

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-63656; File No. SR-CBOE-2011-003)

January 6, 2011

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Clarify Reciprocal Listing Respecting a \$5 Strike Program for Stock Options

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 4, 2011, 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 clarify that the Exchange may list \$5 strike prices on any other option classes designated by other securities exchanges that employ a \$5 Strike Program. 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.

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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 Statutory Basis for, the Proposed Rule Change

1. Purpose

Recently, the Exchange proposed to adopt a \$5 Strike Program (by modifying Interpretation and Policy .01 to Rule 5.5), which will allow the Exchange to list and trade series in intervals of \$5 or greater where the strike price is more than \$200 in up to five (5) option classes on individual stocks (“\$5 Strike Program”).<sup>5</sup> The purpose of this proposed rule change is to amend the text of Rule 5.5.01 to clarify that the Exchange may list \$5 strike prices on any other option classes designated by other securities exchange that employ a \$5 Strike Program.

The Exchange has several strike setting programs that permit the Exchange to choose a fixed number of classes to participate in the programs. For each of these programs, the Exchange’s rules also expressly set forth reciprocity provisions.<sup>6</sup> In other words, the Exchange is

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<sup>5</sup> See SR-CBOE-2011-002.

<sup>6</sup> See Rules 5.5 (d)(1) and 24.9(a)(2)(A)(i), which permit the Exchange to select five option classes to participate in the Short Term Option Series Program and to also list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their rules. See also Rules 5.5(e)(1) and 24.9(a)(2)(B)(i), which permit the Exchange to select five option classes to participate in the Quarterly Option Series Program and to also list Quarterly Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their rules. Reciprocity provisions also exist for the \$2.50 Strike Program,

permitted to list series for classes that are selected by other securities exchanges that employ similar programs under their respective rules.

While the recent proposal to establish the \$5 Strike Program did not specifically address a reciprocity provision, the Exchange's existing strike setting programs demonstrate the intent of a reciprocity provision and the need for it to implement the \$5 Strike Program. Clarifying that reciprocity is permitted is pro-competitive and will eliminate confusion. For example, CBOE will be able to list all series in option classes chosen by other exchanges and investors will be able to access these series across all exchanges that employ a \$5 Strike Program. CBOE believes that this is consistent with the goals of the National Market System and the concepts of price improvement and best execution. Also, because all of the existing strike price programs that have been adopted by the various exchanges include reciprocity provisions, the Exchange believes that current proposal will eliminate confusion and prevent listing errors amongst the exchanges.

It is expected that other options exchanges that have also proposed to establish a \$5 Strike Program will submit similar clarifying proposals.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>7</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

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the \$1 Strike Program and the \$0.50 Strike Program. See Rules 5.5.01(a), 5.5.05(a) and 5.5.01(b).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

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

6(b)(5)<sup>9</sup> 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 codifying a reciprocity provision to the \$5 Strike Price Program eliminate investor confusion and promote competition. While the reciprocity provision will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes per exchange. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes per exchange and the Exchange does not believe that the additional price points will result in fractured liquidity.

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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such

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

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed reciprocity provision is similar to reciprocity provisions in place for other option strike price programs,<sup>12</sup> which have been previously approved by the Commission.<sup>13</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

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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). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

<sup>12</sup> See Rule 5.5, Interpretations and Policies .01(a)(1) (\$1 Strike Program), .01(b) (\$0.50 Strike Program), and .05(a) (\$2.50 Strike Program).

<sup>13</sup> See, e.g., Securities Exchange Act Release No. 60694 (September 18, 2009); 74 FR 49048 (September 25, 2009) (SR-Phlx-2009-65) (approving NASDAQ OMX PHLX's \$0.50 Strike Program, with reciprocity provision).

<sup>14</sup> For 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).

#### 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-2011-003 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-2011-003. 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 website (<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 website 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 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-2011-003 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>

Elizabeth M. Murphy  
Secretary

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