

original intent of the BX Fee Filing and the fee BX currently charges its members. The proposed rule change will retroactively correct the error by assessing the fees pursuant to the now accurate Rule 7018. The Commission believes it is important for BX's rules to be accurate and applied correctly in order to remove impediments to and perfect the mechanism of a free and open market and a national market system.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-BX-2009-055), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60864; File No. SR-CBOE-2009-076]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

October 22, 2009.

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 October 20, 2009, 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 and II 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

CBOE proposes to amend its rules relating to the Penny Pilot Program. The

text of the rule proposal 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.

#### 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. 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

CBOE proposes to extend and expand the Penny Pilot Program, which commenced on January 26, 2007, in accordance with the proposed expansion that the SEC approved on September 23, 2009.<sup>5</sup>

###### Background:

The Penny Pilot Program currently is in effect in fifty-eight multiply-listed option classes.<sup>6</sup> For all classes in the Program except for the QQQs, the minimum increment for bids and offers is 0.01 for all option series below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). For QQQs, the minimum increment is \$0.01 for all option series. The Penny Pilot Program is scheduled to expire on October 31, 2009.<sup>7</sup>

On May 20, 2009, CBOE filed SR-CBOE-2009-31, which filing proposed to extend the Pilot Program, and also proposed to significantly expand the Pilot Program to all equity and ETF option classes, such that at the end of a brief roll-out period all equity and ETF option classes would be included in the

Penny Pilot Program.<sup>8</sup> Moreover, in all Pilot classes, option series of less than \$1 premium value would be quoted in penny increments, and series at \$1 or above would be quoted in nickel increments. CBOE believed that extending and expanding the Penny Pilot Program as proposed was balanced, responsible, and reasonable. It would benefit investors by expanding the Pilot Program in all equity and ETF option classes over a relatively short period of time, which would enable investors to obtain the benefits of penny quoting and trading in those option contracts that customers actually trade. CBOE also believed that its proposal was balanced in that it recognized that the Pilot Program, while providing certain benefits such as reducing spreads, also resulted in a significant reduction in liquidity at the BBO, a decrease in volume in some classes, and a significant rise in quote traffic. Moreover, CBOE's plan eliminated investor confusion as to which options are quoted in penny increments, and helps to reduce the growth of quote traffic.

###### Proposed Expansion:

In light of the SEC's recent approval of the NYSEArca's proposed expansion of the Penny Pilot Program (see SR-NYSEArca-2009-44), CBOE has determined to withdraw its proposal to expand the Pilot Program as described in SR-CBOE-2009-31. Instead, CBOE now proposes to extend the Pilot Program from November 1, 2009 until December 31, 2010, and expand the Penny Pilot Program by adding the 300 most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class would be designated as "high premium" if, at the time of selection, the underlying security was priced at \$200 per share or above, or the underlying index level was at 200 or above. These determinations shall be based on the price at the close of trading on Expiration Friday prior to the class being added to the Pilot Program. CBOE believes that it is appropriate to exclude high priced underlying securities, as the benefit to the public from excluding such issues is minimal because of the high price of at-the-money options.

The 300 option classes would be added in groups of 75 classes each quarter beginning on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010. The option classes will be identified based on national average daily volume

<sup>8</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)(iii).

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

<sup>5</sup> See Securities Exchange Act Release No. 60711 (September 23, 2009), approving SR-NYSEArca-2009-44.

<sup>6</sup> CBOE's rules also provide that for so long as SPDR options (SPY) and options on Diamonds (DIA) participate in the Penny Pilot Program, the minimum increments for Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), respectively, are \$0.01 for all option series below \$3, and \$0.05 for all option series \$3 and above. See CBOE Rule 6.42.03.

<sup>7</sup> See Securities Exchange Act Release No. 60223 (July 1, 2009), 74 FR 32993 (July 9, 2009), granting immediate effectiveness to SR-CBOE-2009-43.

<sup>8</sup> See Securities Exchange Act Release No. 60018 (June 1, 2009), 74 FR 27211 (June 8, 2009).

in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to the Pilot Program would not be utilized for purposes of the six month analysis.<sup>9</sup> CBOE will not include option classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. CBOE will announce the classes to be added by circular, in addition to filing a proposed rule change identifying the option classes.

In the event an option class included in the Pilot Program is delisted, the Exchange may replace it on a semi-annual basis with the next most actively-traded, multiple-listed option class that is not yet participating in the Pilot Program, based on national average daily volume in the preceding six months. Any replacement class would be added on the second trading day following January 1, 2010 and July 1, 2010.<sup>10</sup> CBOE will employ the same parameters to prospective replacement issues as approved and applicable under the Penny Pilot Program, including excluding high-priced underlying securities. CBOE will announce any replacement classes by circular.

CBOE is specifically authorized to act jointly with the other options exchanges participating in the Penny Pilot Program in identifying the 300 option classes that will be added to the Pilot Program, as well as any replacement class for an option class included in the Pilot Program that has been delisted.

CBOE will submit to the SEC semi-annual reports that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active option classes added to the Pilot Program. This proposed sampling

approach provides an appropriate means by which to monitor and assess the Penny Pilot Program's impact. CBOE will also identify, for comparison purposes a control group consisting of the ten least active option classes from the existing 58 Penny Pilot Program classes. This report will include, but is not limited to the following: (1) Data and analysis of the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on CBOE's automated systems; (4) data reflecting the size and depth of markets; and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

## 2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>11</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>12</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change allows for an expansion of the Penny Pilot Program for the benefit of market participants.

### 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

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

Because the foregoing proposed 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that the proposed rule change is substantially similar to a proposal submitted by another options exchange that was recently approved by the Commission and also incorporates a change to the initial expansion date filed by the other exchange. The Exchange further states that waiving the 30-day operative delay will allow the Pilot Program to continue uninterrupted and allow CBOE to adopt the same expansion schedule as other exchanges.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to implement the 75 additional classes on November 2, 2009 and permit the Penny Pilot Program to continue uninterrupted, consistent with other exchanges.<sup>17</sup> Accordingly, the Commission designates the proposed rule change operative 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.

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78(c)(f).

<sup>9</sup> Thus, the 75 classes to be added on November 2, 2009 would be identified based on OCC volume data from April 1, 2009 through September 30, 2009; the 75 classes to be added on February 1, 2010 would be identified based on OCC volume data from July 1, 2009 through December 31, 2009; the 75 classes to be added on May 3, 2010 would be identified based on OCC volume data from October 1, 2009 through March 31, 2010; and the 75 classes to be added on August 2, 2010 would be identified based on OCC volume data from January 1, 2010 through June 30, 2010.

<sup>10</sup> The month immediately preceding their addition to the Pilot Program, i.e., December or June, would not be used for purposes of the six month analysis. For example, a replacement class to be added on the second trading following January 1 would be identified based on OCC volume data from June 1 through November 30.

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

#### 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-2009-076 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2009-076. 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 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-2009-076 and should be submitted on or before November 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60872; File No. SR-OCC-2009-14]

#### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Clear Options Based on Index-Linked Securities

October 23, 2009.

##### I. Introduction

On August 12, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-OCC-2009-14 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on September 8, 2009.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

##### II. Description

The proposed rule change permits OCC to clear options based on index-linked securities ("Index-Linked Securities").

Index-Linked Securities are non-convertible debt of major financial institutions that typically have a term of at least one year but not greater than thirty years and that provide for payment at maturity based upon the performance of an index or indices of equity securities or futures contracts, one or more physical commodities, currencies or debt securities, or a combination of any of the foregoing. Index-Linked Securities are traded on national securities exchanges and meet the definition of "NMS Stock" under regulation NMS.<sup>3</sup> The options

exchanges will treat options on Index-Linked Securities ("Index-Linked Security Options") as standardized equity options for listing and trading purposes and will generally govern their trading by the same rules that are applicable to trading in other equity options. Exercises of Index-Linked Security Options will be settled by delivery of the underlying securities in the same manner as exercises of equity options.

OCC is amending its By-Laws and Rules to accommodate Index-Linked Security Options. OCC is adding a definition of "index-linked security" to Article I of its By-Laws, amending the definition of "stock option contract" in Article I of its By-Laws to include Index-Linked Security Options, and amending the definition of "non-equity securities option contract" in Article I of its By-Laws to clarify that Index-Linked Security Options are excluded from the definition. OCC is amending Interpretation and Policy .05 to Article VI, Section 11A of its By-Laws to clarify that a call of an entire class of Index-Linked Securities will result in an adjustment of Index-Linked Security Options in the event of a cash merger but that a partial call will not result in an adjustment. OCC is adding Interpretation and Policy .10 to Article VI, Section 11A of the By-Laws that would state that interest payments on Index-Linked Securities generally will be considered "ordinary cash dividends or distributions" within the meaning of paragraph (c) Article VI, Section 11A. OCC is adding language to Rule 604(b)(4)(iii) to state that for the purposes of Rule 604, Index-Linked Securities will be treated as stock, assuming they meet the basic listing requirement applicable to stocks. OCC is amending Rule 604(b)(4) to conform its language to its practice of limiting the value of securities with the same CUSIP number, as opposed to securities of the same issuer, to 10% of the margin requirement of an account. OCC is adding Interpretation and Policy .14 to Rule 604(b)(4), which states that OCC may disapprove for margin credit a security that otherwise meets the Rule 604(b) criteria if other factors warrant such a disapproval.

##### III. Discussion

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 registered clearing agency. In particular, the Commission believes that by amending its By-Laws and Rules to provide for the clearance and settlement of Index-Linked Security

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 60602 (Sep. 1, 2009), 74 FR 46278.

<sup>3</sup> Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005). "NMS Stock" is defined in Rule 600(b)(47) of Regulation NMS as "any NMS security other than an option." The definition of "NMS Security" in Rule 600(b)(46) of Regulation NMS includes any security for which transaction reports are collected and disseminated under an effective national market system plan. Because Index-Linked Securities are exchange traded, they fall within this definition.