

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56640; File No. SR-CBOE-2007-118)

October 11, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Its Marketing Fee Program

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 October 1, 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by 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. 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 Marketing Fee Program. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.cboe.com](http://www.cboe.com).

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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).

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. CBOE has substantially 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

Recently, CBOE amended its Marketing Fee Program to, among other things, collect an administrative fee to offset its costs in administering the marketing fee program and also to provide funds to the association of members for its costs and expenses in supporting CBOE's marketing fee program and in seeking to bring order flow to CBOE.<sup>5</sup> Under the amended Marketing Fee Program, CBOE collects an administrative fee of .45% on the total amount of funds collected each month prior to making the remaining funds available to DPMs and Preferred Market-Makers to attract orders to CBOE.

CBOE now proposes to limit the total amount that any Market-Maker, RMM, e-DPM, or DPM would contribute to the administrative fee. Specifically, CBOE proposes to amend its Marketing Fee Program such that no Market-Maker, RMM, e-DPM, or DPM would contribute more than 15% of the total amount collected by the .45% administrative fee. As amended, if the assessment of CBOE's marketing fee resulted in any Market-Maker, RMM, e-DPM or DPM contributing more than 15% of the funds collected for the administrative fee, the amount of

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<sup>5</sup> See Securities Exchange Release No. 56289 (August 20, 2007), 72 FR 49030 (August 27, 2007) (SR-CBOE-2007-95).

money in excess of the 15% would not be allocated to the administrative fee and instead would be allocated to the DPMs or Preferred Market-Makers to attract orders to CBOE.

The following is an example of how this 15% limit would be applied, where there is one DPM and three Market-Makers on CBOE, and collectively they generated \$100,000 in marketing fee funds in August. The administration fee of .45% would be collected from the total amount of funds collected, i.e., \$100,000, resulting in \$450. Assume that based on their trading in August, the DPM accounted for 70%, or \$70,000, of the marketing fee funds collected in August, and each of the Market-Makers accounted for 10%, or \$10,000 each. CBOE would then determine whether the DPM or any of the Market-Makers contributed more than 15% of the total funds collected and allocated to the .45% admin fee (15% of \$450 is \$67.50). In this case, because the DPM accounted for 70% of the marketing fee funds available in August, the DPM also would have accounted for 70% of the \$450 administration fee (or \$315), since the administration fee is a percentage taken from the total amount of marketing fee funds collected in August.<sup>6</sup>

Because the DPM would have contributed more than 15% of the total amount of funds raised by the .45% administrative fee, would be capped at \$67.50, and the balance of \$247.50 (\$315 - \$67.50) would be provided to DPMs and Preferred Market-Makers to pay for order flow. Accordingly, in August the administration fee amount would be \$202.50 instead of \$450. CBOE intends to calculate the 15% limit on a firm-wide basis. If a member organization and its nominees operate on the Exchange in various approved statuses, such as a Market-Maker, RMM, DPM or e-DPM, CBOE intends to aggregate it and its nominees' activity to determine if the

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<sup>6</sup> A Market-Maker's, RMM's, e-DPM's or DPM's percentage contribution to the total amount of marketing fee funds collected in a month is directly proportional to its percentage contribution to the funds collected as part of the administration fee.

member firm exceeded the 15% limit. CBOE believes that limiting the total amount that any Market-Maker, RMM, DPM, or e-DPM would contribute to the administrative fee is fair and reasonable and an equitable allocation of fees.

CBOE proposes to implement these changes to the marketing fee program beginning on October 1, 2007. CBOE is not amending its marketing fee program in any other respects.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and Section 6(b)(4) of the Act<sup>8</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 will 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

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to

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<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

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-2007-118 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-2007-118. 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 10:00 am and 3:00 pm. 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-2007-118 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).