

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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2007-29 and should be submitted on or before August 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56132; File No. SR-CBOE-2007-71]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Relating to an Extension of the Linkage Fee Pilot Program

July 25, 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 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 and II below, which Items have been substantially prepared by the Exchange. On July 20, 2007, CBOE filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1, and approves the proposed rule change, as amended, on an accelerated basis.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule to extend until July 31, 2008 the Options Intermarket Linkage ("Linkage") fees pilot program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <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, 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 III 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 Exchange's fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders")<sup>3</sup> are operating under a pilot program scheduled to expire on July 31, 2007.<sup>4</sup> The Exchange proposes to amend its Fees Schedule to extend the pilot program until July 31, 2008.

The Exchange assesses its members the following Linkage Order related fees: (i) \$.26 per contract transaction fee, (ii) \$.30 per contract Retail Automatic Execution System ("RAES") access fee, if a Linkage Order is executed in whole

<sup>3</sup> Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage ("Plan") and Exchange Rule 6.80(12), which tracks the language of the Plan, a "Linkage Order" means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) "P/A Order," which is an order for the principal account of a specialist (or equivalent entity or another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) "P Order," which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) "Satisfaction Order," which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

<sup>4</sup> See Securities Exchange Act Release No. 54272 (August 3, 2006), 71 FR 45865 (August 10, 2006) (SR-CBOE-2006-59).

or in part on RAES, and (iii) \$.10 per contract surcharge fee on transactions in options on the Nasdaq-100 Index (MNX and NDX) and options on the Russell 2000 Index (RUT).<sup>5</sup> Satisfaction Orders are not assessed Exchange fees.

The Exchange believes that extension of the Linkage fee pilot program until July 31, 2008 will give the Exchange and the Commission further opportunity to evaluate the appropriateness of Linkage fees.

The Exchange also proposes to amend section 21 of the Fees Schedule to change the Linkage fees pilot expiration date included in that section to July 31, 2008, thereby extending the term of the DPM Linkage Fees Credit program for P/A Orders.

##### 2. Statutory Basis

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

#### C. Self-Regulatory Organization's Statement on Comments Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. 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

<sup>5</sup> See CBOE Fees Schedule, Footnote 14. Surcharge fees are also assessed on OEX, XEO, SPX, VIX, DJX and DXL options. However, Linkage fees do not apply to these products because they are not multiply listed.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

Number SR-CBOE-2007-71 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-2007-71. 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 a.m. and 3 p.m. Copies of such 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-2007-71 and should be submitted on or before August 22, 2007.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>8</sup> and, in particular, the requirements of section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section

<sup>8</sup> In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b).

6(b)(4) of the Act,<sup>10</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2008 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission also finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission continue considering the appropriateness of Linkage fees. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Exchange Act,<sup>11</sup> to approve the proposed rule change on an accelerated basis.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2007-71), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56139; File No. SR-CBOE-2007-86]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Penny Pilot Program

July 26, 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 July 24,

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

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 the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered 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

The Exchange proposes to extend the Penny Pilot Program. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and <http://www.cboe.com>.

#### 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. 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 January 23, 2007, the Commission approved CBOE's rule filing (SR-CBOE-2006-92),<sup>5</sup> which permits thirteen option classes to quote in penny increments in connection with the implementation of an industry wide, six month Penny Pilot Program.<sup>6</sup> The Penny

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92).

<sup>6</sup> The Exchange acknowledged that the approval order permitted quoting in penny increments in the Pilot classes. Telephone conversation between Patrick Sexton, Associate General Counsel, CBOE, Jennifer L. Colihan, Special Counsel, Division of Market Regulation ("Division"), Commission, and