

business day immediately preceding that Friday.<sup>6</sup> This would also be the expiration date for that Volatility Index option.

After carefully considering the proposal, 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>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

The Commission believes that codifying CBOE's pre-existing methodology used for determining the day on which the exercise settlement value of Volatility Index options is calculated in Rule 24.9 will provide certainty and predictability for CBOE members and other market participants engaged in the trading of Volatility Index options. The Commission further believes that the Exchange's new procedure for determining the day on which the exercise settlement value for Volatility Index options will be calculated and the expiration date for Volatility Index options when the Exchange is closed due to an Exchange holiday is an appropriate supplement to the existing methodology.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-CBOE-2007-41) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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<sup>6</sup> The Exchange represented that it was also proposing a similar change relating to the final settlement date for futures contracts on volatility indexes.

<sup>7</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>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56289; File No. SR-CBOE-2007-95]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to the Exchange's Marketing Fee Program

August 20, 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 August 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. On August 13, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, 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 <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, 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

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

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

<sup>3</sup> In Amendment No. 1, the Exchange made minor clarifying changes to the purpose section and the proposed rule text of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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

CBOE proposes to amend its marketing fee program as follows. First, CBOE proposes to increase the total balance of the Excess Pool of funds that a DPM/LMM or Preferred Market-Maker can maintain. Currently, a DPM/LMM can maintain up to \$25,000 in an Excess Pool of funds, and a Preferred Market-Maker can maintain up to \$80,000 in an Excess Pool of funds. Going forward, CBOE proposes to increase both of those amounts to \$100,000. CBOE believes that the allowable balance in the Excess Pool of funds should be the same for DPMs and Preferred Market-Makers, and increasing the balance will assist those firms in attracting order flow to CBOE.

Second, CBOE proposes to allow a DPM/LMM or Preferred Market-Maker to voluntarily elect to have funds refunded. For instance, if a DPM/LMM or Preferred Market-Maker paid out 80% or more of the funds collected in a given month but less than 100% of the funds collected, a DPM/LMM or Preferred Market-Maker could elect to refund the funds it did not use rather than having those funds be allocated to its Excess Pool. Or, a DPM/LMM or Preferred Market-Maker could elect to have some of the funds in its Excess Pool refunded. As is currently the case, any refunds would be made on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs in that month.

Third, CBOE proposes to impose an administrative fee to offset its costs in administering the marketing fee program and also to provide funds to the association of members<sup>6</sup> ("Association") for its costs and expenses in supporting CBOE's marketing fee program and in seeking to bring order flow to CBOE. CBOE proposes to assess an administrative fee of .45% of the total amount of funds collected each month.

The Exchange intends to assess and collect the administrative fee of .45% on

<sup>6</sup> The Association is technically known as the DPM Association; however, its activities are not limited to assisting only DPM organizations. As noted above, through its business development activities it seeks to bring order flow to CBOE for the benefit of all CBOE liquidity providers.

the total amount of funds collected each month prior to making the remaining funds available to DPMs/LMMs and Preferred Market-Makers to attract order to CBOE. For example, if the Exchange's marketing fee in a given month results in the total collection of \$100,000, the administrative fee of .45% would be assessed on the \$100,000 resulting in \$4,500 being generated as part of the administrative fee. The remaining funds in the amount of \$95,500 would be made available to DPMs/LMMs and Preferred Market-Makers to attract orders to CBOE.

With respect to the portion of the fee that is intended to offset CBOE's overall costs related to the marketing fee program, CBOE notes that it previously assessed an administrative fee as part of its marketing fee program.<sup>7</sup> CBOE intends to allocate each month approximately 40% of the funds collected through the administrative fee to CBOE to offset CBOE's overall costs in administering the program; the balance collected by this fee would be allocated to the Association.

With respect to the portion of the fee that is intended to reimburse and provide funds to the Association for its costs and expenses in supporting CBOE's marketing fee program and in seeking to bring order flow to CBOE, CBOE notes that all DPMs can participate in the Association and support its business development activities. Additionally, through its support of the marketing fee program and business development, the Association seeks to bring order flow to CBOE that all members (Market-Makers, RMMs, LMMs, DPMs, and e-DPMs) may transact with. The funds allocated to the Association generally would be used to cover the Association's administrative costs and other costs such as travel and entertainment. Accordingly, CBOE believes that allocating a portion of the funds collected through this administrative fee to the Association is an equitable allocation of fees among CBOE members.

CBOE intends to closely monitor the amount of funds raised by this administrative fee and may propose amendments to the fee in the future as appropriate, so that the fee provides sufficient funds to adequately offset CBOE's costs in administering the marketing fee program and provide funds to the Association to cover its costs and expenses.

CBOE proposes to implement this change to the marketing fee beginning

on August 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>8</sup> in general, and furthers the objectives of section 6(b)(4) of the Act<sup>9</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

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>10</sup> and Rule 19b-4(f)(2)<sup>11</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 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>12</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.

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on August 13, 2007, the date on which the Exchange filed Amendment No. 1.

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-2007-95 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-2007-95. 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-2007-95 and should be submitted on or before September 17, 2007.

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

<sup>7</sup> See Securities Exchange Act Release No. 44469 (June 22, 2001), 66 FR 35301 (July 3, 2001) (SR-CBOE-2001-25).