

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58955; File No. SR-CBOE-2008-109)

November 14, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Consolidate into a Single Rule Certain Requirements for Products Traded on the CBOE Stock Exchange Pursuant to Unlisted Trading Privileges

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 November 4, 2008, the Chicago Board Options Exchange, Inc. (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. CBOE has designated the proposed rule change as constituting a rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CBOE proposes to amend its rules to consolidate into a single rule certain requirements for products traded on the CBOE Stock Exchange (“CBSX”), the CBOE’s stock trading facility, pursuant to unlisted trading privileges (“UTP”). Many of these products have been established in various new products proposals previously approved by the Commission.

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<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).

The text of the proposed rule change is available at the Exchange's Web site at <http://www.cboe.com>, at the principal office of the Exchange, 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 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. 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

The CBOE proposes to amend its rules to consolidate into a single rule certain requirements for products traded on CBSX pursuant to UTP. Many of these products have been established in various new products proposals previously approved by the Commission. The Exchange proposes to amend CBOE Rule 31.5 to set forth a new rule, CBOE Rule 31.5P, regarding the extension of UTP to an NMS Stock<sup>5</sup> that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stock, unless otherwise noted. The Exchange will file with the Commission a Form 19b-4(e) with respect to any such security that is a "new derivative securities product" ("NDSP") as

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<sup>5</sup> See CBOE Rule 50.1(j).

defined in Rule 19b-4(e) under the Act.<sup>6</sup> In addition, any NDSP traded on the Exchange pursuant to proposed CBOE Rule 31.5P will be subject to the following criteria.

Proposed CBOE Rule 31.5P(2)(a) provides that the Exchange will distribute an information circular prior to the commencement of trading in such NDSP that generally will include the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the NDSP, including CBOE Rule 53.6;<sup>7</sup> (2) the Exchange's rules that will apply to the NDSP, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risks of trading during the period from 8:15 a.m. until 8:30 a.m. (Central Time) due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the NDSP.

Proposed CBOE Rule 31.5P(2)(b) reminds members and member organizations that they are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to such NDSPs by means of an information circular.

CBOE Rule 52.3(b)-(c) addresses trading halts in NDSPs traded on the Exchange pursuant to UTP. Proposed CBOE Rule 52.3(c)(6)(i) would modify the term "Derivative

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

<sup>7</sup> CBOE Rule 53.6 requires, in part, that member organizations have a reasonable basis for recommendations that they make to customers.

Securities Product” to “New Derivative Securities Product” and state that the modified term shall have the same meaning as New Derivative Securities Product in Rule 31.5P. The term “New Derivative Securities Product” is intended to include any products that are included in the current term “Derivative Securities Product.” In addition, throughout CBOE Rule 52.3(b)-(c), the term “Derivative Securities Product” is modified to “New Derivative Securities Product” to reflect the change in proposed CBOE Rule 52.3(c)(6)(i).

CBOE Rule 52.3(c)(1) provides that if an NDSP begins trading on CBSX in the period from 8:15 a.m. until 8:30 a.m. (Central Time) and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value,<sup>8</sup> CBSX may continue to trade the NDSP for the remainder of the 8:15 a.m. to 8:30 a.m. session. CBOE Rule 52.3(c)(2) provides that during Normal Market Hours,<sup>9</sup> if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the NDSP, CBSX, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the NDSP on CBSX. CBOE Rule 52.3(c)(3) provides that if an applicable Required Value continues not to be calculated or widely disseminated as of the commencement of trading on CBSX on the next trading day, CBSX shall not commence trading of the NDSP that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, CBSX may resume trading in the NDSP only if calculation and wide dissemination of the applicable Required Value resumes or

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<sup>8</sup> Proposed CBOE 52.3(c)(6)(ii) states that “Required Value” shall mean (i) the value of any security or index underlying a New Derivative Securities Product, and (ii) the intraday indicative value, or the indicative optimized portfolio value or other comparable estimate of the value of a share of a New Derivative Securities Product updated regularly during the trading day.”

<sup>9</sup> CBOE Rule 52.3(c)(2) defines Normal Market Hours as the time period from 8:30 a.m. until 3:15 p.m. (Central Time).

trading in the NDSP resumes in the listing market. Finally, proposed CBOE Rule 52.3(c)(4) provides that for an NDSP where a net asset value (or, in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated, CBSX will immediately halt trading in such security upon notification by the listing market that the net asset value or, if applicable, such disclosed portfolio is not being disseminated to all market participants at the same time. CBSX may resume trading in the NDSP only when trading in the NDSP resumes on the listing market.

Proposed CBOE Rule 31.5P(2)(c) provides for restrictions for members registered as Market Makers (“Restricted Market Maker”) in an NDSP that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, “Reference Assets”). Specifically, proposed CBOE Rule 31.5P(2)(c)(i) provides a Restricted Market Maker in an NDSP is prohibited from acting or registering as a market maker in any Reference Asset of that NDSP or any derivative instrument based on a Reference Asset of that NDSP (collectively, with Reference Assets, “Related Instruments”). Proposed CBOE Rule 31.5P(2)(c)(ii) provides a Restricted Market Maker shall, in a manner prescribed by CBOE, file with CBOE and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded: (a) in which the Restricted Market Maker holds an interest; (b) over which it has investment discretion; or (c) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to CBOE as required by this Rule. Proposed CBOE Rule 31.5P(2)(c)(iii) provides that in addition to the existing obligations under CBOE rules regarding the production of books

and records, a Restricted Market Maker shall, upon request by CBOE, make available to CBOE any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded. Finally, proposed CBOE Rule 31.5P(2)(c)(iv) provides that a Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

Lastly, CBOE represents that the Exchange's surveillance procedures for NDSPs traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems. The Exchange will closely monitor activity in NDSPs traded on the Exchange pursuant to UTP and deter any potential improper trading activity. Proposed CBOE Rule 31.5P(2)(d) also provides that the Exchange will enter into a comprehensive surveillance sharing agreement ("CSSA") with a market trading components of the index or portfolio on which the New Derivative Securities Product is based to the same extent as the listing exchange's rules require the listing market to enter into a CSSA with such market.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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, by providing for the trading of securities, including NDSPs, on CBSX pursuant to UTP, subject to consistent and reasonable standards.

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange 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.

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

Because the foregoing 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 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

CBOE has asked the Commission to waive the 30-day operative delay. The Commission hereby grants the Exchange's request and believes that such waiver is consistent with the protection of investors and the public interest. This action should benefit investors by creating, without undue delay, additional competition in the trading of new derivative securities products, subject to consistent and reasonable standards. Proposed CBOE Rules 31.5 and 52-3(b)-(c) are

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that CBOE has satisfied the five-day pre-filing notice requirement.

closely modeled after similar rules of other national securities exchanges<sup>14</sup> and do not raise any novel or significant regulatory issues. Therefore, the Commission designates the proposed rule change as operative upon filing.<sup>15</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.

#### 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-2008-109 on the subject line.

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<sup>14</sup> See BATS Exchange Rule 14.1 and Securities Exchange Act Release No. 58623 (September 23, 2008), 73 FR 57169 (October 1, 2008) (SR-BATS-2008-004); National Stock Exchange Rule 15.9 and Securities Exchange Act Release No. 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05); NASDAQ OMX PHLX Rule 803(o) and Securities Exchange Act Release No. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34); International Securities Exchange Rule 2101 and Securities Exchange Act Release No. 57387 (February 27, 2008), 73 FR 11965 (March 5, 2008) (SR-ISE-2007-99).

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

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-2008-109. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also 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-2008-109 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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