

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57314; File No. SR-CBOE-2007-143]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Imposition of Fines for Minor Rule Violations

February 12, 2008.

On December 27, 2007, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) and to revise CBOE 17.50(g)(8) (Violations of Exercise and Exercise Advice Rules for Non-Cash-Settled Equity Options). The proposed rule change was published for comment in the **Federal Register** on January 10, 2008.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to increase and strengthen the sanctions imposed under its Minor Rule Violation Plan (“MRVP”) on any member who fails to submit to the Exchange in a timely manner pursuant to CBOE Rule 11.1 (or a Regulatory Circular issued pursuant to CBOE Rule 11.1) “Advice Cancel” or exercise instruction relating to the exercise or nonexercise of a noncash-settled equity option. The Exchange believes that increasing the fine levels specified with respect to both individual members and member organizations and lengthening the surveillance period from a 12-month period to a rolling 24-month period will serve as an effective deterrent to such violative conduct.<sup>4</sup>

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>5</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, 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 further believes that CBOE’s proposal to increase the fine levels imposed on individuals and member organizations who fail to submit Advice Cancel or exercise instructions in a timely manner is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>7</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>8</sup> which governs minor rule violation plans. The Commission believes that the proposed rule change should strengthen the Exchange’s ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not

pursuant to Section 17(d) of the Act (the “17d-2 Agreement”). As set forth in the 17d-2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend CBOE’s MRVP will result in further consistency in sanctions among the SROs that are signatories to the 17d-2 Agreement concerning Contrary Exercise Advice violations.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>8</sup> 17 CFR 240.19d-1(c)(2).

rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the CBOE MRVP or whether a violation requires formal disciplinary action under CBOE Chapter XVII.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act<sup>9</sup> and Rule 19d-1(c)(2) under the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2007-143) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-3038 Filed 2-19-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57317; File No. SR-CBOE-2007-151]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Linkage Fees

#### I. Introduction

On December 20, 2007, Chicago Board Options Exchange, Incorporated (“CBOE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its Options Intermarket Linkage (“Linkage”) fees. The proposed rule change was published for comment in the **Federal Register** on January 9, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposal.

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

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57083 (January 2, 2008), 73 FR 1651.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57089 (January 3, 2008), 73 FR 1900.

<sup>4</sup> In addition, as a member of the Intermarket Surveillance Group, the Exchange, as well as certain other self-regulatory organizations (“SROs”) executed and filed on October 29, 2007 with the Commission, a final version of an Agreement

## II. Description of the Proposal

Under the Exchange's current Fees Schedule, Principal ("P") and Principal Acting as Agent ("P/A") Orders<sup>4</sup> are charged a transaction fee of \$.26 per contract.<sup>5</sup> Satisfaction orders are not assessed Exchange fees. Linkage fees are operating under a pilot program scheduled to expire on July 31, 2008. The Exchange has proposed to increase its Linkage transaction fee for P and P/A Orders from \$.26 per contract to \$.30 per contract.

## III. Discussion

After careful review, 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>6</sup> and, in particular, the requirements of section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with section 6(b)(4),<sup>8</sup> 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.

The Exchange has represented that the proposed fee increase would help the Exchange partially offset its costs of crediting Linkage fees and related costs to Designated Primary Market-Makers ("DPMs") pursuant to the Exchange's DPM Linkage Fees Credit Program.<sup>9</sup> The Commission believes that the proposed increase in fees is reasonable for this purpose. Further, the Commission notes that the fees proposed by CBOE are commensurate with the fees charged by other options exchanges for Linkage Orders. Finally, the Commission notes that the Exchange's fees are operating

<sup>4</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 on 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>5</sup> Linkage orders in MNX, NDX and RUT options are also charged a \$.10 per contract surcharge fee. See CBOE Fees Schedule, Footnote 14.

<sup>6</sup> The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>9</sup> See CBOE Fees Schedule, Section 21.

under a pilot program in effect until July 31, 2008.<sup>10</sup>

## IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2007-151) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-3059 Filed 2-19-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57315; File No. SR-CHX-2008-01]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Number 1 Thereto Relating to Participant Fees and Credits

February 12, 2008.

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 January 31, 2008, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 11, 2008, CHX filed Amendment No. 1 to the proposed rule change. The Exchange 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) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders it 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

The CHX proposes to amend its Schedule of Participant Fees and Credits

<sup>10</sup> See CBOE Fees Schedule, footnote 8.

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

<sup>12</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.

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

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

(the "Fee Schedule") to modify the fees for the receipt of orders through the CHX Connect network. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), the Exchange, and in the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX 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. CHX 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

Through this filing, the Exchange would amend its Fee Schedule to modify the fees for the receipt of orders through the CHX Connect network.<sup>5</sup> Under the current Fee Schedule, the Exchange charges a \$10,000 base fee per month to any participant firm that receives orders through the CHX Connect network and charges an additional fee of \$.0004 per share for executions that are processed by the network.<sup>6</sup> The Exchange also applies a credit of \$.0004 for each provide share executed in the Exchange's Matching System.<sup>7</sup> Through this filing, the Exchange proposes to decrease the monthly base fee to \$5,000 per month and apply an increased credit of \$.0008 for each provide share executed in the

<sup>5</sup> The Exchange's CHX Connect system is a communications service that allows its participants to route orders to any destination connected to the CHX's network, including (1) the CHX Matching System; (2) CHX institutional brokers; (3) market makers or other broker-dealers connected to the CHX's network, which provide order handling and execution services in the over-the-counter market; and (4) other destinations (including order-routing vendors) that are connected to the CHX's network. See Securities Exchange Act Release No. 54846 (November 30, 2006), 71 FR 71003 (December 7, 2006) (SR-CHX-2006-34). Fees are charged under the Fee Schedule to participants that receive orders through this service.

<sup>6</sup> The base fee is prorated in the first month of use, based on the date that a participant firm begins using the service.

<sup>7</sup> No credits are carried over from month to month and these credits cannot be used to reduce the base fee below \$5,000 per month.