

requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchanges believe the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>7</sup> that the rules of an exchange be designed to prevent fraudulent and manipulative acts, 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.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change would impose no 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*

The Exchange has neither solicited nor received comments on this proposal.

### 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 Number SR-Amex-2007-123 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-Amex-2007-123. 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 submissions, 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 the filings also will be available for inspection and copying at the principal offices 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 No. SR-Amex-2007-123 and should be submitted on or before December 26, 2007.

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

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 national securities exchanges.<sup>8</sup> In particular, the Commission finds that the proposal is consistent with the provisions of Section 6(b)(5) of the Act<sup>9</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, 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 allowing the Exchange to send P/A Orders to the Linkage prior to the opening should facilitate investors' intermarket access to superior prices.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. Granting accelerated approval would facilitate the implementation of the proposed rule change in conjunction with Amendment No. 23 to the Linkage Plan.<sup>10</sup> In addition, the Commission notes that the

Exchange has committed to ensuring that, for Linkage P/A Orders sent prior to the opening, Amex specialists will provide customers with the most advantageous price in the event that the Amex opens its market while the Exchange is awaiting a response to such a P/A Order. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the 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-Amex-2007-123) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56852; File No. SR-CBOE-2007-139]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for Trading on the FLEX Hybrid Trading System

November 28, 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 November 20, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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. 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 amend its Fees Schedule to establish fees

<sup>8</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. See 5 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See *supra* note 4.

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

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

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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

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

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

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

applicable to trading on the Exchange's FLEX Hybrid Trading System. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, and at 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, 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. 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 November 15, 2007, the Commission approved Exchange rules that provide for the trading of Flexible Exchange ("FLEX") options on the Exchange's new FLEX Hybrid Trading System ("CFLEX").<sup>3</sup> CFLEX is a trading platform that incorporates both open outcry and electronic trading functionality.

The Exchange proposes to amend its Fees Schedule to establish fees applicable to trading on the CFLEX system. First, the Exchange proposes to assess a \$0.10 per-contract surcharge fee on all orders (*i.e.*, applicable to all origin codes) executed electronically on the CFLEX system ("CFLEX Surcharge Fee"). The CFLEX Surcharge Fee would be charged only up to the first 2,500 contracts per trade for public customers. The CFLEX Surcharge Fee would assist the Exchange in recouping the cost of developing the CFLEX system.

Second, the Exchange proposes to assess a monthly fee of \$100 per log-in ID assigned by the Exchange to each individual member for use in accessing the electronic component of the CFLEX system ("CFLEX Log-in Fee"). The CFLEX Log-in Fee would be charged only up to the first five log-ins per member organization (*i.e.*, the CFLEX Log-in Fee would be capped at \$500 per

member organization).<sup>4</sup> The CFLEX Log-in Fee would assist the Exchange in offsetting the cost of rolling out and maintaining the CFLEX system.

Lastly, in order to promote the launch of the CFLEX system, the Exchange proposes to waive the CFLEX Surcharge Fee and the CFLEX Log-in Fee beginning with the launch of trading on the CFLEX system through December 31, 2007.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its 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

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup> At any time within 60 days of the filing of the 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 No. SR-CBOE-2007-139 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-2007-139. 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 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-2007-139 and should be submitted on or before December 26, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Nancy M. Morris,**  
Secretary.

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<sup>3</sup> See Securities Exchange Act Release No. 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007) (SR-CBOE-2006-99).

<sup>4</sup> For purposes of the CFLEX Log-in Fee, "member organization" means the member organization with which the individual member is affiliated.

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 19b-4(f)(2).

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