

the Exchange more flexibility to determine when to permit the HOSS opening rotation process to begin, and should contribute to the Exchange's ability to conduct openings in a fair and orderly manner. Further, the Commission notes that it previously approved a similar rule changes for the American Stock Exchange LLC.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2007-88) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56602; File No. SR-CBOE-2007-116]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Hybrid Electronic Quoting Fee

October 3, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² 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 the Exchange under Section 19(b)(3)(A),³ and Rule 19b-4(f)(2) thereunder,⁴ 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 Hybrid Electronic Quoting Fee. 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, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE 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 purpose of this proposed rule change is to amend CBOE's Hybrid Electronic Quoting Fee, which is applicable to all Market-Makers, RMMs, DPMs and e-DPMs (collectively "liquidity providers") in order to promote and encourage more efficient quoting.⁵ The fee has been effective since February 1, 2007.

Under the existing fee, all liquidity providers who are submitting electronic quotations to the Exchange in Hybrid and Hybrid 2.0 option classes are assessed a monthly fee of \$450. Each month, each liquidity provider receives an allocation of 1,000,000 quotes. If a liquidity provider submits to CBOE more than 1,000,000 quotes in a month, the liquidity provider is assessed an additional fee of \$.03 per 1,000 quotes in excess of 1,000,000.

As amended, CBOE will continue to assess all liquidity providers who are submitting electronic quotations to the Exchange in Hybrid and Hybrid 2.0 option classes a monthly fee of \$450 per membership utilized. However, CBOE proposes to assess or credit liquidity

providers a Hybrid Electronic Quoting Fee that varies depending on: (i) The quality of the liquidity providers' quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.⁶ CBOE also proposes to vary the fee slightly in "high premium series"⁷ with respect to Market-Makers and RMMs on the one hand, and DPMs and e-DPMs on the other hand due to the difference in their quoting obligations. Market-Makers and RMMs have an obligation to continuously quote 60% of the series in each of their appointed classes that have a time to expiration of less than 9 months. DPMs and e-DPMs, however, have a greater obligation and must continuously quote either 100% of the series in their appointed classes (DPMs) or 90% if the series in their appointed classes (e-DPMs). CBOE generally has found that there are a significant amount of quotations in high premium series, but very little volume.

Specifically, the Hybrid Electronic Quoting Fee will be assessed/credited as follows:

If the value of the underlying security is less than or equal to \$100 and CBOE's bid is less than or equal to \$10, or if the value of the underlying security is greater than \$100 and CBOE's bid is less than or equal to 15% of the underlying security, then:

- A liquidity provider's quotation that improves the NBBO on at least one side of the market will be credited \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that matches the NBBO on both sides of the market will be credited \$0.01 per 1,000 quotes.
- A liquidity provider's quotation that matches the NBBO on only one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.
- A liquidity provider's quotation that is a duplicate quote,⁸ or that does

⁶ The value of the underlying security is the closing price of the underlying security on the preceding trading day. The bid is the closing bid in the option series at CBOE on the preceding trading day.

⁷ For purposes of this fee, "high premium series" are those series in which the value of the underlying security is less than or equal to \$100 and CBOE's bid is greater than \$10, or those series in which the value of the underlying security is greater than \$100 and CBOE's bid is greater than 15% of the underlying security.

⁸ A "duplicate quote" is one where there is no change in bid and offer price and size. See proposed Item 17 of the Fees Schedule, at note 5, as set forth in CBOE's Form 19b-4.

⁹ See Securities Exchange Act Release No. 55272 (February 12, 2007), 72 FR 7779 (February 20, 2007) (approving SR-Amex-2006-77, permitting the American Stock Exchange LLC to open its trading rotation once the underlying security has opened for trading in any market).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ Because the Hybrid Quoting Fee is only applicable in Hybrid and Hybrid 2.0 option classes, it does not apply to LMMs, which currently only function in Hybrid 3.0 option classes. Therefore, the Exchange is proposing to delete the reference to LMMs in the Hybrid Electronic Quoting Fee section of Item 17 of the Fees Schedule.

not satisfy any of the above conditions will be assessed a fee of \$0.05 per 1,000 quotes.

If the value of the underlying security is less than or equal to \$100 and CBOE's bid is greater than \$10, or if the value of the underlying security is greater than \$100 and CBOE's bid is greater than 15% of the underlying security, then:

- A liquidity provider's quotation that improves the NBBO on at least one side of the market will be credited \$0.02 per 1,000 quotes.

- A liquidity provider's quotation that matches the NBBO on both sides of the market will be credited \$0.01 per 1,000 quotes.

- A liquidity provider's quotation that matches the NBBO on only one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.

- A Market-Maker's or RMM's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.05 per 1,000 quotes; and a DPM's or e-DPM's quotation that matches the CBOE BBO (which is not the NBBO) on at least one side of the market will be assessed a fee of \$0.02 per 1,000 quotes.

- A liquidity provider's quotation that is a duplicate quote, or that does not satisfy any of the above conditions will be assessed a fee of \$0.05 per 1,000 quotes.

As before, the Hybrid Electronic Quoting Fee will be assessed by liquidity provider acronym. In the event a liquidity provider is utilizing more than one membership and submits electronic quotations for all of the memberships under the same acronym, the Hybrid Electronic Quoting Fee will be assessed per membership utilized by the liquidity provider. Because a liquidity provider's total credits cannot exceed the total debits assessed according to the schedule of credits and debits set forth in the two tables in Item 17 of the Fees Schedule, if the total credits were to exceed the total debits, the Hybrid Electronic Quoting Fee assessed to that liquidity provider would be \$450.

Also, if a liquidity provider is assessed the Hybrid Electronic Quoting Fee, the liquidity provider does not pay a member dues fee. The Exchange intends to implement this revised Hybrid Electronic Quoting Fee effective October 1, 2007.

CBOE believes that the Hybrid Electronic Quoting Fee, as amended, is fair and reasonable and will promote and encourage more efficient quoting and help to reduce quote traffic. The fee encourages and rewards liquidity providers that quote competitively, and imposes costs on liquidity providers

that do not. The fee also fairly and reasonably takes into consideration the different quoting obligations of the various liquidity providers and, therefore, represents an equitable allocation of fees among members.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁰ in particular, in that it is designed to provide for the equitable allocation of reasonable 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 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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹¹ and subparagraph (f)(2) of Rule 19b-4 thereunder,¹² since it establishes or changes a due, fee or other charge imposed by the Exchange. 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 the 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:

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A)(ii).

¹² 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-CBOE-2007-116 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-2007-116. 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 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 No. SR-CBOE-2007-116 and should be submitted on or before October 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Nancy M. Morris,
Secretary.

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¹³ 17 CFR 200.30-3(a)(12).