

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56000; File No. SR-CBOE-2007-73)

July 2, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Assess, on a Retroactive Basis, Certain CBOE and CBSX Market Data Fees

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 June 28, 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 Exchange. 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 its Fees Schedule to assess, retroactive to April 1, 2007, fees relating to CBOE and CBOE Stock Exchange (“CBSX”) market data that were implemented on June 1, 2007. The text of the proposed rule change is available at CBOE, the Commission’s Public Reference Room, and [www.cboe.org/legal](http://www.cboe.org/legal).

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

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

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

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

On June 1, 2007, the Exchange implemented new fees relating to TickerXpress ("TX"), which is an Exchange service that supplies market data to Exchange market-makers trading on the Hybrid Trading System.<sup>3</sup> Specifically, the Exchange increased the monthly fee for enhanced TX market data from \$200 per month to \$300 per month and adopted a fee of \$100 per TX user per month for use of TX software for the use and display of market data. The Exchange proposes to assess these fees for the period April 1, 2007 through May 31, 2007, to help compensate the Exchange for its increased costs in providing the TX data and to help offset the license fees paid by the Exchange to its third-party provider for making the TX software available to users during this time period.

On June 1, 2007, the Exchange adopted a monthly fee to recoup the fees CBSX pays a third-party market data vendor and other parties to help establish facilities at CBSX through which the third-party market data vendor can provide CBSX participants with certain market data.<sup>4</sup> The fee is equal to \$19,400 divided by the number of CBSX participants receiving the market data. The Exchange proposes to assess this fee for the period April 1, 2007 through May 31, 2007, to recoup the fees CBSX paid during this time period for providing the infrastructure to make the market data available to CBSX participants.

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<sup>3</sup> See Securities Exchange Act Release No. 55882 (June 8, 2007), 72 FR 32931 (June 14, 2007) (File No. SR-CBOE-2007-54).

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is 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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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<sup>4</sup> See id.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

#### 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-2007-73 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-2007-73. 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 10:00 a.m. and 3:00 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 SR-CBOE-2007-73 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>7</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).