

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56276; File No. SR-CBOE-2007-98)

August 17, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Expansion of the Penny Pilot Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 14, 2007 the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been substantially prepared by the CBOE. 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 its rules relating to an expansion of the Penny Pilot Program.

The text of the proposed rule change is available on the Exchange’s Web site at

(<http://www.cboe.com>), at the offices of the Exchange, and at the Commission’s Public

Reference Room.

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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to amend its rules in connection with an expansion of the industry-wide Penny Pilot Program, which commenced on January 26, 2007.<sup>3</sup> CBOE believes expanding the Penny Pilot Program as proposed in this rule filing will allow further analysis over a longer period of time as to the impact of quoting and trading in these reduced increments on market participants, transparency, liquidity, market structure, and quote traffic. Currently, thirteen option classes participate in the Penny Pilot Program.<sup>4</sup> CBOE intends to expand the Penny Pilot Program in two phases. Phase I of the expansion would begin on September 28, 2007, last for six months, and add the following twenty-two option classes to the Penny Pilot Program.<sup>5</sup>

SPDR S&P 500 (SPY/SPY)	NYSE Euronext (NYX/NYX)
Apple Inc. (AAPL/AAQ)	Cisco Systems (CSCO/CYQ)
Altria Group, Inc. (MO/MO)	Financial Select Sector SPDR (XLF/XLF)
Dendreon Corp. (DNDN/UKO)	AT&T, Inc. (T/T)
Amgen Inc. (AMGN/AMQ)	Citigroup, Inc. (C/C)
Yahoo! Inc. (YHOO/YHQ)	Amazon.com Inc. (AMZN/ZQN)
Qualcomm Inc. (QCOM/QAQ)	Motorola Inc. (MOT/MOT)
General Motors (GM/GM)	Research in Motion Ltd. (RIMM/RUL)

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<sup>3</sup> See Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR-CBOE-2006-92).

<sup>4</sup> CBOE recently extended the Penny Pilot Program in the thirteen classes until September 27, 2007. See Securities Exchange Act Release No. 56139 (July 26, 2007), 72 FR 42159 (August 1, 2007) (SR-CBOE-2007-86).

<sup>5</sup> CBOE also intends to issue a Regulatory Circular, which will be published on its Web site, identifying these twenty-two option classes.

Energy Select Sector SPDR  
(XLE/XLE)

Freeport-McMoRan Copper & Gold, Inc.  
(FCX/DPJ)

Diamonds Trust (DIA/DIA)

ConocoPhillips (COP/COP)

Oil Services HLDRS (OIH/OIH)

Bristol-Myers Squibb Co. (BMY/BMY)

These twenty-two option classes are among the most actively traded multiply-listed option classes based on national average daily volume, and together with the existing thirteen Pilot classes, represent approximately 35% of the total industry volume.

Phase II of the expansion would begin on March 28, 2008 and last for one year until March 27, 2009. It is currently anticipated that an additional twenty-eight option classes would be added to the Penny Pilot Program on March 28, 2008, bringing the total number of classes in the Pilot Program to 63. These twenty-eight new classes would be among the most active, multiply-listed option classes. CBOE intends to submit a proposed rule change pursuant to Section (b)(3)(A) of the Exchange Act announcing the names of these twenty-eight option classes prior to the beginning of Phase II.

The minimum increments for all classes in the Penny Pilot, except for the QQQQs, would continue to be \$0.01 for all option series below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). For QQQQs, the minimum increment would remain \$0.01 for all option series. In connection with the expansion of the Penny Pilot Program, CBOE proposes to amend Rule 6.42(3) to specify in the rule text the minimum increments for the Pilot classes.

Additionally, because SPDR options (SPY) and options on Diamonds (DIA) will participate in the Penny Pilot Program beginning on September 28, 2007, CBOE proposes to quote and trade two index option classes -- Mini-SPX Index Options (XSP) and options on the

Dow Jones Industrial Average (DJX), respectively, in the same minimum increments as SPY options and DIA options (*i.e.*, \$0.01 for all option series below \$3, and \$0.05 for all option series \$3 and above). SPY options are options on the SPDR exchange-traded fund (ETF) which is designed to track the performance of the S&P 500<sup>®</sup> Index. XSP options are options based on the S&P 500<sup>®</sup> Index. DIA options are options on an ETF that is designed to track the performance of the Dow Jones Industrial Average. DJX options are options based on the Dow Jones Industrial Average. CBOE believes it is important that these products, DIA and DJX, and SPY and XSP, have the same minimum increments for consistency and competitive reasons. Proposed new Interpretation .03 to Rule 6.42 addresses the minimum increments for the XSP and DJX option classes when SPY and DIA, respectively, participate in the Penny Pilot Program.

CBOE intends to submit to the SEC reports analyzing the Penny Pilot Program for the following time periods:

- May 1, 2007 – September 27, 2007
- September 28, 2007 – January 31, 2008
- February 1, 2008 – July 31, 2008
- August 1, 2008 – January 31, 2009

CBOE anticipates that its reports will assess the impact of the changes to the minimum increments during the specific time period being analyzed, including, among other things, effects on (i) market participants and customers; (ii) market performance and quality, such as quoted spreads, effective spreads, and the displayed size in the Pilot classes; and (iii) OPRA, vendor and exchange capacity. CBOE's reports should be submitted within one month following the end of the period being analyzed.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that the proposed rule change is designed to promote just and equitable principles of trade, serve 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.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

#### 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. The Commission also requests and encourages interested persons to submit comments on the following specific questions:

- Whether there are circumstances under which options classes included in the Penny Pilot should be removed from the Pilot?
- If so, what factors should be considered in making the determination to remove an option class from the Penny Pilot?
  - Should an objective standard be used? For instance, should an option class come out of the Penny Pilot if its trading volume drops below a threshold amount? If so, what should that threshold be? Or, should an option class come out of the Penny Pilot if it is no longer among the most actively-traded options? If so, what should be considered the most-actively traded options? What statistics or analysis should be used to support a determination to remove an options class?
  - Should a more subjective analysis be allowed? If so, what factors should be taken into account?
- What concerns might arise by removing an option from the Penny Pilot? How could such concerns be ameliorated?
- How frequently should the analysis be undertaken (e.g., annually, bi-annually, quarterly), or should the evaluation be an automated process?

- If a determination is made that an option should be removed from the Penny Pilot, how much notice should be given to market participants that the quoting increment will change?

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-2007-98 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2007-98. 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 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-2007-98 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).