

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-55677; File No. SR-CBOE-2007-32)

April 27, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Transaction Fees for Certain Electronically Executed Orders

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 March 29, 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, II, and III below, which Items have been substantially prepared by the 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

The Exchange proposes to amend the CBOE Fees Schedule (“Fees Schedule”) to increase transaction fees for certain electronically executed orders. The text of the proposed rule change is available at the CBOE, on the Exchange’s Web site at <http://www.cboe.org/legal>, and in 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 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

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

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

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

Currently, the Exchange charges \$.25 per contract for broker-dealer transactions and \$.26 per contract for non-member market-maker transactions, except for such transactions in options on the S&P 100 Index ("OEX" and "XEO") and options on the S&P 500 ("SPX"), which are charged \$.30 per contract for broker-dealer and market-maker transactions and \$.40 per contract for broker-dealer and market-maker transactions, respectively. The purpose of this proposed rule change is to amend the Fees Schedule to establish a higher fee for "electronically executed" broker-dealer and non-member market-maker orders, i.e., broker-dealer and non-member market-maker orders that are automatically executed on the CBOE Hybrid Trading System ("Hybrid").

The Exchange proposes to assess electronically executed broker-dealer and non-member market-maker orders a transaction fee of \$.45 per contract. Manually executed broker-dealer and non-member market-maker orders would be assessed a transaction fee of \$.25 per contract. The \$.26 per contract non-member market-maker transaction fee would be deleted from the Fees Schedule. OEX, XEO and SPX broker-dealer and non-member market-maker fees would remain unchanged. Broker-dealer and non-member market-maker orders for options on the Morgan Stanley Retail Index ("MVR") would be charged \$.25 per contract.<sup>3</sup> A new Footnote 16 is proposed to be added to the Fees Schedule clarifying that the broker-dealer manual and electronic transaction fees apply to broker-dealer orders (orders with "B" origin code), non-member market-

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<sup>3</sup> OEX, MVR and SPX are currently non-Hybrid classes.

maker orders (orders with “N” origin code), and orders from specialists in the underlying security (orders with “Y” origin code).

No changes are proposed to Linkage order fees. The proposed broker-dealer electronic transaction fee is comparable to the RAES Access Fee assessed by the Exchange on certain orders executed through the RAES system in non-Hybrid classes, which is a fee assessed in addition to standard transaction fees.<sup>4</sup> Like the RAES Access Fee, the Exchange believes the proposed broker-dealer electronic transaction fee will help allocate to such orders a fair share of the costs of running the automatic execution feature of Hybrid and related Exchange systems.

The proposed fees are modeled after the broker-dealer transaction fees of the NYSE Arca, Inc. (“NYSE Arca”).<sup>5</sup> The Exchange believes its proposed \$.45 per contract fee is reasonable in that it is less than the \$.50 per contract fee assessed by NYSE Arca on electronically executed broker-dealer and non-member market-maker orders.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>7</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.

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<sup>4</sup> See CBOE Fees Schedule, Section 4.

<sup>5</sup> See Securities Exchange Act Release No. 54309 (August 11, 2006), 71 FR 48571 (August 21, 2006) (SR-NYSEArca-2006-25).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 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 Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4<sup>9</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>10</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:

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-2007-32 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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> Id.

All submissions should refer to File Number SR-CBOE-2007-32. 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-2007-32 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>11</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).