it intends to continue to maintain the Floor Post; however, this change will permit the Exchange to remove the Floor Post if at a later time the Exchange deems such action prudent.

The Exchange also proposes to eliminate the requirement that CBSX DPMs maintain personnel at the Floor Post. As proposed, it would be optional for CBSX DPM firms to staff the Floor Post. The Exchange stated that some CBSX DPMs have requested this change to allow them to more efficiently allocate resources.

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.[4] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[5] which requires that the Exchange's rules be designed 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 to protect investors and the public interest.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–CBOE–2007–129) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25182 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

[4] 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).

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

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57005; File No. SR–CBOE–2007–122]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Amending Its Obvious Error Rule for Options on Indices, ETFs, and HOLDRS

December 20, 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 October 31, 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 December 14, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange proposes to amend CBOE Rule 24.16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds (''ETFs''), and options on HOLding Company Depository ReceiptS (''HOLDRS''). The Exchange is proposing to amend the rule to change the manner in which it applies the obvious price error provision to transactions occurring as part of the Hybrid Opening System (''HOSS'') process. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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. 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 is proposing to amend CBOE Rule 24.16, which is its obvious error rule pertaining to index options, options on ETFs, and options on HOLDRS. The proposal would revise the obvious price error provision that pertains to transactions occurring as part of the HOSS opening rotation process. Currently, Rule 24.16 provides that an obvious price error would be deemed to have occurred when the execution price of a buy (sell) transaction is above (below) the fair market value of the option by at least a prescribed minimum error amount.[3] For purposes of transactions occurring on HOSS, ''fair market value'' is currently defined as the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). The Exchange is proposing to revise the fair market value calculation to provide additional conditions that would apply during regular HOSS rotations and during HOSS rotations in index options series that are being used to calculate the final settlement price of volatility indexes. The additional conditions are intended to reasonably factor the amount of available liquidity into the fair market value calculation during these rotations.

With respect to regular HOSS rotations, the Exchange is proposing to add a condition that the option contract quantity subject to nullification or adjustment would not exceed the size of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).[4] For example, assume that the opening transactions in series XYZ totaled 200 contracts at a price $0.75. Also assume that a member representing non-CBOE Market-Maker A sold 200 contracts, trading 100 contracts with CBOE Market-Maker B and 100 contracts with non-CBOE Market-Maker C. Finally, assume that the first quote after the transaction in question that does not reflect the erroneous transaction is bid 100 contracts for $0.95 and offered 150 contracts at $1.15. In this scenario, an erroneous sell transaction would be deemed to have occurred in accordance with the obvious price error provision because the $0.75 price received by non-CBOE Market-Maker A is at least $0.125 lower than the fair market value of $1.05.[5] In addition, because the size of the bid in the first quote after that does not reflect the erroneous transaction is for 100 contracts, up to 100 contracts executed on the opening on behalf of non-CBOE Market-Maker A would be subject to

[3] For example, for series trading with normal bid-ask differentials as established in CBOE Rule 8.7(b)(iv), the prescribed minimum error amount is as follows: $0.125 if the fair market value is below $2, $0.20 if the fair market value is $2 to $5, $0.25 if the fair market value is above $5 to 10, $0.40 if the fair market value is above $10 to 20, and $0.50 if the fair market value is above $20. *See* CBOE Rule 24.16(a)(1).

[4] For erroneous sell transactions, the size of the bid would be used. For erroneous buy transactions, the size of the offer would be used.

[5] $1.05 is the midpoint of $0.95 and $1.15.

nullification or adjustment under the obvious price error provision.[6] Any nullifications or adjustments would occur on a pro rata basis considering the overall size of the HOSS opening trade. Thus, 50 contracts executed against CBOE Market-Maker B would have a price adjustment to $1.05 (provided the adjusted price does not violate A's limit price) and 50 contracts executed against non-CBOE Market-Maker C would have a price adjustment to $1.05 (provided the adjusted price does not violate A's or C's limit price).

With respect to HOSS rotations in index options series being used to calculate the final settlement price of a volatility index,[7] the Exchange is proposing to add a condition that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) must be for at least the overall size of the HOSS opening transaction(s).[8] If the size of the quote is less than the overall size of the opening transaction(s), then the obvious price error provision shall not apply. For example, if the opening trade in Series XYZ is for a total of 200 contracts and the bid or offer, as applicable, of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) is for 500 contracts, then the quote would be used to determine the fair market value and whether an obvious price error occurred. If the bid or offer, as applicable, of the quote is for only 100 contracts, then the trade would not be subject to nullification or adjustment under the obvious price error provision.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

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 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 by the Exchange with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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–2007–122 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–2007–122. 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 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–CBOE–2007–122 and should be submitted on or before January 18, 2008.

[6] A HOSS transaction involving a non-CBOE Market-Maker is adjusted based on the first non-erroneous quote after the erroneous transaction on CBOE, provided the price does not violate the non-CBOE Market-Maker's limit price. Otherwise, the transaction is nullified. *See* Rule 24.16(a)(1)(ii)(B) and (c)(3).

[7] The Exchange states that CBOE's and the CBOE Futures Exchange, LLC's (a designated contract market approved by the Commodity Futures Trading Commission and a wholly-owned subsidiary of CBOE) rules provide for the listing and trading of options and futures, as applicable, on various volatility indexes. This proposed obvious price error provision would be utilized only for those index options series used to calculate the final settlement price of a volatility index and only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month. Thus, for example, the proposed obvious price error provision would be used for the relevant Standard & Poor's 500 Stock Index (''SPX'') options series on settlement days for CBOE Volatility Index (''VIX'') options and futures contracts. The Exchange notes that, during the final settlement date, traders holding hedged volatility futures positions to settlement can be expected to trade out of their SPX options on that date. Traders who hold short, hedged VIX futures would liquidate that hedge by selling their SPX options, while traders holding long, hedged VIX positions would liquidate their hedge by buying SPX options. In order to seek convergence with the VIX final settlement value, these traders would be expected to liquidate their hedges by submitting orders in the appropriate SPX option series during the SPX opening on the final settlement date of the VIX futures contract. To the extent: (i) traders who are liquidating hedges predominately are on one side of the market (*e.g.*, seek to buy the particular SPX options); and (ii) those traders' orders predominate over other orders during the SPX opening on the final settlement date for the VIX futures contract, trades to liquidate hedges may contribute to an order imbalance during the SPX opening on that date. The same is equally applicable with respect to the final settlement dates of other volatility index options and futures. In light of this potential for a large order imbalance in the applicable series on these dates, the Exchange believes that the application of a modified obvious price error provision is reasonable and appropriate and will contribute to a fair and orderly opening.

[8] *See supra* note 4.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–25187 Filed 12–27–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57012; File No. SR–CBOE–2007–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Amending its Obvious Error Rule for Options on Indices, ETFs, and HOLDRS

December 20, 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 February 21, 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 December 20, 2007, the CBOE submitted Amendment No. 1 to the proposed rule change. 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 Exchange proposes to amend CBOE Rule 24 .16, which is the Exchange's rule applicable to the nullification and adjustment of transactions in index options, options on exchange-traded funds (''ETFs''), and options on HOLding Company Depository ReceiptS (''HOLDRS''). The Exchange is proposing to amend the rule in order to: (i) Modify the nullification and adjustment provisions for erroneous prints and erroneous quotes in the underlying; (ii) eliminate the nullification and adjustment provision for trades below intrinsic value; and (iii) modify the nullification provision for no bid series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://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. 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 proposes to make various amendments to CBOE Rule 24.16, which is its obvious error rule pertaining to index options, options on ETFs, and options on HOLDRS. First, the proposal would modify the rule's provisions pertaining to erroneous prints and erroneous quotes in the underlying. Currently, the rule provides that a trade resulting from an erroneous print disseminated in the underlying market which is later cancelled or corrected by that underlying market may be adjusted or nullified.[3] Similarly, the rule also provides that a trade resulting from an erroneous quote in the underlying security may be adjusted or nullified.[4] Under the revised rule, the appropriate Exchange committee would identify particular underlying or related instrument(s) that would be used to determine an erroneous print or quote and would also identify the relevant market(s) trading the underlying or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The underlying or related instrument(s) may include the underlying or related ETF(s), HOLDRS(s), and/or index value(s),[5] and/or related futures product(s),[6] and the relevant underlying market(s) may include one or more markets. The underlying or related instrument(s) and relevant market(s) would be designated by the appropriate Exchange committee and announced to the membership via Regulatory Circular. For a particular ETF, HOLDRS, index value, and/or futures product to qualify for consideration as a ''related instrument,'' the revised rule requires that: (i) The option class and related instrument must be derived from or designed to track the same underlying index; or (ii) in the case of S&P 100-related options, the options class and related instrument must be derived from or designed to track the S&P 100 Index or the S&P 500 Index. Thus, as an example for illustrative purposes only, for options on the Nasdaq 100 Index Tracking Stock (ETF option symbol ''QQQ'') , the appropriate Exchange committee may determine to designate the underlying Nasdaq 100 ETF and the primary market where it trades, as well as a related futures product overlying the Nasdaq 100 Index and the primary market where that futures product trades, as the instruments that would be considered by the Exchange in determining whether an erroneous print or an erroneous quote has occurred that would form the basis for an adjustment or nullification to a transaction in the related options.[7]

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Under the current rule, to be adjusted or nullified, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period. *See* CBOE Rule 24.16(a)(3).

[4] Under the current rule, an erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. *See* Rule 24.16(a)(4).

[5] An ''index value'' is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would only be applicable for purposes of identifying an erroneous print in the underlying (and not an erroneous quote). *See* proposed changes to CBOE Rule 24.16(a)(3).

[6] To confirm, the Exchange states that it is only proposing that it may designate underlying or related ETF(s), HOLDRS(s), and/or index value(s), and/or related futures product(s). The Exchange states that it is not proposing to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR, or index (any such proposal would be the subject of a separate rule filing).

[7] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Circular. Thereafter, for a transaction in the QQQ options class to be adjusted or nullified due to an erroneous print in an underlying or related instrument that is later cancelled or corrected, the trade must be the result of: (i) An erroneous print in the underlying Nasdaq 100 ETF that is higher or lower than the average trade in the underlying Nasdaq 100 ETF on the primary market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the ETF during the same period; or (ii) an erroneous print in the designated futures product overlying the Nasdaq 100 Index that is higher or lower than the average trade in the designated futures product on the designated market during a two-minute period before and after the erroneous print by an

Continued