

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-62040; File No. SR-CBOE-2010-040)

May 5, 2010

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adding 75 Options Classes 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 April 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, II, and III below, which Items have been prepared by the Exchange. 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 at [www.sec.gov](http://www.sec.gov).

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

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to identify the 75 option classes that will be added to the Penny Pilot Program on May 3, 2010, consistent with CBOE’s rule filing to extend and expand the Program that was approved on October 22, 2010.<sup>3</sup> As described in SR-CBOE-2009-76, the Pilot Program will be 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>4</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 May 3, 2010:

<b>Symbol</b>	<b>Security Name</b>	<b>Symbol</b>	<b>Security Name</b>
GFI	Gold Fields Ltd.	JCP	JC Penney Co Inc
XLV	Health Care Select Sector SPDR	ACL	Alcon Inc

<sup>3</sup> See Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR-CBOE-2009-76. The Commission notes that this proposed rule change was submitted pursuant to Section 19(b)(3)(A)(iii) of the Act and was, therefore, effective upon filing. The Commission does not approve proposed rule changes submitted pursuant to this section of the Act.

<sup>4</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	Security Name	Symbol	Security Name
	Fund		
CIEN	Ciena Corp	STP	Suntech Power Holdings Co Ltd
AMLN	Amylin Pharmaceuticals Inc	TLB	Talbots Inc
CTIC	Cell Therapeutics Inc	SYMC	Symantec Corp
MDT	Medtronic Inc	AMED	Amedisys Inc
TIVO	TiVo Inc	TM	Toyota Motor Corp
MNKD	MannKind Corp	HK	Petrohawk Energy Corp
MDVN	Medivation Inc	ENER	Energy Conversion Devices Inc
BRKB	Berkshire Hathaway Inc	STT	State Street Corp
APOL	Apollo Group Inc	BHP	BHP Billiton Ltd
BSX	Boston Scientific Corp	NFLX	NetFlix Inc
XLY	Consumer Discretionary Sel. Sec. SPDR Fund	LDK	LDK Solar Co Ltd
CLF	Cliffs Natural Resources Inc	SPG	Simon Property Group Inc
ZION	Zions Bancorporation	TIF	Tiffany & Co
IOC	InterOil Corp	BUCY	Bucyrus International Inc
ITMN	InterMune Inc	WAG	Walgreen Co
GME	GameStop Corp	IP	International Paper Co
XLK	Technology Select Sector SPDR Fund	XME	SPDR S&P Metals & Mining ETF
AKS	AK Steel Holding Corp	KGC	Kinross Gold Corp
GRMN	Garmin Ltd	EP	El Paso Corp
MRVL	Marvell Technology Group Ltd	SEED	Origin Agritech Ltd
XLP	Consumer Staples Select Sector SPDR Fund	WIN	Windstream Corp
UNP	Union Pacific Corp	DHI	DR Horton Inc
DTV	DIRECTV	ADBE	Adobe Systems Inc
WMB	Williams Cos Inc/The	PCX	Patriot Coal Corp
MEE	Massey Energy Co	SPWRA	SunPower Corp
CELG	Celgene Corp	LCC	US Airways Group Inc
GMCR	Green Mountain Coffee Roasters Inc	PRU	Prudential Financial Inc
WDC	Western Digital Corp	LEN	Lennar Corp
DAL	Delta Air Lines Inc	EWT	iShares MSCI Taiwan Index Fund
FXE	CurrencyShares Euro Trust	KBH	KB Home
COST	Costco Wholesale Corp	CREE	Cree Inc
MJN	Mead Johnson Nutrition Co	SIRI	Sirius XM Radio Inc
ALL	Allstate Corp/The	MMR	McMoRan Exploration Co
SII	Smith International Inc	CENX	Century Aluminum Co
RTN	Raytheon Co	MT	ArcelorMittal
DVN	Devon Energy Corp		

The minimum increments for all classes in the Penny Pilot (except for the QQQQs, IWM and SPY) are: \$0.01 for all option series below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). The minimum increment for all option series in QQQQ, IWM and SPY is \$.01.

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

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.

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.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Securities Exchange Act of 1934 and Rule 19b-4(f)(1)<sup>8</sup> thereunder as it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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-2010-040 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-2010-040. 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

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

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 CBOE's principal office and on its Web site at [www.cboe.com](http://www.cboe.com). 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 No. SR-CBOE-2010-040 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).