

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56448; File No. SR-CBOE-2007-111)

September 17, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Retire Two Existing Pilot Programs that Permit the Exchange to list Options on the Vanguard Emerging Markets Exchange Traded Fund and the iShares MSCI Emerging Markets Index Fund

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 September 11, 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 Exchange. The Exchange has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing of this proposal with the Commission. 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

The Exchange submits this rule filing to retire two existing pilot programs that permit the Exchange to list options on the Vanguard Emerging Markets Exchange Traded Fund (“VWO

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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)(i).

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

Fund") and on the iShares MSCI Emerging Markets Index Fund ("EEM Fund").<sup>5</sup> The Exchange is proposing to retire the two pilot programs because both the VWO Fund and the EEM Fund now meet all of the Exchange's generic initial and maintenance listings standards, which permit the Exchange to list options on the VWO Fund and the EEM Fund without having to file for Commission approval. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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. CBOE 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>5</sup> The VWO Fund pilot program commenced on March 19, 2007 and is scheduled to expire on September 19, 2007. See Securities Exchange Act Release No. 55491 (March 19, 2006), 72 FR 14145 (March 26, 2007) (order granting accelerated approval of SR-CBOE-2006-95). The EEM Fund pilot program commenced on April 10, 2006 and has been renewed four times. The EEM Fund pilot program is scheduled to expire on December 7, 2007. See Securities Exchange Act Release No. 53621 (April 10, 2006), 71 FR 19568 (April 14, 2006) (approval of SR-CBOE-2006-32, which established EEM Fund pilot program to expire on June 9, 2006); Securities Exchange Act Release No. 53930 (June 1, 2006), 71 FR 33322 (June 8, 2006) (granting immediate effectiveness to SR-CBOE-2006-56, which renewed EEM Fund pilot through September 7, 2006); Securities Exchange Act Release No. 54347 (August 22, 2006), 71 FR 51242 (August 29, 2006) (granting immediate effectiveness to SR-CBOE-2006-72, which renewed EEM Fund pilot program through December 7, 2006); Securities Exchange Act Release No. 54876 (December 5, 2006), 71 FR 74968 (December 13, 2006) (granting immediate effectiveness to SR-CBOE-2006-103, which renewed EEM Fund pilot program through June 7, 2007); Securities Exchange Act Release No. 55758 (May 14, 2007), 72 FR 28090 (May 18, 2007) (granting immediate effectiveness to SR-CBOE-2007-43, which renewed EEM Fund pilot program through December 7, 2007).

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

1. Purpose

The purpose of this rule filing is to retire two existing pilot programs that permit the Exchange to list options on the VWO Fund and the EEM Fund.<sup>6</sup> The Exchange is proposing to retire the two pilot programs because both the VWO Fund and the EEM Fund now meet all of the Exchange's generic initial and maintenance standards. Specifically, the Exchange has in place initial and maintenance listing standards set forth in Rules 5.3.06 and 5.4.08, respectively ("Listing Standards"), that are designed to allow the Exchange to list funds structured as open-end investment companies, such as the VWO Fund and the EEM Fund, without having to file for Commission approval to list for trading options on these types of funds.<sup>7</sup>

When the Exchange first sought to list options on the VWO Fund and EEM Fund, the Exchange had determined that the VWO Fund and the EEM Fund both met substantially all of the Exchange's Listing Standards requirements, but did not meet the Listing Standards

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<sup>6</sup> The VWO Fund is an open-end investment company that is designed to hold a portfolio of securities that tracks the Morgan Stanley Capital International, Inc. ("MSCI") Emerging Markets Select Index, which consists of stocks that can be purchased free of restrictions in 18 emerging markets in Europe, Asia, Africa and Latin America. The EEM Fund is an open-end investment company that is designed to hold a portfolio of securities that tracks the MSCI Emerging Markets Free Index, which is designed to measure equity market performance in the global emerging markets.

<sup>7</sup> Rules 5.3.06 and 5.4.08 set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trust or other similar entities traded on a national securities exchange or through the facilities of a national securities exchange. See Exchange Act Release, No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998) (approval order for SR-CBOE-97-045, predating the Commission's adoption of Rule 19b-4(e) of the Act; see also Exchange Act Release No. 34-40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

requirement that no more than 50% of the weight of the securities in the VWO Fund and the EEM Fund be comprised of securities that are not subject to a comprehensive surveillance sharing agreement ("CSSA").<sup>8</sup> As to the VWO Fund, the Exchange had in place CSSAs with foreign exchanges that covered 48.10 % of the securities in the VWO Fund. As to the EEM Fund, the Exchange had in place CSSAs with foreign exchanges that covered 49.76% of the securities in the EEM Fund. In order to meet the 50% threshold, the Exchange requested the Commission's approval to rely upon a memorandum of understanding that the Commission had entered into with the Mexican Bolsa ("MOU") because the securities traded on that exchange represented 6.6% of the weight of the securities in the VWO Fund and 7.54% of the weight of the securities in the EEM Fund.<sup>9</sup>

Since the Commission approved the VWO Fund pilot program in March 2007 and since the last renewal of the EEM Fund pilot program in May 2007, the VWO Fund and the EEM Fund have both become compliant with Rule 5.3.06(A) and more than 50% of the weight of the securities in the VWO Fund and the EEM Fund are now subject to a CSSA. Specifically, the Exchange represents that the Korean Exchange ("KRX") recently became a member of the Intermarket Surveillance Group; therefore, securities and other products trading on its markets are now subject to a CSSA.<sup>10</sup> As a result, the percentage of the weight of the VWO Fund and

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<sup>8</sup> See Rule 5.3.06(A).

<sup>9</sup> See supra note 5. The Commission permitted the Exchange to rely on the MOU, and the Exchange agreed to use its best efforts to obtain a CSSA with the Bolsa during the respective pilot periods, which to date has not been obtained.

<sup>10</sup> The KRX was created on January 27, 2005 through the consolidation of three domestic Korean exchanges: Korea Stock Exchange (KSE), KOSDAQ Market and Korea Futures Market (KOFEX). See <http://eng.krx.co.kr/index.html>

the EEM Fund represented by South Korean securities now renders both the VWO Fund and the EEM Fund compliant with the Exchange's Listing Standards requirements.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>12</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.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>14</sup>

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(1).

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 the 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-2007-111 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-2007-111. 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 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-2007-111 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>15</sup>

Florence E. Harmon  
Deputy Secretary

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