

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56774; File No. SR-CBOE-2007-114)

November 8, 2007

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Options Already Listed on Another National Securities Exchange

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 21, 2007, 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 and II below, which Items have been substantially prepared by the Exchange. On October 26, 2007, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add new Interpretation .01(c) to CBOE Rule 5.3 (Criteria for Underlying Securities) for the purpose of permitting the Exchange to list and trade individual equity options on the Exchange that are otherwise ineligible for listing and trading if such options are listed and traded on another national securities exchange. The text of the proposed rule change is available on the Exchange’s Web site ([www.cboe.org/legal](http://www.cboe.org/legal)), at CBOE’s principal office 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> Amendment No. 1 supercedes the original filing and replaces it in its entirety.

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 III below. The Exchange 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the Exchange's options listing standards so that as long as the continued listing criteria set forth in CBOE Rule 5.4 (Withdrawal of Approval of Underlying Securities) are met and the option is listed and traded on another national securities exchange, the Exchange would be able to list and trade the option. CBOE Rule 5.3 sets forth the requirements that an underlying equity security must meet before the Exchange may initially list options on that security. The Exchange notes that these requirements are relatively uniform among the options exchanges.

Interpretation .01 to CBOE Rule 5.3 relates to the minimum market price at which an underlying security must trade for an option to be listed on it, and applies to the listing of individual equity options on both "covered" and "uncovered" underlying securities.<sup>4</sup> In the case of an underlying security that is a "covered security" as defined under Section 18(b)(1)(A) of the

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<sup>4</sup> Section 18(b)(1)(A) of the Securities Act of 1933 ("Securities Act") provides, "[a] security is a covered security if such security is -- A. listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities)...." See 15 U.S.C. 77r(b)(1)(A).

Securities Act, the closing market price of the underlying security must be at least \$3.00 for the five previous consecutive business days preceding the date on which the Exchange submits a certification to The Options Clearing Corporation (“OCC”) for listing and trading.<sup>5</sup>

In connection with an underlying security deemed to be “uncovered,” Exchange rules require that the market price per share of the underlying security be at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

CBOE Rule 5.4 sets forth the Exchange's continued listing criteria, which the Exchange notes are less stringent than the initial listing criteria contained in CBOE Rule 5.3. This is due largely because, in total, the Exchange's listing criteria assure that options will be listed and traded on securities of companies that are financially sound and subject to adequate minimum standards. The Exchange believes that the continued listing criteria are uniform among the options exchanges.

To address the circumstance in which an options class is currently ineligible for listing on the Exchange, while at the same time such option is listed and trading on another options exchange(s), the Exchange proposes to amend CBOE Rule 5.3. Specifically, the Exchange proposes to add new paragraph (c) to Interpretation .01 to CBOE Rule 5.3 to provide that notwithstanding that a particular underlying security may not meet the requirements set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of that Interpretation, the Exchange nonetheless could list and trade an option on such underlying security if (1) the underlying security meets the

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<sup>5</sup> See Interpretation .01(b)(2)(A) of Rule 5.3. For purposes of this Interpretation, the market price of an underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.

criteria for continued listing in CBOE Rule 5.4, and (2) options on such underlying security are listed and traded on at least one other registered national securities exchange. In connection with the proposed changes, the Exchange represents that the procedures currently employed to determine whether a particular underlying security meets the initial listing criteria will similarly be applied to the continued listing criteria.

The Exchange believes that this proposal is narrowly tailored to address the circumstances where an options class is currently ineligible for listing on the Exchange while at the same time, such option is trading on another options exchange(s). The Exchange notes that when an underlying security meets the Exchange's continued listing criteria and at least one other exchange trades options on the underlying security, the option is already available to the investing public. Therefore, the Exchange notes that the current proposal will not introduce any inappropriate additional listed options classes. Further, the adoption of the proposal is for competitive purposes and to promote a free and open market for the benefit of investors.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>6</sup> and the rules and regulations under the Act applicable to national securities exchanges. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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.

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

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

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

The Exchange neither solicited nor received comments on the proposal.

III. 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-2007-114 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-2007-114. 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 a.m. and 3:00 p.m. 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-2007-114 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 proposal is narrowly tailored to address the circumstances where an equity option class is currently ineligible for initial listing on the Exchange even though it meets the Exchange's continued listing standards and is trading on another options exchange. Allowing

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<sup>8</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

CBOE to list and trade options on such underlying securities should help promote competition among the exchanges that list and trade options. The Commission notes, and the Exchange represents, that the procedures that the Exchange currently employs to determine whether a particular underlying security meets the initial equity option listing criteria for the Exchange will similarly be applied when determining whether an underlying security meets the Exchange's continued listing criteria.

The Commission finds good cause, pursuant to Section 19(b)(2)(B) of the Act,<sup>10</sup> for approving the proposed rule change prior to the 30<sup>th</sup> day after the publication of the notice of the filing thereof in the Federal Register. The Commission notes that the proposed rule change is substantially identical to the proposed rule change submitted by the American Stock Exchange LLC,<sup>11</sup> which was previously approved by the Commission after an opportunity for notice and comment, and therefore does not raise any new regulatory issues.

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<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> See Securities Exchange Act Release No. 56598 (October 2, 2007), 72 FR 57615 (October 10, 2007) (SR-Amex-2007-48). See also Securities Exchange Act Release Nos. 56647 (October 11, 2007), 72 FR 58702 (October 16, 2007) (SR-ISE-2007-80) (substantially identical proposed rule change approved on an accelerated basis) and 56717 (October 29, 2007), 72 FR 62508 (November 5, 2007) (SR-Phlx-2007-73) (substantially identical proposed rule change approved on an accelerated basis).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2007-114), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>12</sup>

Id.

<sup>13</sup>

17 CFR 200.30-3(a)(12).