

investors interested in FLEX Equity Options with additional opportunities to trade customized options in an exchange environment, and investors will benefit as a result.

#### *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 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*

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> 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.

### **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-2008-102 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-2008-102. 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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-102 and should be submitted on or before October 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58719; File No. SR-CBOE-2008-103]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Electronic Indicative FLEX Quotes**

October 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<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 Exchange proposes to amend its rules related to Flexible Exchange Options ("FLEX Options")<sup>5</sup> in order to adopt provisions codifying certain electronic Indicative FLEX Quote functionality. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary 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, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below.

<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)(iii).

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

<sup>5</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

**1. Purpose**

The purpose of the proposed rule change is to modify Rule 24B.14, *FLEX Official*, and to include a new definition of the term "Indicative FLEX Quote" in Rule 24B.1, *Definitions*, in order to make clear that non-binding electronic indications of the market for particular series of FLEX Options may be periodically supplied by FLEX Traders<sup>6</sup> and displayed on the FLEX Hybrid Trading System communications network, which is made available to all FLEX Traders that chose to receive the information. Under the proposed rule text, a FLEX Official<sup>7</sup> may call for such Indicative FLEX quotes at any time during the course of trading and with respect to any series of FLEX Options that the FLEX Official deems appropriate. In addition, FLEX Traders may call for Indicative FLEX Quotes, updates thereto, or cancellations thereof.

This ability to call for and provide electronic Indicative FLEX Quotes is somewhat like the Indicative FLEX Quote functionality that CBOE previously utilized on its open outcry-based FLEX RFQ System (the "legacy FLEX system"),<sup>8</sup> except that under the proposed FLEX Hybrid Trading System application: FLEX Officials and all FLEX Traders have the ability to electronically request an Indicative FLEX Quote (previously under the legacy FLEX system, only FLEX Officials had the ability to make a verbal

request on their own motion or at the request of a Market-Maker); FLEX Traders can now electronically communicate their Indicative FLEX Quotes (previously such quotes were only verbalized by Market-Makers in open outcry); and the information is disseminated over the FLEX Hybrid Trading System communications network interface (previously the information was disseminated at the trading post and over a different communications network). We believe the ability to request and provide Indicative FLEX Quotes over the interface serves as a useful tool for FLEX Traders to obtain information about indicative FLEX markets, and the above-described distinctions represent an enhancement to the former process by providing a more efficient and effective means of communication.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder, in general, and Section 6(b)(5),<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change allows FLEX Traders to more efficiently and effectively communicate information about indicative prices to the benefit of customers.

*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 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*

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative

for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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.

**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-2008-103 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-2008-103. 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

<sup>6</sup> The reference to "FLEX Traders" includes any Exchange members that have been approved by the Exchange to use the FLEX Hybrid Trading System and any non-member Sponsored Users that have been provided electronic access, through Sponsoring Members, to the FLEX Hybrid Trading System in accordance with Rule 6.20A, *Sponsored Users*.

<sup>7</sup> The Exchange may at any time designate an Exchange employee or independent contractor to act as a FLEX Official in one or more classes of FLEX Options. A FLEX Official performs the functions set out in Rule 24B.14.

<sup>8</sup> See Securities Exchange Act Release Nos. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993)(SR-CBOE-92-17)(approval of rule change that, among other things, established the legacy FLEX system rule provisions pertaining to Indicative FLEX Quotes) and 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007)(SR-CBOE-2006-99)(approval of rule change that, among other things, deleted the legacy FLEX system rule provisions pertaining to Indicative FLEX Quotes because the then-existing functionality was no being longer utilized).

<sup>9</sup> 15 U.S.C. 78s(b)(1).

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-103 and should be submitted on or before October 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58730; File No. SR-DTC-2008-09]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Expand DTC's Debit Cap Look-Ahead Processing

October 3, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 12, 2007, The Depository Trust Company ("DTC") 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 primarily by DTC. 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 proposed rule change would amend the Look-Ahead Process in DTC's Settlement Services Guide to allow Money Market Issuance Deliveries pending for a Custodian's or Dealer's net debit cap to complete against Maturity

Presentments pending for an Issuing/Paying Agent's net debit cap. DTC's processing system would calculate the net effect of the dollar amount of offsetting transactions in the accounts of the two Participants involved. If the net of the transactions would result in positive risk management controls in those two accounts, the transactions would be completed.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 10, 2003, the Commission approved a proposed rule change to establish a transaction Look-Ahead Process which became available for municipal and corporate bonds, including Money Market Instruments ("MMIs").<sup>3</sup> On August 11, 2004, the Commission approved another proposed rule change which expanded the application and extended the benefit of the Look-Ahead Process to all equity transactions.<sup>4</sup> With this proposed rule change, DTC is proposing to expand the Look-Ahead Process to MMIs.

The purpose of DTC's Look-Ahead Process is to reduce the number of recycling transactions in the system caused by the Net Debit Cap Risk Management Control.<sup>5</sup> The existing Look-Ahead Process finds delivery transactions that are pending because the Receiving Participant has reached its net debit cap.<sup>6</sup> It then looks to see

whether the Receiving Participant has a pending delivery for the same security to another Participant.<sup>7</sup> In such a situation, DTC's Account Transaction Processor ("ATP")<sup>8</sup> will calculate the net effect to the collateral<sup>9</sup> and net debit cap controls for all three Participants involved. If the net effect will not result in a deficit in the collateral or net debit cap controls for any of the three Participants, ATP processes the transactions simultaneously. Without the Look-Ahead Process, the transaction would pend in DTC's system until another transaction created sufficient credit in the Receiving Participant's account. Most credits are generated when a Participant delivers securities versus payment, pledges securities for value, receives principal, dividend or other interest allocations, or wires funds (a Settlement Progress Payment ("SPP")) to DTC's account at the Federal Reserve Bank of New York in order to reduce its DTC net debit.

In order to further reduce the number of recycling transactions in the system and to improve the timeliness and certainty of transactions completing, DTC is proposing to expand the Look-Ahead Process beyond same securities for MMIs to allow pairs of money market instrument transactions between two Participants (*i.e.*, an Issuing Paying Agent ["IPA"] and a custodian or dealer) that are pending for both party's net debit caps to complete. This situation occurs when an IPA has a delivery of a new money market instrument to a custodian or a dealer for X dollars and that same custodian or dealer has a maturity of a money market instrument of equal or greater value awaiting acceptance by the same IPA. The proposed rule change would allow ATP to process those transactions simultaneously, as long as neither Participant's risk management controls were overridden.

Participant's net settlement debit to exceed its net debit cap is placed in a pending (recycling) queue until another transaction creates credits in the Participant's account.

<sup>7</sup> For example, Participant A is delivering shares to Participant B and Participant B has a delivery obligation of shares with the same CUSIP to Participant C.

<sup>8</sup> ATP is the core processing system for all transaction activity affecting security positions held at DTC.

<sup>9</sup> DTC tracks collateral in a Participant's account through its Collateral Monitor ("CM"). At all times, the CM reflects the amount by which the collateral in the account exceeds the net debit in the account. When processing a transaction, DTC verifies that the deliverer's and receiver's CMs will not become negative when the transaction completes. If the transaction would cause either party to have a negative CM, the transaction will recycle until the deficient account has sufficient collateral for the transaction to complete.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (June 16, 2003) (File No. SR-DTC-2003-07).

<sup>4</sup> Securities Exchange Act Release No. 50182 (August 11, 2004), 69 FR 51341 (August 18, 2004) (File No. SR-DTC-2004-05).

<sup>5</sup> Net debit caps help ensure that DTC can complete settlement, even if a Participant fails to settle.

<sup>6</sup> Before completing a transaction in which a Participant is the receiver, DTC calculates the resulting effect the transaction would have on the Participant's account and determines whether the resulting net balance would exceed the Participant's net debit cap. Any transaction that would cause the