

orders exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act. On December 19, 2012, Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Guilty Plea from December 19, 2012, until the Commission takes final action on an application for a permanent order or, if earlier, February 15, 2013.

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants assert that the Conduct did not involve any of the Applicants' Fund Service Activities, and that the Settling Firm does not serve in any of the capacities described in section 9(a) of the Act. Additionally, Applicants assert that the Conduct did not involve any Fund or ESC with respect to which the Applicants provided Fund Service Activities, or the assets of any such Fund or ESC. Applicants further assert that (i) none of the current or former directors, officers or employees of the Applicants (other than certain personnel of the Settling Firm and UBS AG who were not involved in any of the Applicants' Fund Service Activities) had any knowledge of, or had any involvement in, the Conduct; (ii) no former employee of the Settling Firm or any other Covered Person who previously has been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agencies as having been responsible for the Conduct will be an officer, director, or employee of any Applicant or any other Covered Person; (iii) those identified employees have had no, and will not have any future, involvement in the Covered Persons' activities in any capacity described in section 9(a) of the Act; and (iv) because the personnel of the Applicants (other than certain personnel of the Settling Firm and UBS AG who were not involved in any of the Applicants' Fund Service Activities) did not have any involvement in the Conduct, shareholders of those RICs and ESCs were not affected any differently than if those RICs and ESCs had received services from any other non-affiliated investment adviser or principal underwriter. Applicants have agreed that neither they nor any of the other Covered Persons will employ any

of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

5. Applicants further represent that the inability of the Applicants (other than the Settling Firm) to continue providing Fund Service Activities would result in potential hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of each Fund, including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Guilty Plea, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Plea Agreement and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they (other than the Settling Firm) were barred from providing Fund Service Activities to Funds, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial capital and resources to establishing expertise in advising and sub-advising Funds and in support of their principal underwriting business.

7. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

#### Applicants' Conditions

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary

exemptions granted under the Act in connection with the application.

2. Neither the Applicants nor any of the other Covered Persons will employ any of the former employees of the Settling Firm or any other Covered Person who previously have been or who subsequently may be identified by the Settling Firm, UBS AG or any U.S. or non-U.S. regulatory or enforcement agency as having been responsible for the Conduct in any capacity without first making a further application to the Commission pursuant to section 9(c).

#### Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

*It is hereby ordered*, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Guilty Plea, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68933; File No. SR-CBOE-2013-020]

#### Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Renew an Existing Pilot Program for an Additional Fourteen Months

February 14, 2013.

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 February 7, 2013, Chicago Board Options Exchange, Incorporated (the "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 Commission is

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

<sup>2</sup> 17 CFR 240.19b-4.



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 renew an existing pilot program for an additional fourteen months. Under the existing pilot program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (a) any Friday of the month, other than the third Friday-of-the-month ("End of Week Expirations" or "EOWs"), and (b) the last trading day of the month ("End of Month Expirations" or "EOMs"). The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

### **Chicago Board Options Exchange, Incorporated Rules**

\* \* \* \* \*

### **Rule 24.9. Terms of Index Option Contracts**

(a)–(d) No change.

(e) *End of Week/End of Month Expirations Pilot Program ("EOW/EOM Pilot Program")*

(1) End of Week ("EOW") Expirations. The Exchange may open for trading EOWs on any broad-based index eligible for regular options trading to expire on any Friday of the month, other than the third Friday-of-the-month. EOWs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the Saturday following the third Friday of the month; provided, however, that EOWs shall be P.M.-settled.

(2) End of Month ("EOM") Expirations. The Exchange may open for trading EOMs on any broad-based index eligible for regular options trading to expire on last trading day of the month. EOMs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the Saturday following the third Friday of the month; provided, however, that EOMs shall be P.M.-settled.

(3) Duration of EOW/EOM Pilot Program. The EOW/EOM Pilot Program shall be through [February 14, 2013] *April 14, 2014.*

(4) EOW/EOM Trading Hours on the Last Trading Day. On the last trading day, transactions in expiring EOWs and EOMs may be effected on the Exchange between the hours of 8:30 a.m. (Chicago time) and 3:00 p.m. (Chicago time). This subsection (4) applies to all outstanding

expiring EOW and EOM Expirations listed on or before May 6, 2011 and all EOWs and EOMs listed thereafter under the EOW/EOM Pilot Program.

\* \* \* Interpretations and Policies:

.01–.13 No change

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 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**

On September 14, 2010, the Commission approved a CBOE proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month, and (b) the last trading day of the month.<sup>3</sup> Under the terms of the End of Week/End of Month Expirations Pilot Program ("Program"), EOWs and EOMs are permitted on any broad-based index that is eligible for regular options trading. EOWs and EOMs are cash-settled and have European-style exercise. The proposal became effective on a pilot basis for a period of fourteen months that commenced on the next full month after approval was received to establish the Program<sup>4</sup> and was subsequently extended.<sup>5</sup> The Program is scheduled to expire on February 14, 2013. The Exchange believes that the Program has

<sup>3</sup> See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (order approving SR-CBOE-2009-075).

<sup>4</sup> *Id.*

<sup>5</sup> See Securities Exchange Act Release No. 65741 (November 14, 2011), 76 FR 72016 (November 21, 2011) (immediately effective rule change extending the Program through February 14, 2013).

been successful and well received by its Trading Permit Holders and the investing public during that [sic] the time that it has been in operation. The Exchange hereby proposes to extend the Program for an additional fourteen months, so that it will expire on April 14, 2014. This proposal does not request any other changes to the Program.

Pursuant to the order approving the establishment of the Program, two months prior to the conclusion of the pilot period, CBOE is required to submit an annual report to the Commission, which addresses the following areas: Analysis of Volume & Open Interest, Monthly Analysis of EOW & EOM Trading Patterns and Provisional Analysis of Index Price Volatility. The Exchange has submitted, under separate cover, the annual report in connection with the present proposed rule change. Confidential treatment under the Freedom of Information Act is requested regarding the annual report.

If, in the future, the Exchange proposes an additional extension of the Program, or should the Exchange propose to make the Program permanent (which the Exchange currently intends to do), the Exchange will submit an annual report (addressing the same areas referenced above and consistent with the order approving the establishment of the Program) to the Commission at least two months prior to the expiration date of the Program. The annual report will be provided to the Commission on a confidential basis. Any positions established under the Program will not be impacted by the expiration of the Program.

The Exchange believes there is sufficient investor interest and demand in the Program to warrant its extension. The Exchange believes that the Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the Program.

The Exchange believes that the proposed extension of the Program will not have an adverse impact on capacity.

##### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

<sup>6</sup> 15 U.S.C. 78f(b).



6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the Program has been successful to date and states that it has not encountered any problems with the Program. The proposed rule change allows for an extension of the Program for the benefit of market participants. Additionally, the Exchange believes that there is demand for the expirations offered under the Program and believes that that EOWs and EOMs will continue to provide the investing public and other market participants increased opportunities to better manage their risk exposure.

#### *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. Specifically, the Exchange believes that, by extending the expiration of the Program, the proposed rule change will allow for further analysis of the Program and a determination of how the Program shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

#### *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 proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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>11</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>12</sup>

The Exchange has asked the Commission to waive the 30-day operative delay.<sup>13</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Program to continue uninterrupted. Accordingly, the Commission designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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:

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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 Exchange has satisfied this requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2013-020 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-2013-020. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 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-2013-020 and should be submitted on or before March 15, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> *Id.*