

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-Amex-2007-130 and should be submitted on or before February 12, 2008.

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

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 a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of a national securities exchange be 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 the Exchange's proposal is consistent with the Act, and, in particular, reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in section 6(b)(5) of the Act. The

<sup>8</sup> In approving this 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>9</sup> 15 U.S.C. 78f(b)(5).

Commission notes that a variety of exchange-traded funds seeking to provide (a) investment results that correspond to or exceed twice (200%) the direct performance of a specified stock index, or (b) investment results that correspond to twice (-200%) the inverse or opposite of the index's performance, are currently listed and traded on the Exchange.<sup>10</sup> In addition, the Commission further believes that heightened suitability standards are appropriate for derivative securities products, including section 107 Securities, that seek to provide investment results that correspond to the direct or inverse performance of an underlying reference asset by a specified multiple and allow for a loss or negative payment at maturity to be accelerated by a specified multiple. Before recommending transactions in these types of leveraged products, Exchange members must have a reasonable basis to believe that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. The Commission expects the Exchange to continue to monitor the application of its suitability requirements, including those under Commentary .05 to Amex Rule 411, as proposed.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that it has approved identical revisions to the initial listing standards for the same type of derivative securities products, as proposed by another national securities exchange.<sup>11</sup> With respect to the revisions to Commentary .05 to Amex Rule 411, the Commission believes that the proposal strengthens the suitability standards and raises no new regulatory issues. Accordingly, the Commission finds good cause for approving the proposal on an accelerated basis, pursuant to section 19(b)(2) of the Act.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>12</sup> that the

<sup>10</sup> See *supra* note 5 and accompanying text.

<sup>11</sup> See Securities Exchange Act Release No. 57149 (January 15, 2008) (SR-NYSEArca-2007-122) (approving the proposal to make substantively identical revisions to the initial listing standards for Index-Linked Securities listed and/or traded on NYSE Arca, Inc. ("NYSE Arca")). See also Securities Exchange Act Release No. 56907 (December 5, 2007), 72 FR 70640 (December 12, 2007) (SR-NYSEArca-2007-122) (providing notice of the proposal to make substantively identical revisions to the initial listing standards for Index-Linked Securities listed and/or traded on NYSE Arca).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

proposed rule change (SR-Amex-2007-130), as modified by Amendment Nos. 1 and 2 thereto, 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>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-996 Filed 1-18-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57152; File No. SR-BSE-2007-55]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Exchange Fees and Charges To Be Assessed in Connection With the Implementation of an Electronic Registration Process

January 15, 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 December 21, 2007, the Boston Stock Exchange, Inc. ("BSE" 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 prepared substantially by the Exchange. On January 11, 2008, BSE filed Amendment No. 1 to the proposed rule change. BSE has designated this proposal as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and 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, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the BSE Fee Schedule and the Boston Options Exchange ("BOX") Fee Schedule in order to adopt certain fees to be charged

<sup>13</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>4</sup> 17 CFR 240.19b-4(f)(2).

to all active members<sup>5</sup> and to all member and participant organizations (collectively, the “members”) associated with the implementation of an electronic registration process through the Financial Industry Regulatory Authority’s (“FINRA”) Web Central Registration Depository (“Web CRD”). The text of the proposed rule change is available at <http://www.bostonstock.com>, the principal offices of the Exchange, and 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. BSE 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 the proposed rule change is to adopt fees associated with the implementation of an electronic registration process through FINRA’s Web CRD, which should, in turn, create a more efficient registration process by migrating from a manual paper-based Exchange procedure for registration to a Web-based registration process that is operated by FINRA. The proposed fees are similar to those fees charged by other self-regulatory organizations that use FINRA’s Web CRD.<sup>6</sup>

Specifically, the Exchange proposes to adopt the following fees that will be imposed upon all members in connection with their required participation in Web CRD: (a) A FINRA CRD Processing Fee of \$85.00; (b) a FINRA Disclosure Processing Fee of \$95.00; (c) a FINRA Annual System Processing Fee of \$30.00; and (d) fingerprinting fees that will vary

depending on the submission: For a first card submission the fee will be \$30.25; for a second card submission the fee will be \$13.00; for a third card submission the fee will be \$30.25; for processing fingerprint results where the member had prints processed through a self-regulatory organization and not FINRA, the fee will be \$13.00 (collectively, the “FINRA Fees”). The Exchange also proposes to adopt: (e) An individual initial registration fee of \$60.00; (f) an individual transfer fee for \$40.00 with a transfer time period of thirty (30) days; (g) an individual renewal fee for \$50.00; and (h) an individual termination fee of \$30.00 (collectively, the “Exchange Fees”). FINRA will process the fingerprint cards and will make the results available to the Exchange, its members, and member and participant organizations via Web CRD.

Members and participant organizations will be instructed to pay the FINRA Fees and the Exchange Fees associated with Web CRD directly to FINRA through Web CRD. FINRA will retain the FINRA Fees and remit the Exchange Fees it collects to BSE.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>8</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 issuers and other persons using its facilities in connection with their use of Web CRD. The fees are imposed upon all members equally. The Exchange believes the proposed fees are reasonable in that they are similar to those charged by other self-regulatory organizations that use FINRA’s Web CRD.<sup>9</sup>

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

The Exchange does not believe that the proposed rule change will result in 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

The Exchange has neither solicited nor received written comments on 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 on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission. 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.<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. 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-BSE-2007-55 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2007-55. 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

<sup>5</sup> Because BSE ceased operations of its BeX equity market on September 5, 2007, the only active members that this now applies to are those members of BOX.

<sup>6</sup> See Securities Exchange Act Release Nos. 51641 (May 2, 2005), 70 FR 24155 (May 6, 2005) (SR-PCX-2005-49); 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR-AMEX-2003-49); 45112 (November 28, 2001), 66 FR 63086 (December 4, 2001) (SR-NYSE-2001-47); and 53688 (April 20, 2006), 71 FR 24885 (April 27, 2006) (SR-Phlx-2006-24).

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

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

<sup>9</sup> See note 6, supra.

<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 under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on January 11, 2008, the date on which the Exchange filed Amendment No. 1.

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 publicly available. All submissions should refer to File Number SR-BSE-2007-55 and should be submitted on or before February 12, 2008.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

Release No. 34-57159; File No. SR-CBOE-2006-106]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to an Interpretation of Paragraph (b) of Article Fifth of Its Certificate of Incorporation

January 15, 2008.

#### I. Introduction

On December 12, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt an interpretation of the rules of CBOE in response to the acquisition of the Board of Trade of the City of Chicago, Inc. ("CBOT") by Chicago Mercantile Exchange Holdings, Inc.

("CME Holdings"). On January 17, 2007, the Exchange filed Amendment No. 1 to the proposed rule change which replaced and superseded the filing. The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on February 6, 2007.<sup>3</sup> The Commission received 174 comment letters from 134 separate commenters on the proposed rule change, including comment letters from CBOT members and legal counsel to CBOT and CBOE members. The CBOE submitted its response to comments on June 15, 2007.<sup>4</sup> On June 29, 2007, CBOE filed Partial Amendment No. 2 to the proposal.<sup>5</sup> This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

#### II. Description of the Proposed Rule Change

##### A. Background

As compensation for the "special contribution" of time and money that the CBOT expended in the development of the CBOE in the early 1970s, an "Exercise Right" was granted to each "member of [the CBOT]" entitling him or her to become a member of the CBOE without having to acquire a separate CBOE membership.<sup>6</sup> This right, established in Article Fifth(b) of the CBOE Certificate of Incorporation

<sup>3</sup> See Securities Exchange Act Release No. 55190 (January 29, 2007), 72 FR 5472 (SR-CBOE-2006-106) ("Notice").

<sup>4</sup> See Letter from Michael L. Meyer, Schiff Hardin, to Nancy M. Morris, Secretary, Commission, dated June 15, 2007 ("CBOE Response to Comments").

<sup>5</sup> The CBOE submitted an opinion of counsel as Exhibit 3f to Amendment 1 to its proposal. See Letter from Wendell Fenton, Esq., Richards, Layton & Finger, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated January 16, 2007 ("First Opinion of Counsel"). CBOE subsequently submitted an updated legal opinion via Partial Amendment No. 2, which opines that the proposed rule change embodied in SR-CBOE-2006-106 constitutes an interpretation of Article Fifth(b), and not an amendment of Article Fifth(b), consistent with the conclusions reached in the opinion letters of Delaware counsel that CBOE submitted to the Commission in connection with CBOE rule filings SR-CBOE-2004-16 and SR-CBOE-2005-19. See Letter from Wendell Fenton, Esq., Richards, Layton & Finger, to Joanne Moffic-Silver, General Counsel and Corporate Secretary, CBOE, dated June 28, 2007 ("Second Opinion of Counsel"). The Commission believes that because Partial Amendment No. 2 raises no new or novel issues, it is technical in nature and not subject to separate notice and comment.

<sup>6</sup> As CBOE explained in the notice of its proposal, the "special contribution" of the members of CBOT referred to in Article Fifth(b) consisted primarily of CBOT's providing the seed capital for the start-up of CBOE in the early 1970s by means of direct cash expenditures, CBOT's guarantee of a bank loan to CBOE to fund additional CBOE start-up costs, and CBOT's contribution of intellectual property. See Notice, *supra* note 3, 72 FR at 5473.

("Article Fifth(b)"), provides, in relevant part:

In recognition of the special contribution made to the organization and development of the [CBOE] by the members of [the CBOT] \* \* \* every present and future member of [the CBOT] who applies for membership in the [CBOE] and who otherwise qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members or elsewhere.

Article Fifth(b) states that no amendment may be made to it without the approval of at least 80% of those CBOT members who have "exercised" their right to be CBOE members and 80% of all other CBOE members.

Since Article Fifth(b) does not define what a "member of [the CBOT]" means, on several occasions in the past, the CBOE has interpreted the meaning of Article Fifth(b), in particular the term "member of [the CBOT]," in response to changes in the ownership structure of the CBOT. On each such occasion, the CBOE and CBOT ultimately reached a mutual agreement on the particular interpretation at issue, and those interpretations are reflected in various agreements and letter agreements between CBOE and CBOT. CBOE filed these interpretations of Article Fifth(b) with the Commission, reflected in amendments to CBOE Rule 3.16(b) ("Special Provisions Regarding Chicago Board of Trade Exerciser Memberships"), as proposed rule changes pursuant to Section 19(b)(1) of the Exchange Act.<sup>7</sup> The Commission approved each such interpretation.

##### 1. 1992 Agreement

In 1993, the Commission approved the CBOE's proposed interpretation of the meaning of the term "member of [the CBOT]" as used in Article Fifth(b) that was embodied in an agreement dated September 1, 1992 (the "1992 Agreement") and reflected in CBOE Rule 3.16(b).<sup>8</sup> The 1992 Agreement addressed, among other things, the effect on the Exercise Right of CBOT's plans to divide the membership interests of the then-existing 1,402 member-owners of CBOT into parts. That interpretation provided that all such parts, together with the trading rights appurtenant thereto, must be in the possession of an individual in order for that individual to be eligible to

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> See Securities Exchange Act Release No. 32430 (June 8, 1993), 58 FR 32969 (June 14, 1993) (SR-CBOE-92-42).

<sup>13</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.