

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56197; File No. SR-CBOE-2007-91)

August 3, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status Access Fee

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 July 26, 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 prepared by the Exchange. CBOE 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),<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 from interested persons.

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

CBOE proposes to adopt a monthly access fee for persons granted temporary CBOE membership status pursuant to Interpretation and Policy .01 under CBOE Rule 3.19 (“Rule 3.19.01”). The text of the proposed rule change is provided below. Changes are underlined, and deletions are [bracketed].

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<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).

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CHICAGO BOARD OPTIONS EXCHANGE, [INC.] INCORPORATED

FEES SCHEDULE

JULY [2]26, 2007

1. - 4. Unchanged.

Footnotes: (1) - (16) Unchanged.

5. - 21. Unchanged.

22. TEMPORARY MEMBERSHIP STATUS ACCESS FEE \$4700 per month\*

\* This access fee is assessed to each person granted temporary CBOE membership status under CBOE Rule 3.19.01. The access fee is due and payable for each calendar month on the first day of that calendar month. The first month for which the access fee will be assessed is September 2007. The access fee is non-refundable except as specified below. The access fee and any other applicable monthly fees will be assessed for a calendar month unless the person provides written notice to the Membership Department at least five business days prior to the start of that month that the person is relinquishing temporary membership status effective on a date prior to the start of that month. The access fee will be assessed through the integrated billing system. The access fee will terminate when the SEC takes final action on SR-CBOE-2006-106. All access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the SEC takes such final action. The Exchange will retain such fees if the SEC approves SR-CBOE-2006-106, and such fees will be returned to the payor, with interest, if the SEC disapproves SR-CBOE-2006-106.

Remainder of Fee Schedule: Unchanged.

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CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

RULES

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Rule 3.19. Termination from Membership

Rule 3.19. No change.

...Interpretations and Policies:

.01 If the proposed merger between Chicago Mercantile Exchange Holdings, Inc. and CBOT Holdings, Inc. ("CME/CBOT Transaction"), the parent company of the Board of Trade of the City of Chicago, Inc. ("CBOT"), is consummated and if such consummation occurs before the Securities and Exchange Commission ("Commission") takes final action on SR-CBOE-2006-106, a person who is a member of CBOE (an "exerciser member") pursuant to paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation ("Article Fifth(b)") as of July 1, 2007 will be granted temporary membership status at the Exchange, until the Commission takes final action on SR-CBOE-2006-106, if and only if such person (i) remains an exerciser member in good standing as of the close of business on the trading day immediately before the consummation of the CME/CBOT Transaction, (ii) thereafter remains in good standing and continues to pay all applicable fees, dues, assessments and other like charges that are assessed against CBOE members, and (iii) pays to the Exchange, for each month starting in the second month after the CME/CBOT Transaction is consummated, a monthly access fee [based on the then current monthly lease fees being paid to lessors of the interest that CBOT denominates as a full CBOT membership, with such fee to be] set by the Exchange [on a monthly basis based on published lease fee information]. Such access fee shall be due and payable in accordance with the provisions of the Exchange Fee Schedule [advance of each calendar month that the person

decides to retain the temporary membership status granted pursuant to this paragraph]. All such access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the Commission takes final action on SR-CBOE-2006-106. The Exchange will retain such fees if the Commission approves SR-CBOE-2006-106, and such fees will be returned to the payor, with interest, if the Commission disapproves SR-CBOE-2006-106. The temporary membership status granted pursuant to this paragraph shall be subject to the regulatory jurisdiction of CBOE under the Act, the Constitution and the Rules, including CBOE's disciplinary jurisdiction under Chapter XVII.

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

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE 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

Rule 3.19.01 granted temporary CBOE membership status to certain persons in the event that the proposed merger between Chicago Mercantile Exchange Holdings, Inc. and CBOT Holdings, Inc. ("CME/CBOT Transaction"), the parent company of the Board of Trade of the

City of Chicago, Inc. ("CBOT"), were to be consummated before the Commission took final action on CBOE's pending rule filing SR-CBOE-2006-106.<sup>5</sup>

Subsequent to the adoption of Rule 3.19.01, the CME/CBOT Transaction was consummated on July 12, 2007. As a result, there are currently persons who have temporary CBOE membership status under Rule 3.19.01 until such time that the Commission takes final action on SR-CBOE-2006-106.

Specifically, under Rule 3.19.01, each person who was a member of the Exchange pursuant to paragraph (b) of Article Fifth of the CBOE Certificate of Incorporation (an "exerciser member") on July 1, 2007 and who satisfies the following conditions has been granted temporary CBOE membership status until the Commission takes final action on SR-CBOE-2006-106: (1) the person was an exerciser member in good standing as of the close of business on the trading day immediately before the consummation of the CME/CBOT Transaction; (2) the person remains in good standing and continues to pay all applicable fees, dues, assessments, and other like charges that are assessed to CBOE members; and (3) the person pays a monthly access fee to the Exchange.

In CBOE rule filing SR-CBOE-2007-77<sup>6</sup> which adopted Rule 3.19.01, the Exchange stated that it was going to submit a subsequent rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> to specify the access fee to be charged under Rule 3.19.01 or the methodology for determining it.

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<sup>5</sup> See Securities Exchange Act Release No. 55190 (January 29, 2007), 72 FR 5472 (February 6, 2007) (SR-CBOE-2006-106).

<sup>6</sup> See Securities Exchange Act Release No. 56016 (July 5, 2007), 72 FR 38106 (July 12, 2007) (SR-CBOE-2007-77).

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

The purpose of this rule filing is to specify the access fee to be charged under Rule 3.19.01.

The Exchange proposes to set the access fee for those granted temporary CBOE membership status under Rule 3.19.01 at \$4700 per month. The Exchange indicated in SR-CBOE-2007-77 that the access fee would be based on the then current monthly lease fees being paid to lessors of what CBOT denominates as a full CBOT membership as reflected in published lease fee information. Consistent with the foregoing, the Exchange set the access fee to closely approximate the rate published by CBOT on its website as the average lease rate as of June 28, 2007 for the month of July 2007 to lease all of the interests that composed a full CBOT membership as of that date (which is \$4711.40 per month).

The Exchange has determined to have this rate remain in effect until such time that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> to modify the access fee or the Commission takes final action on SR-CBOE-2006-106.<sup>9</sup> Therefore, the Exchange is proposing to delete the current provisions of Rule 3.19.01 which indicate that the Exchange will set the access fee on a monthly basis based on the then current monthly lease fees being paid to lessors of what CBOT denominates as a full CBOT membership.

The Exchange believes that the proposed access fee of \$4700 per month is appropriate because it closely approximates an average of the lease rates that exerciser members were paying during the month in which the CME/CBOT Transaction was consummated and temporary CBOE membership status under Rule 3.19.01 was granted. The Exchange removed the requirement that the access fee be re-set each month based upon then current CBOT lease rates because those

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

<sup>9</sup> The Exchange will remove the access fee and the text describing it from the CBOE Fee Schedule when the Commission takes final action on SR-CBOE-2006-106.

rates could be impacted by the implementation of Rule 3.19.01 and may not reflect what those rates would have been in the absence of Rule 3.19.01. At the same time, the Exchange will retain the flexibility to adjust the access fee in the future through a rule filing submitted under Section 19(b)(3)(A)(ii) of the Act<sup>10</sup> if the Exchange determines that it would be appropriate to do so taking into consideration factors and circumstances prevailing at that time.

The Exchange is also proposing to amend Rule 3.19.01 to delete the provision that the access fee will be due and payable in advance of each calendar month, and instead, to more fully address in the CBOE Fee Schedule the manner in which the access fee will be assessed. This approach is consistent with CBOE's general approach regarding Exchange fees, which is to include the details regarding fee assessment in the Fee Schedule instead of in rules.

Accordingly, the Exchange is proposing to amend the CBOE Fee Schedule to specify the amount of the access fee and to add an explanatory provision setting forth the details regarding its assessment.

First, the explanatory provision states that the access fee is due and payable for each calendar month on the first day of that calendar month. Rule 3.19.01 previously provided that the access fee would be due and payable in advance of each calendar month. The time at which the access fee will be assessed has been changed to the beginning of the month because that is more consistent with CBOE's general billing practices under which monthly fees are generally assessed at the beginning of a month rather than in advance of a month.

Second, the explanatory provision provides that the first month for which the access fee will be assessed is September 2007, and the Exchange proposes to make a corresponding change to Rule 3.19.01. Rule 3.19.01 previously provided that the access fee would be assessed for each

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

month starting in the month after consummation of the CME/CBOT Transaction (which would have been August 2007). In order to effectuate this change, Rule 3.19.01 is proposed to be revised to provide that the access fee will be assessed for each month starting in the second month after consummation of the CME/CBOT Transaction rather than in the first month following its completion. The Exchange is making this change in the interest of fairness so that there is an appropriate transition time for persons granted temporary CBOE membership status under Rule 3.19.01.

Third, the explanatory provision indicates that the access fee is non-refundable except as specified below. This is consistent with how other Exchange fees are generally assessed. For example, CBOE Rule 2.20 provides that CBOE membership dues are assessed on a non-refundable basis.

Fourth, the explanatory provision states that the access fee and any other applicable monthly fees will be assessed for a calendar month unless a person with temporary CBOE membership status provides written notice to the CBOE Membership Department at least five business days prior to the start of that month that the person is relinquishing that status effective on a date prior to the start of that month. The purpose of this requirement is to allow time for the Exchange to process such a change within its membership and billing systems prior to the beginning of the next month.

Fifth, the explanatory provision indicates that the access fee will be assessed through the integrated billing system. This is consistent with how Exchange fees are generally assessed pursuant to CBOE Rule 3.23.

Finally, consistent with the provisions of Rule 3.19.01, the explanatory provision indicates that the access fee will terminate when the SEC takes final action on SR-CBOE-2006-



106 (at which time the Exchange will also remove the access fee and the text describing it from the CBOE Fee Schedule); that all access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the Commission takes such final action; that the Exchange will retain such fees if the Exchange approves SR-CBOE-2006-106; and that such fees will be returned to the payor, with interest, if the Commission disapproves SR-CBOE-2006-106. In addition to stating in the explanatory provision that such fees will be returned to the payor with interest if the Commission disapproves SR-CBOE-2006-106, Rule 3.19.01 is also proposed to be revised to make more explicit that a return of these fees will be with interest. The Exchange believes that the return of these fees with interest in the event the Commission disapproves SR-CBOE-2006-106 was already provided for under Rule 3.19.01 and is making the foregoing change to Rule 3.19.01 solely to eliminate any potential for ambiguity in this regard.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>12</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

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

CBOE 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.

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

<sup>12</sup> 15 U.S.C. 78f(b)(4).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(2) of Rule 19b-4<sup>14</sup> thereunder. 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 Number SR-CBOE-2007-91 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-2007-91. 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

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>14</sup> 17 CFR 240.19b-4(f)(2).

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 10:00 am and 3:00 pm. 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 No. SR-CBOE-2007-91 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).