

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-61478; File No. SR-CBOE-2010-009)

February 3, 2010

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

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 January 29, 2010, 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 proposes to amend [sic] 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, at the Commission’s Public Reference Room and on the Commission’s Web site [www.sec.gov](http://www.sec.gov).

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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)(iii).

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

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules in connection with the expansion of the Penny Pilot on February 1, 2010. Specifically, CBOE proposes to amend Rule 6.42 to provide that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010. Currently, the minimum increments in these two classes are \$0.01 for all option series quoted below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). CBOE notes that the SEC recently approved a NYSEArca rule filing which provides that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010.<sup>5</sup>

CBOE also proposes to identify the 75 option classes that will be added to the Penny Pilot Program beginning on February 1, 2010. CBOE recently extended and expanded the Penny Pilot Program through December 31, 2010.<sup>6</sup> As described in its filing, the Pilot Program will be

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<sup>5</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), granting partial approval of SR-NYSEArca-2009-44, as modified by Amendment No. 4 thereto.

<sup>6</sup> See Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR-CBOE-2009-76.

expanded by adding 300 option classes, in groups of 75 classes each quarter on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.<sup>7</sup> The option classes will be identified based on national average daily volume 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 will not be utilized for purposes of the six month analysis.

The following 75 option classes will be added to the Pilot Program beginning on February 1, 2010:

<b>Symbol</b>	<b>Company Name</b>	<b>Symbol</b>	<b>Company Name</b>
ABT	Abbott Laboratories	LEAP	Leap Wireless International Inc
AEM	Agnico-Eagle Mines Ltd	LLY	Eli Lilly & Co
AET	Aetna Inc	LO	Lorillard Inc
AFL	Aflac Inc	LOW	Lowe's Cos Inc
AKAM	Akamai Technologies Inc	M	Macy's Inc
AMAT	Applied Materials Inc	MCO	Moody's Corp
AMR	AMR Corp	MET	MetLife Inc
ANF	Abercrombie & Fitch Co	MMM	3M Co
APC	Anadarko Petroleum Corp	MU	Micron Technology Inc
ATVI	Activision Blizzard Inc	NUE	Nucor Corp
BBD	Banco Bradesco SA	OXY	Occidental Petroleum Corp
BCRX	BioCryst Pharmaceuticals Inc	PARD	Poniard Pharmaceuticals Inc
BK	Bank of New York Mellon Corp/The	PEP	PepsiCo Inc/NC
BRCM	Broadcom Corp	PM	Philip Morris International Inc
BTU	Peabody Energy Corp	PNC	PNC Financial Services Group Inc
BX	Blackstone Group LP	QID	ProShares UltraShort QQQ
CAL	Continental Airlines Inc	SHLD	Sears Holdings Corp

<sup>7</sup> The classes to be added are among the 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.

Symbol	Company Name	Symbol	Company Name
CF	CF Industries Holdings Inc	SLM	SLM Corp
CMCSA	Comcast Corp	SLW	Silver Wheaton Corp
CSX	CSX Corp	SQNM	Sequenom Inc
CVS	CVS Caremark Corp	STEC	STEC Inc
CX	Cemex SAB de CV	STX	Seagate Technology
DD	EI du Pont de Nemours & Co	SU	Suncor Energy Inc
ERTS	Electronic Arts Inc	TCK	Teck Resources Ltd
EWJ	iShares MSCI Japan Index Fund	TEVA	Teva Pharmaceutical Industries Ltd
FDX	FedEx Corp	TLT	iShares Barclays 20+ Year Treasury Bond Fund
FNM	Federal National Mortgage Association	TZA	Direxion Daily Small Cap Bear 3X Shares
FRE	Federal Home Loan Mortgage Corp	UAUA	UAL Corp
GILD	Gilead Sciences Inc	URE	ProShares Ultra Real Estate
GLW	Corning Inc	UTX	United Technologies Corp
HBC	HSBC Holdings PLC	WFR	MEMC Electronic Materials Inc
HES	Hess Corp	WFT	Weatherford International Ltd
HL	Hecla Mining Co	WLP	WellPoint Inc
HOG	Harley-Davidson Inc	XLB	Materials Select Sector SPDR Fund
HON	Honeywell International Inc	XRX	Xerox Corp
JOYG	Joy Global Inc	XTO	XTO Energy Inc
JWN	Nordstrom Inc	YRCW	YRC Worldwide Inc
KFT	Kraft Foods Inc		

## 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>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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 and identifies the option classes to be added to the Pilot Program in a manner consistent with CBOE's rule filing SR-CBOE-2009-76 to extend and expand the Pilot Program. The proposed rule change also allows for reductions in the minimum increments in IWM and SPY, which has been shown to reduce spreads.

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 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>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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

designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is based on a recent Commission-approved proposal submitted by another options exchange<sup>13</sup> and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of \$0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>14</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:

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days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. CBOE has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> See supra note 5.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-009 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-2010-009. 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 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 the filing also will be available for inspection and copying at the principal office of the self-regulatory organization. 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-2010-009 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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