

Classes, the Exchange will apply similar firm quote surveillance procedures in Hybrid 3.0 to monitor for compliance with members' firm quote obligations.

#### D. Application of CBOE Rule 6.45B

CBOE Rule 6.45B, which relates to the priority and allocation of trades, will apply to trading in Hybrid 3.0 classes in the same way it is applied to CBOE's existing Hybrid Trading System. For example, multiple customer orders in the electronic book at the same price will be ranked based on time priority pursuant to the priority methods set forth in Rule 6.45B.<sup>18</sup> Further, unlike CBOE's non-Hybrid classes, Hybrid 3.0 will allow (i) Each Market-Maker in the trading crowd and (ii) all floor brokers in the trading crowd (collectively referred to as "in-crowd market participants" or "ICMPs") to trade against the electronic book pursuant to CBOE Rule 6.45B(c).<sup>19</sup>

CBOE Rule 6.45B(d) currently governs the interaction of quotes when they are locked (e.g., \$1.00 bid—1.00 offer). Specifically, CBOE Rule 6.45B(d) provides that when the quotes of two Market-Makers interact (i.e., "quote lock"), either party has one second during which it may move its quote without obligation to trade with the other party. If, however, the quotes remain locked at the conclusion of one-second, the quotes trade in full against each other. For quote locks in Hybrid 3.0 classes, the appropriate Procedure Committee will set the length of the counting period, provided that the period shall not exceed ten seconds.<sup>20</sup> According to the Exchange, the proposed ten second threshold is intended to provide additional flexibility for Market-Makers to become acclimated with Hybrid 3.0.<sup>21</sup>

Regarding the time periods required for order exposure in Interpretation .01 of Rule 6.45B ("Principal Transactions") and Interpretation .02 of Rule 6.45B ("Solicitation Orders"), CBOE has proposed a minimum exposure time for Hybrid 3.0 classes, on a class by class basis, to be at least three seconds but not to exceed thirty seconds.<sup>22</sup> According to CBOE, this extended time frame for exposure will provide additional

flexibility as ICMPs become more acclimated with Hybrid 3.0.<sup>23</sup>

#### E. Opening Procedures

Only the DPM or LMM responsible for generating the Hybrid 3.0 crowd quote will be required to enter quotes as part of the opening rotations in Hybrid 3.0 option classes. The DPM or LMM must enter opening quotes in opening rotations that comply with the legal quote width requirements of Rule 8.7(b)(iv), and if there is not a quote present in a series that complies with the legal quote width requirements of Rule 8.7(b)(iv), then that series will not open.<sup>24</sup> Additionally, Hybrid 3.0 will allow public customer, broker-dealer, Exchange Market-Maker, away Market-Maker and Specialist participation in the opening. Since Hybrid 3.0 is a single quoter environment, these participants will not be permitted to enter opening quotes in opening rotations but will be permitted to directly enter opening orders in opening rotations in Hybrid 3.0 classes.<sup>25</sup> Further, similar to the rules for CBOE's non-Hybrid classes, Hybrid 3.0 also proposes to allow special "modified" opening procedures for settlement in options on the Volatility Indexes.<sup>26</sup>

#### III. Discussion

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>27</sup> In particular, the Commission finds that the proposed rule change is consistent with Section

<sup>23</sup> By comparison, the current exposure period for Hybrid and Hybrid 2.0 classes is at least three seconds. See CBOE Rule 6.45B.01 and 6.45B.02.

<sup>24</sup> This is consistent with the opening quote requirements in CBOE's existing Hybrid classes that utilize CBOE's Hybrid Opening System ("HOSS"). See CBOE Rule 6.2B.

<sup>25</sup> See proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, currently in non-Hybrid option classes (such as SPX and OEX), public customers, Market-Makers and broker-dealers are not able to directly participate in the opening rotations (for series that utilize the Exchange's Rapid Opening System). For example, Market-Makers who wish to participate on ROS in the opening rotation in non-Hybrid option classes must submit orders through the LMM at least ten minutes prior to the opening of trading pursuant to CBOE Rules 6.2A and 24.13.

<sup>26</sup> See the "Modified HOSS Opening Procedures" in proposed Interpretation .01 to CBOE Rule 6.2B. By comparison, non-Hybrid option classes that utilize RAES and ROS have special procedures for purposes of settlement in the volatility indexes called "Modified ROS Opening Procedures" pursuant to Interpretation .03 to CBOE Rule 6.2A.

<sup>27</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

6(b)(5) of the Act,<sup>28</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 proposed rules for Hybrid 3.0 are similar to existing rules applicable to trading in Hybrid and/or non-Hybrid classes. The Commission believes that the proposed rules for the Hybrid 3.0 platform, including those pertaining to quoting, order eligibility in the electronic book, automatic execution, order priority and allocation, are consistent with the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change as modified by Amendment Nos. 1 and 2 thereto (File No. SR-CBOE-2006-101) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant delegated authority.<sup>30</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55873; File No. SR-CBOE-2007-50]

### 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

June 7, 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 May 29, 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

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</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)(ii).

<sup>18</sup> See CBOE Rule 6.45B(a)(ii)(A)(1).

<sup>19</sup> This process is the same as for existing Hybrid classes.

<sup>20</sup> See proposed changes to CBOE Rule 6.45B(d).

<sup>21</sup> By comparison, the current quote lock timer for Hybrid and Hybrid 2.0 classes may not exceed one second. See CBOE Rule 6.45B(d)(i)(C).

<sup>22</sup> See proposed changes to CBOE Rule 6.45B.01 and 6.45B.02.

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 <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 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 in two respects. First, CBOE proposes to amend its fees schedule to reduce the fee that is collected in the option classes participating in the Penny Pilot Program in which the marketing fee is applicable from \$0.25 to \$0.10. CBOE intends to implement this change effective June 1, 2007.

Second, CBOE's marketing fee program states that it is currently in effect until June 2, 2007, which is the date that CBOE's pilot program establishing its Preferred Market-Maker Program is scheduled to expire. However, CBOE has filed a proposed rule change requesting permanent approval of its Preferred Market-Maker Program.<sup>5</sup> Therefore, CBOE proposes to delete the last sentence in footnote 6 of its fees schedule that states, "CBOE's marketing fee program as described

above will be in effect until June 2, 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>6</sup> in general, and 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*

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>8</sup> and Rule 19b-4(f)(2)<sup>9</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.

### **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-2007-50 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-2007-50. 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. 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-2007-50 and should be submitted on or before July 5, 2007.

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

<sup>5</sup> See Securities Exchange Act Release No. 55826 (May 29, 2007), 72 FR 31357 (SR-CBOE-2007-47) (permanent approval of CBOE's Preferred Market-Maker Program).

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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