transaction fees for options on exchange-traded funds ("ETFs") except QQQQ and SPDR options, and options on Holding Company Depositary Receipts ("HOLDRs").

contract if the premium is greater than or equal to \$1 and \$.27 per contract if the premium is less than \$1, instead of the current \$.45 and \$.25 per contract rates depending on the premium. The Exchange proposes to charge customers a flat \$.40 per contract for transactions in options on the Jumbo Dow Jones Industrial Average (“DXL”), Morgan Stanley Retail Index (“MVR”) and CBOE Volatility Index (“VIX”) instead of the current \$.45 and \$.25 per contract rates depending on the premium.

Broker-dealer transaction fees in index, ETF, and HOLDRs options currently range from \$.25 per contract to \$.45 per contract. The Exchange proposes to charge broker-dealers a flat \$.25 per contract, except for OEX, XEO, and SPX options. OEX and XEO options broker-dealer fees are proposed to be \$.30 per contract, and SPX options broker-dealer fees are proposed to be \$.40 per contract. Non-member market-maker transaction fees in index, ETF, and HOLDRs options currently range from \$.17 per contract to \$.47 per contract. The Exchange proposes to charge non-member market-makers a flat \$.26 per contract, except for OEX, XEO, and SPX options, which are proposed to be \$.30 per contract for OEX and XEO and \$.40 per contract for SPX.

Linkage transaction fees in index, ETF, and HOLDRs options currently range from \$.20 per contract to \$.45 per contract. The Exchange proposes to charge a flat \$.26 per contract fee for Linkage transactions.<sup>10</sup>

QQQQ and SPDR Options: The Exchange proposes to increase the customer transaction fee in S&P 500 Depositary Receipts (“SPDR”) options from \$.15 per contract to \$.18 per contract. The public customer transaction fee for QQQQ options would remain at \$0.00, but public customer transactions would be subject to the proposed Customer Complex Order Fee.<sup>11</sup> All other proposed

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<sup>10</sup> See supra note 8.

<sup>11</sup> See infra Section II.A.1.e.

changes to the QQQQ and SPDR options transaction fees mirror the changes described above for equity options.

Surcharge Fees: The Exchange currently charges a \$.10 per contract surcharge fee on all contracts traded by the DPM and market-makers in options on the Russell 2000 Index ("RUT").<sup>12</sup> The RUT surcharge fee is assessed by the Exchange to help it recoup license fees the Exchange pays to the Frank Russell Company for its license to trade the RUT product. Similarly, the Exchange charges a \$.10 per contract surcharge fee on all contracts traded by market-makers in options on Dow Jones indexes, except for DJX options and options on DIAMONDS ("DIA"), to help it recoup license fees paid to Dow Jones.

The Exchange proposes to amend the RUT and Dow Jones surcharge fees by expanding application of the fees to transactions of all market participants in these options, except for public customers (*i.e.*, CBOE and non-member market-maker, member firm and broker-dealer). The amended Dow Jones surcharge fee would apply only to DJX and DXL options. These surcharge fees would also apply to Linkage orders.

In addition, the Exchange proposes to adopt a similar \$.04 per contract surcharge fee on all contracts traded by market participants in OEX, XEO, and SPX options, except for public customers.

The proposed surcharge fees are similar to the surcharge fee currently assessed by the Exchange on transactions in MNX and NDX options<sup>13</sup> and are similar to surcharge fees charged by other exchanges.

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<sup>12</sup> See Fees Schedule, Footnote 12.

<sup>13</sup> See Fees Schedule, Footnote 15.

b. Liquidity Provider Sliding Scale

The Exchange proposes to adopt a program to reduce a Liquidity Provider's per contract transaction fee based on the number of contracts the Liquidity Provider trades in a month, based on the following sliding scale:

<u>Tiers</u>	<u>Contracts per Month</u>	<u>Rate</u>
First	First 50,000	20 cents
Second	Next 950,000	18 cents
Third	Next 1,500,000	15 cents
Fourth	Next 1,500,000	10 cents
Fifth	Above 4,000,000	2 cents

The sliding scale would apply to all Liquidity Providers for transactions in all products. A Liquidity Provider's \$.20 per contract rate will be reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee will decrease. Under the sliding scale, the first 50,000 contracts traded in a month would be assessed at \$.20 per contract. The next 950,000 contracts traded (up to 1 million total contracts traded) would be assessed at \$.18 per contract. The next 1.5 million contracts traded (up to 2.5 million total contracts traded) would be assessed at \$.15 per contract, and the next 1.5 million contracts traded (up to 4 million total contracts traded) would be assessed at \$.10 per contract. All contracts above 4 million contracts traded in a month would be assessed at \$.02 per contract. The Exchange will aggregate the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A.<sup>14</sup>

<sup>14</sup> A Liquidity Provider's monthly contract volume would be determined at the firm affiliation level (e.g., if five Liquidity Provider individuals are affiliated with member firm ABC as reflected by Exchange records for the entire month, all of the volume from

The Exchange proposes to provide Liquidity Providers with two incentives to prepay annual transaction fees. First, in order to be eligible to participate in the sliding scale above 1 million contracts (i.e., at the \$.15 per contract rate and lower), a Liquidity Provider would be required to prepay their transaction fees for the first two tiers of the sliding scale for the entire year (i.e., \$2.172 million). Second, if a Liquidity Provider prepays annual fees for the first four tiers of the sliding scale, the Liquidity Provider would receive a \$500,000 prepayment discount (total amount of the prepayment would be \$6.172 million instead of \$6.672 million).

Contract volume resulting from dividend, merger, and short stock interest strategies as defined in Footnote 13 of the Fees Schedule would not apply towards reaching the sliding scale volume thresholds, since that volume may have already received fee reductions as described in Footnote 13 of the Fees Schedule.

The Exchange believes the proposed sliding scale is objective in that the fee reductions are based solely on reaching stated volume thresholds, similar to the operation of the Exchange's current Prospective Fee Reduction Program.<sup>15</sup> The sliding scale is intended to replace both the Prospective Fee Reduction Program and the Fixed Annual Fee Program.<sup>16</sup>

c. Prospective Fee Reduction Program

The Exchange proposes to discontinue its Prospective Fee Reduction Program for fiscal year 2007. This program served to limit market-maker and DPM fees in periods of high volume.<sup>17</sup> The Exchange is eliminating this program due to the implementation of the Liquidity Provider Sliding Scale described above.

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those five individual Liquidity Providers will count towards firm ABC's sliding scale transaction fees for that month).

<sup>15</sup> See infra Section II.A.1.c.

<sup>16</sup> See infra Section II.A.1.d.

<sup>17</sup> See Fees Schedule, Section 19.

d. Fixed Annual Fee

The Exchange proposes to eliminate the fixed annual fee program for DPMs and e-DPMs, which is currently set forth in Section 23 of the Fees Schedule. This program offered DPMs and e-DPMs the alternative of choosing a fixed annual fee of \$2.25 million instead of being assessed transaction fees on a per contract basis for its DPM, e-DPM, and RMM transactions in equity options classes. The Exchange is eliminating this program due to the implementation of the Liquidity Provider Sliding Scale described above.

e. Customer Complex Order Fee

The Exchange proposes to adopt a customer transaction fee for certain complex orders in equity and QQQQ options ("Complex Orders").<sup>18</sup> Specifically, the exchange proposes to adopt a transaction fee of \$.18 per contract for Complex Orders<sup>19</sup> that "take liquidity" from the Exchange's complex order book. The fee would be charged only for the leg of the Complex Order consisting of the most contracts.

For purposes of the proposed fee, an order "takes liquidity" when it interacts with a complex order residing on the complex order book. The Exchange will not charge customers for Complex Orders if they are the liquidity provider (i.e., they are first on the complex order book).<sup>20</sup>

The proposed fee would apply solely to Complex Orders that take liquidity from the complex order book. Complex Orders that trade against orders in the Exchange's regular order book ("EBook") or against the displayed individual series quotes would not be assessed the fee.

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<sup>18</sup> Currently, no customer transaction fees are assessed in equity options and QQQQ options.

<sup>19</sup> Complex orders are defined in CBOE Rule 6.53C.

<sup>20</sup> The Exchange will determine the liquidity provider and the liquidity taker based on time (i.e., the order that arrives first on the complex order book is the liquidity provider).

Also, Complex Orders that rest in the complex order book before executing would not be assessed the fee.

Much like broker-dealers, public customers that use sophisticated trading systems are able to take liquidity quickly from the complex order book. The Exchange believes the proposed fee is appropriate in that it would place such customer orders on a more equal footing with broker-dealer complex orders that are currently subject to transaction fees. According to the Exchange, the proposed fee is substantially similar to another exchange's fee that was recently approved by the Commission.<sup>21</sup>

f. Member Firm Proprietary and Firm Facilitation Fee Cap

The Exchange currently caps member firm proprietary and firm facilitation fees at \$100,000 per month per firm.<sup>22</sup> The Exchange proposes to increase the cap to \$125,000 per month per firm. No other changes to this program are proposed.

g. Customer Large Trade Discount Program

The Exchange proposes to amend the Customer Large Trade Discount program. The Customer Large Trade Discount program provides a discount in the form of a cap on the quantity of customer contracts that are assessed transaction fees for most CBOE index, ETF, and HOLDRs options.<sup>23</sup> Currently, customer transaction fees are charged only up to the first 5,000 contracts per order in Dow Jones options (including DIA) and SPX options, and only up to the first 3,000 contracts per order in other index, ETF, and HOLDRs options. The Exchange proposes to: (i) increase the SPX options cap to 7,500 contracts; (ii) reduce the DIA options cap to 3,000 contracts;

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<sup>21</sup> See Securities Exchange Act Release No. 54751 (November 14, 2006), 71 FR 67667 (SR-ISE-2006-56).

<sup>22</sup> See Fees Schedule, Section 20.

<sup>23</sup> See Fees Schedule, Section 18.

and (iii) for those index options currently capped at 3,000 contracts, increase the cap to 5,000 contracts. The cap for other ETF and HOLDRs options would remain unchanged at 3,000 contracts.

h. ORS Order Cancellation Fee

CBOE currently assesses an executing clearing firm \$1 for each cancelled Order Routing System ("ORS") order in excess of the number of orders that the executing clearing member executes in a month ("ORS Order Cancellation Fee").<sup>24</sup> The ORS Order Cancellation Fee is not charged if less than 500 ORS orders are cancelled in the month. The purpose of the ORS Cancellation Fee is to ease order backlogs on ORS.

Some correspondent firms route their orders through multiple CBOE executing clearing firms. Although the individual correspondent firm may cancel more orders than are filled, they may not incur the ORS Cancellation Fee because the executing clearing firm's total mix of orders from all their correspondents has more fills than cancels.

The Exchange proposes to address this situation by calculating the ORS Cancellation Fee by the cancellation activity of each correspondent firm (and the executing clearing firm's own cancellation activity when it self clears), rather than by the aggregate cancellation activity of the executing clearing firm. Correspondent firms using multiple executing clearing firms would be evaluated separately, per executing clearing firm. The Exchange will be able to provide executing clearing members with information regarding the cancellation activity of each of its correspondent firms so that the executing clearing member can pass through any cancellation fees.

In addition, the Exchange proposes to increase the ORS Cancellation Fee from \$1.00 to \$1.25 per cancelled ORS order.

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<sup>24</sup> See Fees Schedule, Section 14.

The Exchange proposes that the following ORS cancellation activity would be exempt from the fee: (i) cancelled ORS orders that improve the Exchange's prevailing bid-offer ("BBO") market when received; and (ii) fill and cancellation activity occurring within the first one minute of trading following the opening of each option class. The Exchange believes the foregoing cancel activity is not an inappropriate use of systems capacity and therefore should not be subject to the fee.

The Exchange believes that the proposed ORS Cancellation Fee is similar to the cancellation fee of another exchange.<sup>25</sup>

i. DPM Facilities Fee

The Exchange proposes to eliminate the DPM facilities fee, which the Exchange charges DPMs each month for use of Exchange floor trading stations. The elimination of this fee is intended to provide fee relief to DPMs in light of a recently adopted fee that DPMs may incur in fiscal year 2007.<sup>26</sup>

j. Miscellaneous, Non-substantive Changes

The Exchange proposes various non-substantive clean-up changes to its Fees Schedule. The Section of the Fees Schedule entitled "Index Customer Boxes" under "Member Transaction Fee Policies and Rebate Programs" is proposed to be deleted, as that program is superseded by the Customer Large Trade Discount Program.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and

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<sup>25</sup> See Securities Exchange Act Release No. 53862 (May 24, 2006), 71 FR 31244 (June 1, 2006) (SR-ISE-2006-23).

<sup>26</sup> See Securities Exchange Act Release No. 54804 (November 21, 2006), 71 FR 69150 (November 29, 2006) (SR-CBOE-2006-98) (Hybrid Electronic Quoting Fee).

<sup>27</sup> 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(4)<sup>28</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 CBOE members and other 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 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>29</sup> and subparagraph (f)(2) of Rule 19b-4<sup>30</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.<sup>31</sup>

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:

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<sup>28</sup> 15 U.S.C. 78f(b)(4).

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f)(2).

<sup>31</sup> Id.

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-2006-111 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CBOE-2006-111. 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. Copies of such filing also will be available for inspection and copying at the principal office of the 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-2006-111 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>32</sup> 17 CFR 200.30-3(a)(12).