

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59005; File No. SR-CBOE-2008-113)

November 24, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Amending CBOE Rule 5.3 to Enable the Listing and Trading of Options on Managed Fund Shares

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 November 18, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to revise Rule 5.3 to enable the listing and trading on the Exchange of options on Managed Fund Shares. The text of the rule proposal is available on the Exchange’s website (<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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

places specified in Item III 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based on a proposal by NYSE Arca, Inc. ("NYSE Arca").³ The purpose of the proposed rule change is to revise CBOE Rule 5.3 to enable the listing and trading of options on managed fund shares ("Managed Fund Shares") that are listed and traded on a national securities exchange and are considered to be an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Act). Managed Fund Shares represent an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity. Unlike traditional exchange traded funds (referred to as "Units" in Rule 5.3), Managed Fund Shares are actively managed. Managed Fund Shares, although, based upon a publicly disclosed portfolio of securities, each trade as a single exchange-listed equity security. Accordingly, rules pertaining to the listing and trading of standard equity options will apply to Managed Fund Shares.

Listing Criteria

The Exchange will consider listing and trading options on Managed Fund Shares provided the Managed Fund Shares meet (1) the criteria for underlying securities set forth in

³ See Exchange Act Release No. 58799 (October 16, 2008), 73 FR 63534 (October 24, 2008) (SR-NYSEArca-2008-108) ("Arca Notice").

Rule 5.3(a)⁴ and Interpretation and Policy .01 to Rule 5.3⁵, or (2) the Managed Fund Shares are available for creation and redemption each business day as set forth in Interpretations and Policy .06(E) to Rule 5.3.

The Exchange proposes that Managed Fund Shares deemed appropriate for options trading represent an interest in an open-end management investment company or similar entity, as described below:

- Managed Fund Shares are securities that represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Continued Listing Requirements

Options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and furthermore, the rules pertaining to position and exercise limits⁶ or

⁴ See Rule 5.3(q) which states that the underlying securities shall be registered and be an "NMS" stock as defined in Rule 600 of Regulation NMS under the Act.

⁵ See Rule 5.3.01 which sets forth minimum requirements for the underlying security which include, but are not limited to, 7,000,000 underlying shares, 2,000 shareholders, and trading volume of 2,400,000 shares over the preceding twelve months.

⁶ See Interpretation and Policy .07 to Rule 4.11, Position Limits, and Interpretation and Policy .02 to Rule 4.12, Exercise Limits.

margin⁷ shall apply. The current continuing or maintenance listing standards for options traded on CBOE will continue to apply.

The Exchange will utilize its existing surveillance procedures applicable to options on exchange traded funds (which will include Managed Fund Shares) to monitor trading. In addition, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements ("CSSA") with markets trading in non-U.S. components,⁸ as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG")⁹ from other exchanges who are members or affiliates of the ISG. CBOE represents that these procedures will be adequate to properly monitor Exchange trading of options on these the securities and to deter and detect violations of Exchange rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹⁰ of the Act, in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is 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 facilitating

⁷ See Rule 12.3, Margin Requirements.

⁸ See Interpretation and Policy .06 to Rule 5.3, which is the Exchange's rule governing the applicable CSSA requirements for options on exchange-traded funds. We note that any non-U.S. component securities (including fixed-income) in an index or portfolio of securities on which the Fund Shares are based that are not subject to comprehensive surveillance agreements may in the aggregate represent an amount equal to 50% of the weight of the index or portfolio.

⁹ A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rules applicable to trading pursuant to generic listing and trading criteria, together with the Exchange's surveillance procedures applicable to trading in the securities covered by the proposed rules, serve to foster investor protection.

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 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

The Exchange neither solicited nor received comments on the proposal.

III. 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. Please include File Number SR-CBOE-2008-113 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-2008-113. 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 10:00 a.m. and 3:00 p.m. Copies of the 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-2008-113 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, 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 national securities exchange¹² and, in particular, the requirements of Section 6 of the Act.¹³ Specifically, the Commission finds that the proposed rule change is consistent with Section

¹² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f.

6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed 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.

Listing and Trading of Options on Managed Fund Shares

As set out above, CBOE's proposed rules include requirements regarding initial and continued listing standards, the creation/redemption process for Managed Fund Shares, and trading halts. Managed Fund Shares must be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.¹⁵

The Commission notes that, pursuant to Interpretation and Policy .06(E) to CBOE Rules 5.3 and Interpretation and Policy .08 to CBOE Rule 5.4, Managed Fund Shares will be subject to the initial and continuing eligibility standards for underlying securities provided in CBOE Rules 5.3 and 5.4, as applicable. In particular, to be options eligible, a Managed Fund Share must either meet the criteria and guidelines for underlying securities set forth in CBOE Rule 5.3 and Interpretation and Policy .01 thereunder, or alternately, the Managed Fund Share must be available for creation or redemption each business day in cash or in kind from or through the issuing trust, investment company, commodity pool or other issuer at a price related to the net asset value. In addition, the issuing trust, investment company, commodity pools or other issuer is obligated to issue Managed Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuing trust, investment company, commodity pools or other issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver the investment

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 17 CFR 242.600(b)(47).

assets and/or cash as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Managed Fund Shares which underlie the option as described in the prospectus of the Managed Fund Share.

To continue to be eligible to underlie options, the Managed Fund Share must remain an NMS stock listed on a national securities exchange. The Exchange will also consider the suspension of opening transactions in any series of options of the class covering Managed Fund Shares where the Managed Fund Share does not satisfy the requirements set out in Interpretation and Policy .08 to CBOE Rule 5.4. These include: (1) continued compliance with paragraphs (a) through (d) of Interpretation and Policy .01 to CBOE Rule 5.4 in the case of options on Managed Fund Shares approved pursuant to clause (E)(x) under Interpretation and Policy .06 of CBOE Rule 5.3; (2) in the case of options on Managed Fund Shares approved pursuant to clause (E)(y) under Interpretation and Policy .06 of CBOE Rule 5.3, following the initial twelve-month period, beginning upon the commencement of trading of the Managed Fund Shares on a national securities exchange and being defined as an "NMS stock", there are fewer than 50 record and/or beneficial holders of such Managed Fund Shares for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities, non-U.S. currency, or portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities and/or Financial Instruments and Money Market Instruments on which the Managed Fund Shares are based is no longer calculated or available. In addition, the Exchange retains discretion to suspend opening transactions in options on Managed Fund Shares where conditions make further dealings in such options inadvisable.

Furthermore, the Exchange represented that options on Managed Fund Shares will be subject to all Exchange rules governing the trading of equity options and that the rules pertaining to position and exercise limits¹⁶ or margin¹⁷ shall apply as well.

Surveillance

The Commission notes that the Exchange has represented that it will utilize its existing surveillance procedures applicable to options on exchange traded funds, which would include Managed Fund Shares, to monitor trading. In addition, the Exchange would implement any new surveillance procedures it deems necessary to effectively monitor the trading of options on Managed Fund Shares, including adequate comprehensive surveillance sharing agreements (“CSSA”) with markets trading in non-U.S. components,¹⁸ as applicable. Also, the Exchange may obtain trading information via the Intermarket Surveillance Group (“ISG”)¹⁹ from other exchanges who are members or affiliates of the ISG. The Exchange represented that it believes that these procedures will be adequate to properly monitor Exchange trading of options on these securities and to deter and detect violations of Exchange rules. This order is based on these representations.

Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ for approving the proposed rule change prior to the 30th day after the date of publication of notice in

¹⁶ See Interpretation and Policy .07 to Rule 4.11, Position Limits, and Interpretation and Policy .02 to Rule 4.12, Exercise Limits.

¹⁷ See Rule 12.3, Margin Requirements.

¹⁸ See Interpretation and Policy .06 to CBOE Rule 5.3, supra, note 8.

¹⁹ A complete list of the current members of the ISG, is available at <http://www.isgportal.org>.

²⁰ 15 U.S.C. 78s(b)(2).

the Federal Register. The Commission notes this proposed rule change is substantively identical to that of NYSE Arca, Inc. being concurrently approved today, which was published for a 21-day comment period and generated no comments.²¹ The Commission does not believe that this proposal raise any new regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal should benefit investors by permitting, without undue delay, options on Managed Fund Shares to trade on CBOE.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-CBOE-2008-113) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Florence E. Harmon
Acting Secretary

²¹ See Arca Notice, supra note 3.

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).