

with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using the Exchange's facilities. The Commission notes that no comments were received on the proposed fee increase, which is based on existing annual fees for other comparable products listed on the Exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2007-116), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57067; File No. SR-CBOE-2007-87]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Quoting Requirements Applicable to the Hybrid Opening System

December 31, 2007.

On July 25, 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 its rule pertaining to the Hybrid Opening System ("HOSS") as well as related rules pertaining to the obligations of designated primary market-makers ("DPMs"), electronic

designated primary market-makers ("e-DPMs") and lead market-makers ("LMMs") during opening rotations. On November 19, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 26, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### I. Description of the Proposal

HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. The Exchange proposes to amend its HOSS procedures contained in CBOE Rule 6.2B. Previously, for each option class approved for trading, HOSS had been programmed to open an option series only if the DPM or LMM, as applicable, for the particular option class submitted a quote that complies with the legal quote width requirements of paragraph (b)(iv) to CBOE Rule 8.7, *Obligations of Market-Makers*. In 2005, the HOSS procedures were revised; currently, HOSS is programmed to open an option series as long as any market maker,<sup>4</sup> not just the DPM or LMM, has submitted an opening quote that complies with the legal width quote requirements of CBOE Rule 8.7(b)(iv).<sup>5</sup> However, even though the procedures were changed to permit HOSS to automatically open a series without a DPM's or LMM's quote, DPMs (as well as e-DPMs) and LMMs are still obligated under CBOE's rules to submit timely opening quotes.<sup>6</sup>

The proposed rule change modifies the HOSS procedures to allow the parameters to be configured so that an option series will open: (1) If at least one market maker has submitted an opening quote, which is how HOSS

currently operates; or (2) only if a DPM or LMM, as applicable, has submitted an opening quote, which is how HOSS operated previously. Determinations on the particular configuration would be made on a class-by-class basis by the appropriate Exchange Procedure Committee and announced to the membership via Regulatory Circular.<sup>7</sup>

In addition, the proposed rule change amends the opening quote obligations of DPMs, e-DPMs, and LMMs to require them to ensure a timely initiation of an opening trading rotation of each allocated class by entering opening quotes as necessary (*i.e.*, when no other market maker has entered an opening quote). This change would absolve DPMs, e-DPMs, and LMMs of their responsibility (under CBOE's current rules) to enter opening quotes when another market maker has already entered an opening quote in a particular series.<sup>8</sup>

#### II. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change 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>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating 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 proposed rule change will afford the Exchange more flexibility in the manner in which HOSS conducts opening rotations. The Commission believes that allowing the appropriate Exchange Procedure Committee to determine on a class-by-class basis how

<sup>3</sup> See Securities Exchange Act Release No. 56814 (November 19, 2007), 72 FR 66008 ("Notice").

<sup>4</sup> This could include a quote from a DPM, e-DPM, LMM, Market-Maker or Remote Market-Maker.

<sup>5</sup> See Securities Exchange Act Release No. 52234 (August 10, 2005), 70 FR 48214 (August 16, 2005) (SR-CBOE-2005-40). Other factors must also be satisfied for HOSS to open an options series. For example, the opening price for the series must be within an acceptable range and the opening trade cannot create a market order imbalance. See, e.g., CBOE Rule 6.2B(e)(ii)-(iii).

<sup>6</sup> Currently, DPMs, e-DPMs, and LMMs are required to enter opening quotes in accordance with CBOE Rule 6.2B in 100% of the series of each appointed class; whereas, other Market-Makers and Remote Market-Makers are permitted, but not obligated, to enter opening quotes in accordance with CBOE Rule 6.2B. See current CBOE Rules 6.2B, 8.15A, *Lead Market-Makers in Hybrid Classes* (subparagraph (b)(iv) of this rule has been interpreted by the Exchange to require an LMM to enter opening quotes in 100% of the series of each appointed class), 8.85, *DPM Obligations*, and 8.93, *e-DPM Obligations*.

<sup>7</sup> See Notice, *supra* note 3, 72 FR at 66008 (noting that the Exchange Procedure Committee might consider such things as "trading in the underlying or related products, trading in the option on competing exchanges, how effectively opens have occurred in the past, liquidity and/or other factors.").

<sup>8</sup> Under CBOE's proposed rules, DPMs, e-DPMs, and LMMs would still be *permitted* to enter opening quotes even if another market maker has already entered an opening quote.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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

<sup>10</sup> 15 U.S.C. 78s(b)(1).

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

a particular series should open may allow CBOE to achieve more competitive, efficient, and orderly openings, while allowing the Exchange to provide sufficient liquidity at the open in particular classes.

While the Commission continues to believe that the quoting obligations of LMMs, DPMs, and e-DPMs are appropriate, given the benefits (such as favorable margin treatment) that are provided to market makers, the Commission also believes that it is reasonable for CBOE to excuse them from submitting opening quotes in their assigned series when at least one other market maker has already entered an opening quote in that series. The Commission notes that if no other market maker has entered an opening quote, the DPM and e-DPM or LMM would be responsible for ensuring that an opening quote is promptly entered so that HOSS can automatically open the series. This proposal, in conjunction with another recently approved proposed rule change,<sup>11</sup> also should encourage LMMs, DPMs, and e-DPMs to quote more competitively during HOSS opening rotations.<sup>12</sup>

### III. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-2007-87), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57065; File No. SR-NYSE-2007-119]

### Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to the Adoption of New Exchange Rule 309 (Failure To Pay Fees)

December 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 December 21, 2007, the New York Stock Exchange, LLC (“NYSE” 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. 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

NYSE proposes to adopt new Exchange Rule 309, which delineates procedures for the collection of fee arrearages due the Exchange. The text of the proposed rule change is set forth below. New text is in *italics*.

Admission of Members (Rules 300–324)

\* \* \* \* \*

#### Rule 309. Failure to Pay Exchange Fees

*Any member, member organization or allied member who shall not pay a fee or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such member, member organization or allied member of such arrearages, may suspend access to some or all of the facilities of the Exchange until payment is made. Except that failure to pay any fine levied in connection with a disciplinary action shall be governed by Exchange Rule 476(k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others).*

*Denial of access to some or all of the facilities of the Exchange through suspension under the provisions of this*

*Rule shall not prevent the member, member organization or allied member from being proceeded against for any offense other than that for which such member, member organization, or allied member was suspended.*

\* \* \* \* \*

#### 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

The Exchange seeks to adopt new procedures that relate to the collection of fees due the Exchange. Currently, Exchange Rule 476(k) delineates the procedures to address the failure of members, member organizations or allied members to pay a fine (*i.e.*, a fine levied in connection with a disciplinary proceeding and related fees also associated with a disciplinary proceeding), or any other sum due the Exchange. Specifically, Exchange Rule 476(k) provides that upon written notice to such members, member organizations or allied members and notification of the Chairman of the Board of Directors of the Exchange of the arrearage, the Board of Directors may suspend the member, member organization or allied member for failure to pay the arrearages due the Exchange until payment is made.

The Exchange now proposes to adopt new Exchange Rule 309 to provide procedures to address members, member organizations and allied members who fail to pay fees and any other sums due the Exchange. Types of payments that would be considered a “fee” under proposed Rule 309 include, but are not limited to, regulatory fees (*i.e.*, Gross Financial and Operational Combined Uniform Single Report (FOCUS) revenue fees and trading floor regulatory fees), trading license fees, and transaction charges. Additionally, examples of payments that would constitute “any other sums” include,

<sup>11</sup> See Securities Exchange Act Release No. 56860 (November 29, 2007), 72 FR 68919 (December 6, 2007) (SR-CBOE-2007-59) (allowing market makers to enter an opening quote for as low as one contract if the underlying primary market disseminates less than a 1,000-share best bid or offer quote immediately prior to an option series opening).

<sup>12</sup> Nothing in this proposal would affect a Market-Maker’s obligation to honor its firm quote obligations imposed by CBOE Rule 8.51.

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

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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