

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60316; File No. SR-CBOE-2009-050)

July 16, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Immediately Add New FAZ and FAS Option Series Within Five Days of Expiration

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 15, 2009, 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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 is seeking to immediately list new option series on Direxion Daily Financial Bear 3X Shares ("FAZ") and on Direxion Daily Financial Bull 3X Shares ("FAS") that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, Series of Option Contracts Open for Trading. The Exchange is not proposing any rule text

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

changes. The Exchange is not proposing any rule text changes.[sic] Although the proposed rule change would not amend the text of Rule 5.5.04, the proposed change would have the effect of permitting the Exchange to immediately add new series of FAZ and FAS options within five business days prior to expiration on Friday, July 17, 2009.

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

1. Purpose

The purpose of this proposed rule change is to allow the Exchange to immediately list new option series on FAZ and FAS that expire this Friday, July 17, 2009, notwithstanding Interpretation and Policy .04 to Rule 5.5, Series of Option Contracts Open for Trading. CBOE Rule 5.5.04 permits the Exchange to list new series of options until the beginning of the month in which the option contract will expire. Due to unusual market conditions, CBOE, in its discretion, may add new series of options until five business days prior to expiration.

On July 14, 2009, NASDAQ OMX PHLX listed additional series on FAZ that expire on July 17, 2009, and on July 15, 2009, NASDAQ OMX PHLX listed additional series on FAS that expire on July 17, 2009. Specifically, NASDAQ OMX PHLX listed July 2009

options on FAZ with the following strikes: 35, 36, 37, 38, 39, 40, 41, 42, 43 and 44, and NASDAQ OMX PHLX listed July 2009 options on FAS with the following strikes: 25, 26, 27 and 28. NASDAQ OMX PHLX does not have restrictions pertaining to the timing of adding new series. See NASDAQ OMX PHLX Rules 1012, [Series of Options Open for Trading](#), and 1101A, [Terms of Option Contracts](#). However, under CBOE's existing rules, the Exchange is not permitted to add these same series. As a result, the Exchange has submitted this current filing seeking to immediately list the same series listed by NASDAQ OMX PHLX on July 14 and 15, 2009. To the extent any additional series are added by NASDAQ OMX PHLX between the time this filing is submitted and Friday, July 17, 2009, the Exchange similarly seeks to immediately list such same series.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁵ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes adding the new FAZ and FAS series will foster competition and benefit investors.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹

CBOE has requested that the Commission waive the 30-day operative delay period. The Commission has determined that waiving the 30-day operative delay of the CBOE's proposal is consistent with the protection of investors and in the public interest in that it will allow CBOE to immediately add options series that another options exchange currently lists

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). 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 Commission deems this requirement to have been met.

and trades, which should promote competition.¹⁰ Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such 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. Please include File Number SR-CBOE-2009-050 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-2009-050. 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

¹⁰ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

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 am and 3:00 pm. Copies of such 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-2009-050 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.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).