

1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date; and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the Fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year.

VII. *Amendments to Rule 19b-1*: The requested relief will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58189; File No. SR-CBOE-2008-75]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Sponsored User Fees

July 18, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on July 15, 2008, the Chicago Board Options Exchange, Incorporated 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 CBOE. 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 the Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to establish fees applicable to Sponsored Users. The text of the

proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, and at 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, CBOE 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 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 Rule 6.20A, *Sponsored Users*, governs electronic access for the entry and execution of orders by Sponsored Users<sup>2</sup> with authorized access to Exchange Systems<sup>3</sup> and the applicable requirements that Sponsored Users and Sponsoring Members<sup>4</sup> are required to satisfy in order to engage in a Sponsoring Member/Sponsored User relationship. The Exchange proposes to establish fees specifically applicable to Sponsored Users. The fees are (1) a Sponsored User Inactivity Fee, (2) a Sponsored User Registration Fee, (3) CBOEdirect connectivity fees, and (4) a co-location fee. The proposed fees would be billed to Sponsoring Members through their clearing firms.

*Sponsored User Inactivity Fee.* The Exchange recently expanded the Sponsored User program, which had previously only applied to CBOE's FLEX and CBSX facilities, to permit electronic access for the entry and execution of orders by Sponsored Users to all other products traded on CBOE.<sup>5</sup> However, the number of Sponsored Users with electronic access to all other products traded on CBOE has been

limited to a total of 15 persons or entities (referred to as the 15 "Sponsored User Slots").<sup>6</sup> The Exchange proposes to charge an inactivity fee of \$5,000 per month that would be charged only if a CBOE Sponsored User (one of the 15 Sponsored User Slots) is not software certified by the Exchange and has not established a production network connection and passed a login test within 90 days of CBOE's acceptance of its Sponsored User registration status. The fee would continue to apply until the Sponsored User has completed all of the foregoing requirements or the Sponsored User's registration status is withdrawn.

Without the fee, a Sponsored User could obtain one of the Sponsored User Slots and choose not to connect to the Exchange. The Exchange believes the proposed fee should provide an appropriate incentive to Sponsored Users to connect to the Exchange and trade. A Sponsored User very easily may avoid assessment of the fee simply by becoming software certified and establishing a network connection to the Exchange as described above.

*Sponsored User Registration Fee.* The Exchange proposes to charge a one-time fee of \$2,500 for each registration of a Sponsored User.

*CBOEdirect connectivity fees.* The Exchange currently charges members the following monthly fees related to connectivity to CBOEdirect: a \$40 per month "CMI Application Server" fee for providing member firms with server hardware that enable the firms to connect to CBOE's two Application Protocol Interfaces: CMI (CBOE Market Interface) and Financial Information Exchange ("FIX"), and a \$40 per month "network access port" fee and a \$40 per month "FIX port" fee for network hardware the Exchange provides to members for access to the Exchange's network. The Exchange proposes to charge Sponsored Users an \$80 per month CMI Application Server fee, \$80 per month network access port fee and \$80 per month FIX port fee.

*Co-location fee.* The Exchange provides cabinet space in the CBOE data center for co-locating member firm network and quoting engine hardware, to help members meet their need for high performance processing and low latency. The Exchange currently charges members a co-location fee of \$10 per "U" of shelf space (which is equal to 1.75 inches). The Exchange proposes to charge Sponsored Users a co-location fee of \$20 per "U" of shelf space.

<sup>2</sup> A "Sponsored User" is defined in Rule 6.20(A)(a) as a person or entity that has entered into a sponsorship arrangement with a Sponsoring Member for purposes of receiving electronic access to the Exchange System(s).

<sup>3</sup> "Exchange Systems" is defined in Rule 6.20A.01 as the FLEX Hybrid Trading System ("FLEX"), CBOE Stock Exchange ("CBSX") and CBOE.

<sup>4</sup> "Sponsoring Member" is defined in Rule 6.20A(b) as a member organization that agrees to sponsor the Sponsored User's access to the Exchange System(s).

<sup>5</sup> See Securities Exchange Act Release No. 58051 (June 27, 2008), 73 FR 38260 (July 3, 2008).

<sup>6</sup> See Rule 6.20A.01.

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

The Exchange believes it is equitable and reasonable to charge higher connectivity and co-location fees to Sponsored Users than it charges to members because members are subject to dues and other fees through their membership to help offset the Exchange's systems expenses.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>7</sup>, in general, and furthers the objectives of section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes the Sponsored User Inactivity Fee should provide an appropriate incentive to Sponsored Users to connect to the Exchange and trade. The Exchange believes the proposed connectivity and co-location fees equitably allocate to Sponsored Users their fair share of Exchange systems expenses.

### *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.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>10</sup> 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>7</sup> 15 U.S.C. 78f(b).

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

## 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-2008-75 on the subject line.

### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2008-75. 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 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-2008-75, and should be submitted on or before August 14, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58194; File No. SR-Phlx-2008-47]

### **Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Disclaimer of Warranties**

July 18, 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 July 16, 2008, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> 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**

The Phlx proposes to adopt Phlx Rule 1107A (NASDAQ OMX Group, Inc. Indexes) to add a disclaimer regarding the accuracy and/or calculation of the NASDAQ-100 Index® (the "Index")<sup>5</sup> or options on the Index, warranties of merchantability for purpose or use, and liability for lost profits or damages.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and on the Exchange's Web site at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

<sup>11</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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The NASDAQ-100 Index® is a mark owned by NASDAQ OMX Group, Inc.