

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55485; File No. SR-CBOE-2007-28)

March 16, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Early Inclusion of NYMEX Holdings, Inc. to the CBOE Exchange Index

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 March 13, 2007, 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 and II below, which Items have been substantially prepared by CBOE. 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 which renders the proposal effective upon receipt of this filing by the Commission. 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 is requesting approval to add NYMEX Holdings, Inc. (“NMX”) to the CBOE Exchange Index (“EXQ”) on March 19, 2007. The text of the rule proposal 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.

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).

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 purpose of this rule proposal is to obtain the Commission's approval to add NMX to the EXQ, which is a Micro Narrow-Based security index. Under CBOE's initial and maintenance standards for Micro Narrow-Based security indexes, a security must have achieved certain daily and monthly trading volume levels in each of the preceding six months before it is eligible for initial and/or continued inclusion in an index.⁵ Therefore, under the current Exchange rules, NMX must trade for at least six months before the Exchange may add it to the EXQ.

As of the date of this filing, NMX has not been trading for the past six months. The Exchange, however, is requesting Commission approval to add NMX to the EXQ at this time. Specifically, the Exchange would like to add NMX to the EXQ on March 19, 2007, which is

⁵ See Rule 24.2(d)(4) (for initial inclusion, requiring average daily trading of at least 45,500 shares in each of the preceding six months); Rule 24.2(e)(4) (for continued inclusion, requiring average daily trading of at least 22,750 shares in each of the preceding six months); and Rule 24.2(e)(11) (for continued inclusion, requiring monthly trading volume of least 500,000 shares in each of the last six months).

after the March expiration (March 17, 2007). The Exchange believes that this is an ideal time to add NMX to the EXQ, since the EXQ will be rebalanced at that time. In addition, the Exchange requests that the Commission permit NMX to meet the maintenance trading volume requirements in the aggregate during the first six months after trading in order to qualify for its inclusion in the EXQ.⁶

In support of this request, the Exchange states that it believes that good cause exists to permit the early inclusion of NMX to the EXQ. The Exchange believes that the addition of NMX to the EXQ will further diversify the EXQ, which is a relatively concentrated index, and will ensure that this emergent index continues to be representative of the exchange market. The Exchange also notes that options are already listed and trading on NMX. Additionally, NMX readily meets the trading volume levels, in the aggregate, required for initial inclusion in a Micro Narrow-Based security index, such as the EXQ.

The EXQ was created to track the performance of stock prices of publicly traded exchanges and is a very small, equal-dollar weighted index currently composed of six security and futures exchanges.⁷ Currently, the EXQ is the only Micro Narrow-Based security index on

⁶ See Telephone conference among Richard Holley III and Kristie Diemer, Special Counsels, Division of Market Regulation, Commission, and Jennifer Klebes, Senior Attorney, CBOE, on March 15, 2007 (in which CBOE clarified, among other things, that the exception it seeks for the maintenance trading volume requirements applies for the first six months of trading of NMX) (“March 15 Telephone Conference”). After six months of trading, NMX then would be required to meet the maintenance trading volume levels contained in Rules 24.2(e)(4) and 24.2(e)(11).

⁷ The Exchange began trading EXQ options on September 29, 2006. The EXQ is currently made up of six component securities. The six component securities are: CBOT Holdings, Inc. (“BOT”), Chicago Mercantile Exchange Holdings, Inc. (“CME”), InterContinental Exchange, Inc. (“ICE”), International Securities Exchange, Inc. (“ISE”), The NASDAQ Stock Market LLC (“NDAQ”) and NYSE Group, Inc. (“NYX”). Additional information regarding pricing, shares, market value and weight can be

which options are traded on the Exchange. Additionally, the Exchange believes that the early inclusion of NMX to the EXQ will ensure that the EXQ more closely reflects the rapidly evolving exchange environment by including all publicly traded exchanges.

NMX recently became a publicly traded company. On November 16, 2006, NMX priced its initial public offering and its shares began trading on the New York Stock Exchange on November 17, 2006. On that day alone, NMX trading volume exceeded 19.5 million shares and, on November 27, 2006, the Exchange certified that NMX met the initial listing criteria for options under CBOE Rules. The following day, on November 28, 2006, the Exchange began trading options on NMX.⁸ Although the Exchange is able to list and trade options on NMX, the Exchange is currently unable to add NMX to the EXQ under its current rules and must wait until at least May 2007 to do so.⁹

Because there are only six components in the EXQ, and to ensure that the EXQ is representative of the rapidly evolving exchange environment and includes all currently publicly traded exchanges, the Exchange seeks the Commission's approval to permit the early inclusion of NMX to the EXQ. Specifically, the Exchange requests that the Commission allow the Exchange to add NMX to the EXQ on March 19, 2007 because (as will be demonstrated below),

accessed at:

<http://www.cboe.com/Products/IndexComponentsAuto.aspx?PRODUCT=EXQ>.

⁸ The initial trading volume level in NMX exceeded the 2.4 million shares required for initial listing under Rule 5.3. Also, the Exchange was able to list options on NMX on the earliest day possible under Exchange Rules. Specifically, Rule 5.3, Interpretation and Policy .01 requires that a security must have a closing price over \$3 per share for each of the five business days prior to listing. The lowest closing price for NMX during this time period was \$126.50 per share.

⁹ The Exchange represents that NMX meets all of the other initial listing standards for Micro Narrow-Based security indexes as set forth in Rule 24.2.

NMX has already met and exceeded the initial trading volume levels set forth in Rule 24.2(d) in the aggregate. The Exchange also requests that the Commission permit NMX to meet the maintenance trading volume levels set forth in Rules 24.2(e)(4) and (e)(11) in the aggregate during the first six months after trading of the NMX.

In the aggregate, NMX currently meets the initial trading volume levels required for securities to be added to a Micro Narrow-Based security index. Specifically, Rule 24.2(d)(4), which sets forth initial listing standards, requires:

The average daily trading volume in each of the preceding six months for each component security in the index is at least 45,500 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 22,750 shares for each of the last six months.

In the aggregate, the 45,500 average daily trading volume amount is comparable to an average monthly trading requirement of 1 million shares, based on a calendar month having 22 trading days, and the 22,750 average daily trading volume amount is comparable to an average monthly trading requirement of 500,000 shares. These average monthly trading volume requirements multiplied over six months would equal 6 million shares and 3 million shares respectively.

Through March 6, 2007, NMX has traded a total of almost 90 million shares, averaging over 1.2 million shares per day. The following table provides total monthly (or in the case of March, partial monthly) trading volume since initial listing:

Month	Total Volume (in millions of shares)
March 1-6, 2007	4.8
February 2007	17.5
January 2007	19.9
December 2006	13.2
November 2006	34.3

In the aggregate, NMX also currently meets the maintenance trading levels required for securities to be added to a Micro Narrow-Based security index. Specifically, Rule 24.2(e)(4), which sets forth maintenance listing standards relating to average daily trading volume, requires:

The average daily trading volume in each of the preceding six months for each component security in the index is at least 22,750 shares, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index may have an average daily trading volume of only 18,200 shares for each of the last six months.

Also, Rule 24.2(e)(11), which sets forth maintenance listing standards relating to monthly trading volume, requires:

Trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at let 400,000 shares for each of the last six months.

In the aggregate, the 22,750 average daily trading volume amount set forth in Rule 24.2(e)(4) is comparable to an average monthly trading requirement of 500,000, based on a calendar month having 22 trading days, and the 18,200 average daily trading volume amount is comparable to an average monthly trading requirement of 400,000 shares. The Exchange notes that these amounts are equivalent to the average monthly trading requirements of Rule 24.2(e)(11), and these average monthly trading volume requirements multiplied over six months would equal 3 million shares and 2.4 million shares respectively.

As demonstrated above, the total trading volume through March 6, 2007 in NMX has approached 90 million shares, averaging over 1.2 million shares per day. Because the Exchange is requesting early inclusion of NMX to the EXQ, there will not be six months' worth of trading volume data to determine if NMX meets the maintenance trading volume levels set forth in Rules 24.2(e)(4) and (e)(11). As a result, the Exchange requests that the Commission permit NMX to meet the maintenance trading volume levels set forth in Rules 24.2(e)(4) and (e)(11) in the aggregate during the first six months of trading of the NMX.¹⁰ After it has been trading for a full six months, NMX then would be required to meet the maintenance trading volume levels contained in Rules 24.2(e)(4) and 24.2(e)(11).

The Exchange further states that NMX must satisfy all other requirements for Micro Narrow-Based security indexes set forth in Rule 24.2 in order to qualify for inclusion and continued inclusion in the EXQ.¹¹

¹⁰ See March 15 Telephone Conference, supra note 6.

¹¹ See March 15 Telephone Conference, supra note 6 (adding “and continued inclusion” in the text above).

The Exchange represents that it has an adequate surveillance program in place to monitor the component securities in the EXQ, including NMX. The Exchange may obtain trading information upon request via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG and which list the security components contained in the EXQ. Specifically, CBOE can obtain such information from the New York Stock Exchange in connection with the trading of NMX shares.

Given the high liquidity of NMX and the other component securities in the EXQ, the Exchange believes that the EXQ is not readily susceptible to manipulation, despite the concentration level of the component securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act¹² in general and furthers the objectives of Section 6(b)(5) of the Act¹³ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. In its filing, the Exchange noted that waiver of the 30-day operative delay, and early addition of the NMX, would diversify the EXQ, a relatively concentrated index and would help ensure that the EXQ continues to be representative of the exchange market. In further support of its waiver request, the Exchange also noted that it would like to add NMX to the EXQ on March 19, 2007,

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that CBOE has satisfied the five-day pre-filing notice requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

which is after the March expiration (March 17, 2007), and believes that March 17, 2007, is an ideal time to add NMX to the EXQ, since the EXQ will be rebalanced at that time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change will allow the Exchange to add NMX to the EXQ in connection with the upcoming rebalancing of the EXQ on March 17, 2007 even though NMX has not been trading for the six months specified in CBOE Rule 24.2. The Commission notes that the CBOE has been trading single-stock options on NMX since November 28, 2006. Further, the Commission notes that NMX has exceeded, by a wide margin, the initial trading volume levels in the aggregate contained in CBOE Rule 24.2(d), as well as the maintenance trading volume levels, in the aggregate, contained in CBOE Rule 24.2(e)(4) and (e)(11). Finally, inclusion of the NMX in the EXQ, given that it has met, in the aggregate and by a wide margin, the volume thresholds contained in CBOE Rule 24.2, will diversify the EXQ and should not increase any concerns about the EXQ's susceptibility to manipulation given the large depth and liquidity of trading in NMX. Accordingly, consistent with the protection of investors and the public interest, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.¹⁷

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.

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2007-28 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-2007-28. 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 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-2007-28 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).