SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60164; File No. SR-CBOE-2009-029)

June 23, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change to Permanently Establish the Quarterly Option Series Program

On May 7, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to permanently establish its Quarterly Option Series pilot program (the "QOS Program"). The proposed rule change was published for comment in the Federal Register on May 21, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

The Exchange established the QOS Program on a pilot basis on July 7, 2006.[4] The QOS Program allows CBOE to list and trade Quarterly Option Series, which expire at the close of business on the last business day of a calendar quarter. Under the QOS Program, CBOE may select up to five (5) currently listed exchange traded fund ("ETF") or index option classes on which Quarterly Option Series may be opened. The Exchange has selected the following five ETF option classes to participate in the QOS Program: DIAMONDS Trust (DIA) options;

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 59601 (March 19, 2009), 74 FR 13281.

4 See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558, (July 17, 2006) (SR-CBOE-2006-65). The QOS Program has since been extended and is currently scheduled to expire on July 10, 2009. See Securities Exchange Act Release Nos. 56035 (July 10, 2007), 72 FR 38851, (July 16, 2007) (SR-CBOE-2007-70) (immediately effective rule change extending the QOS Program through July 10, 2008) and 58018

Standard and Poor's Depositary Receipts/SPDRs (SPY) options; iShares Russell 2000 Index Fund (IWM) options; PowerShares QQQ Trust (QQQQ) options; and Energy Select SPDR (XLE) options. In addition, CBOE may also list Quarterly Option Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the following calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

For each class of ETF options selected for the QOS Program, the Exchange may list strike prices within $5 from the previous day's closing price of the underlying security at the time of initial listing. Subsequently, the Exchange may list up to 60 additional strike prices that are within thirty percent (30%) of the previous day's close, or more than 30% away from the previous day's close provided demonstrated customer interest exists for such series.[5]

The Exchange has also adopted a delisting policy with respect to QOS in ETF options.[6] On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open

(June 25, 2008), 73 FR 38010 (July 2, 2008) (SR-CBOE-2008-62) (immediately effective rule change extending the QOS Program through July 10, 2009).

5 "Demonstrated customer interest" includes interest expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account may not be considered when determining customer interest under this provision.

6 See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96).

interest in both the put and the call series having either: (i) a strike price higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) a strike price lower than the lowest strike price with open interest in the put and/or call series for a given expiration month. Notwithstanding the foregoing, the delisting policy also provides that customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted by the Exchange.

The Exchange also may list Quarterly Option Series based on an underlying index pursuant to similar provisions in Rule 24.9. There are two noteworthy distinctions between the rules for listing QOS based on an ETF versus QOS based on an index. First, whereas the initial listing of QOS based on an underlying ETF is restricted to strike prices within $5 from the previous day's closing price of the underlying security, the initial listing of strikes for QOS based on an underlying index is restricted to: (i) a price that is within thirty percent (30%) of the previous day's close, and (ii) no more than five strikes above and five strikes below the value of the underlying index. Second, whereas the Exchange may list up to 60 additional strike prices for each QOS based on an ETF, there is no firm cap on the additional listing of strikes for QOS based on an underlying index; rather, additional strike prices may be listed provided the new listings do not result in more than five strike prices on the same side of the underlying index value as the new listings. To date, the Exchange has not listed any Quarterly Option Series based on an underlying index.

In support of its proposal to permanently establish the QOS Program, and as required by the terms of the Pilot Program,[7] the Exchange submitted to the Commission a report detailing the

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[7] See Securities Exchange Act Release No. 54123, supra note 4.

Exchange's experience with the QOS Program (the "Report").[8] In addition to the Report, the Exchange represented that it has not experienced any capacity-related problems with respect to Quarterly Option Series, and that it has the necessary systems capacity to continue to support the option series listed under the QOS Program. Finally, the Exchange stated its belief that there is sufficient investor interest in, and demand for, the QOS Program to warrant its permanent approval.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[9] and, in particular, the requirements of Section 6(b)(5) of the Act,[10] 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.

The Commission finds that the QOS Program, as evidenced by the Report, has furthered the public interest by offering investors an alternative means of managing their risk exposures and carrying out their investment objectives. The Commission notes CBOE's representation that there is sufficient investor interest in the QOS Program to warrant its permanent approval. The Commission further notes CBOE's representations that it has not experienced any capacity-related problems with respect to Quarterly Option Series, and that the Exchange has the necessary system capacity to continue to support the option series listed under the QOS Program. Accordingly, the Commission finds that the proposed QOS Program strikes a reasonable balance

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8 The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

9 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).

10 15 U.S.C. 78f(b)(5).

between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid the unnecessary proliferation of option series that could compromise systems capacity. The Commission expects CBOE to continue to monitor the trading and quotation volume associated with the QOS Program, and the effect the QOS Program has on the capacity of the Exchange's, OPRA's, and vendors' systems. In addition, the Commission expects the Exchange, consistent with its QOS delisting policy, to continue to monitor for option series with little or no open interest and trading activity and to act promptly to delist such options in order to mitigate the number of options series with no open interest.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2009-029) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon
Deputy Secretary

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[11] 17 CFR 200.30-3(a)(12).