SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56749; File No. SR–CBOE–2007–128]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Related to the Marketing Fee Program

November 6, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 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. On November 2, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. 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[3] and Rule 19b–4(f)(2) thereunder,[4] 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

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 *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 as follows. First, CBOE proposes to increase the fee from $.10 to $.30 in the following Penny Pilot classes: Equity classes, OIH, and SMH. CBOE also proposes to begin to assess the marketing fee at the rate of $.30 in XLE and XLF, which are also Penny Pilot classes. As a result of this change, CBOE's marketing fee in these classes will be more competitive with the payment for order flow fee other options exchanges assess in these option classes, and allow CBOE market-makers to compete better for order flow in these option classes. CBOE will continue to collect the marketing fee at the rate of $.10 per contract in DIA and SPY, and not collect the marketing fee in QQQQ and IWM.

Second, CBOE also proposes to begin to assess the marketing fee, at the current rate of 65 cents per contract, in all ETF and index option classes in which CBOE currently does not assess the marketing fee, except for the following option classes in which CBOE does not intend to assess the fee: DJX, DXL, EEM, EWC, EWT, IWM, MNX, MVR, OEX, QQQQ, RSP, SPX, VIX, VPL, VWO, XBI, XEO, XSP, credit default options, and credit default basket options. Similar to the proposed change relating to certain Penny Pilot classes, CBOE believes that collecting the marketing fee in these option classes will allow CBOE market-makers to compete better for order flow in these option classes.

CBOE proposes to implement these changes to the marketing fee program beginning on November 1, 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[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

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[7] and Rule 19b–4(f)(2)[8] 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.[9]

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*. Please include File Number SR–CBOE–2007–128 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, the Commission considers the period to commence on November 2, 2007, the date on which the Exchange filed Amendment No. 1.

All submissions should refer to File Number SR–CBOE–2007–128. 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 am and 3 pm. 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–2007–128 and should be submitted on or before December 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–22098 Filed 11–9–07; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56742; File No. SR–FINRA–2007–008]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) To Exempt Locations That Solely Conduct Final Approval of Research Reports

November 5, 2007.

I. Introduction

On August 30, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the definition of Office of Supervisory Jurisdiction (''OSJ'') in NASD Rule 3010(g)(1) to exempt locations that solely conduct final approval of research reports. The proposed rule change was published for comment in the **Federal Register** on October 5, 2007.[3] The Commission received two comment letters in support of the proposal.[4] This order approves the proposed rule change.

II. Description of the Proposal

NASD Rule 3010(g)(1) currently defines OSJ to mean any office of a member at which any one or more of the following functions takes place: (a) Order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to paragraph (d) above; (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect (''Uniform Branch Office Definition'').[5] The Uniform Branch Office Definition was developed collectively by FINRA (then known as NASD), the New York Stock Exchange LLC (''NYSE'') and the North American Securities Administrators Association to establish a national standard. In conjunction with the new Uniform Branch Office Definition, a Form BR was introduced to provide a more efficient, standardized method for members to register branch office locations.

Although FINRA and NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, there were nevertheless different classifications of a location where final approval of research reports by a principal occurs. Under NASD's current rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. NYSE's rules, however, do not include an OSJ definition,[6] and NYSE stated in an *Information Memo* that it deems a location where a member stations a qualified supervisory analyst solely to review research reports as a ''non-sales location,'' which is an express exclusion from the Uniform Branch Office Definition.[7]

Due to this inconsistency, NASD published *Notice to Members* 07–12 in February 2007 seeking comment on a rule harmonization proposal to eliminate the definition of OSJ from the NASD manual. After reviewing the twenty comments received on the original proposal set forth in its *Notice to Members* 07–12, FINRA determined not to move forward with the broad proposal to eliminate the definition of OSJ and adopt new classifications for office locations. Instead, consistent with many of its commenters' recommendation, FINRA proposed to amend the definition of OSJ in the NASD rules to exclude locations that solely conduct final approval of research reports, thereby enabling

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56585 (October 1, 2007), 72 FR 57081.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Marian H. Desilets, President, Association of Registration Management, Inc., dated October 25, 2007, and Jill Ostergaard and Christopher Mahon, Co-Chairs, Securities Industry and Financial Markets Association Self Regulation and Supervisory Practices Committee, dated October 30, 2007.

[5] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104) (order approving Uniform Branch Office Definition).

[6] *See* NYSE Rule 342 (Offices—Approval, Supervision and Control), which contains the Uniform Branch Office Definition.

[7] *See* NYSE *Information Memo* 06–13 (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).