

gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Kohlberg Capital represents that its proposal to grant certain stock options to Non-Employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Kohlberg Capital states that the Board is actively involved in the oversight of its affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, Kohlberg Capital states that the Non-Employee Directors provide guidance and advice on operational matters, asset valuation and strategic direction, as well as serving on committees. Kohlberg Capital believes that the availability of options under the Plan will provide significant at-risk incentives to Non-Employee Directors to remain on the Board and devote their best efforts to ensure Kohlberg Capital's success. Kohlberg Capital states that the options will provide a means for the Non-Employee Directors to increase their ownership interests in Kohlberg Capital, thereby ensuring close identification of their interests with those of Kohlberg Capital and its shareholders. Kohlberg Capital asserts that by providing incentives such as options, it will be better able to maintain continuity in the Board's membership and to attract and retain the highly experienced, successful and dedicated business and professional people who are critical to Kohlberg Capital's success as a BDC.

4. Kohlberg Capital states that the amount of voting securities that would

result from the exercise of all outstanding options issued to its officers and employees under the Employee Plan would be 1,315,000 shares of Kohlberg Capital's Common Stock, or approximately 7.30% of its outstanding voting securities as of December 31, 2007, which is below the percentage limitations in the Act. Kohlberg Capital asserts that, given the relatively small amount of Common Stock issuable to Non-Employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of Kohlberg Capital's Common Stock.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57576; File No. SR-CBOE-2008-33]

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

March 28, 2008.

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 March 25, 2008, 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 CBOE. On March 27, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change.³ The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section

19(b)(3)(A)(i) of the Act⁴ and Rule 19b-4(f)(1) thereunder,⁵ 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 modified by Amendment No. 1, from interested persons.

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

CBOE proposes to implement the second phase of the expansion of the industry-wide Penny Pilot Program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the CBOE'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 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 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 proposes to amend its rules in connection with the second phase of the expansion of the industry-wide Penny Pilot Program on March 28, 2008. The Penny Pilot Program commenced on January 26, 2007, and was later expanded (Phase I) on September 27, 2007 with the addition of twenty-two option classes. Currently, thirty-five option classes participate in the Penny Pilot Program.⁶

Phase II of the expansion will begin on March 28, 2008, last for one year until March 27, 2009, and add the following twenty-eight option classes to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In connection with Amendment No. 1 the Exchange submitted a Regulatory Circular that CBOE disseminated on March 25, 2008, identifying the twenty-eight option classes being added to the Penny Pilot on March 28, 2008. The circular constitutes changes to the text of CBOE's rules.

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

⁵ 17 CFR 240.19b-4(f)(1).

⁶ CBOE also quotes and trades two index option classes, XSP and DJX, in the same minimum increments as the Pilot classes (except for options on the QQQs, in which the minimum increment is \$0.01 for all option series).

the Pilot Program.⁷ These twenty-eight new classes will be among the most active, multiply-listed option classes. Goldman Sachs Group, Inc. (GS) Countrywide Financial Corporation (CFC) Bank of America Corporation (BAC) iShares MSCI Emerging Mkts. Index Fund (EEM) Merrill Lynch & Co., Inc. (MER) Vale (RIO) EMC Corporation (EMC) Exxon Mobil Corporation (XOM) Wal-Mart Stores, Inc. (WMT) The Home Depot, Inc. (HD) Valero Energy Corporation (VLO) Alcoa Inc. (AA) Dell Inc. (DELL) SanDisk Corporation (SNDK) The Bear Stearns Companies, Inc. (BSC) Pfizer Inc (PFE) eBay Inc. (EBAY) Halliburton Company (HAL) Lehman Brothers Holdings Inc. (LEH) JPMorgan Chase & Co. (JPM) Washington Mutual, Inc. (WM) Ford Motor Company (F) Target Corporation (TGT) American International Group, Inc. (AIG) Newmont Mining Corporation (NEM) Verizon Communications Inc. (VZ) Mini-NDX Index Options (MNX) Starbucks Corporation (SBUX)

The minimum increments for all classes in the Penny Pilot Program, except for the QQQQs, will continue to be \$0.01 for all option series below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). For QQQQs, the minimum increment will remain \$0.01 for all option series. CBOE intends to continue to implement the quote mitigation strategies that it previously identified in its rule filings relating to the Penny Pilot Program.

Finally, CBOE intends to submit to the Commission reports analyzing the Penny Pilot Program for the following time periods:

- February 1, 2008–July 31, 2008
- August 1, 2008–January 31, 2009

CBOE anticipates that its reports will assess the impact of penny pricing on market quality and options systems capacity. CBOE's reports should be submitted within one month following the end of the period being analyzed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act⁹ 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act¹⁰ and Rule 19b-4(f)(1) thereunder,¹¹ because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.¹²

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:

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(1).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 27, 2008, the date on which CBOE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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-2008-33 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-2008-33. 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 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-2008-33 and should be submitted on or before April 24, 2008.

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

Florence E. Harmon,

Deputy Secretary.

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¹³ 17 CFR 200.30-3(a)(12).

⁷ CBOE issued a Regulatory Circular, which is published on its Web site, identifying these twenty-eight option classes.