

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60625; File No. SR-CBOE-2009-066)

September 4, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit CBOE to List Series that are Restricted to Closing Transactions if Such Series are Listed and Restricted to Closing Transactions on Another Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 3, 2009, Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“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 Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Interpretation and Policy .12 to Rule 5.4 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 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 those 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 parts 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 this proposed rule change is to amend Interpretation and Policy .12 to Rule 5.4 to permit the Exchange to list series that are restricted to closing transactions if such series are listed and restricted to closing transactions on another exchange.

The impetus for this filing is a customer request for the Exchange to list a series that was previously delisted by the Exchange so that the customer may close an existing position in the delisted series. Specifically, on August 27, 2009, CBOE delisted the January 2010 7 El Paso, Corp. (EPY) strike.⁵ Currently, that series is listed on one other exchange and is restricted to closing transactions only. On September 1, 2009, the Exchange received a customer request to re-list the January 2010 7 EPY strike because the customer wants to close out their position on CBOE, and not on the other exchange that currently lists the restricted January 2010 7 EPY strike. The Exchange wants to accommodate the customer and is therefore proposing to amend Interpretation and Policy .12 to Rule 5.4.

Specifically, the Exchange proposes to add new subparagraph (b) to Interpretation and

⁵ This series was inadvertently listed within \$0.50 of an existing strike and was therefore delisted. See Rule 5.5.01(a)(2).

Policy .12 to Rule 5.4. to provide that if an option series is listed but restricted to closing transactions on another national securities exchange, the Exchange may list such series (even if such series would not otherwise be eligible for listing under the Exchange's Rules), which shall also be restricted to closing transactions on the Exchange.⁶ Similar to series that no longer meet the Exchange's criteria for continued listing, (i) opening transactions by market makers executed to accommodate closing transactions of other market participants, and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) will be permitted in any restricted series listed pursuant to Rule 5.4.12(b).⁷ No restrictions will be in place with respect to the exercise of any restricted series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5) of the Act,⁸ 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. Permitting the Exchange to accommodate a customer request will encourage competition and not harm investors or 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.

⁶ The parenthetical text is being proposed to eliminate ambiguity about the Exchange's ability to list a restricted series pursuant to proposed Rule 5.4.12(b) in the event other Exchange Rules would otherwise prohibit the listing of that series.

⁷ See Rule 5.4.

⁸ 15 U.S.C. 78f(b)(5).

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 proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

The Exchange has requested the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange immediately to provide investors with an additional venue to close their existing open positions. The Commission notes further that the Exchange would be permitted to list the restricted series solely for the purpose of closing transactions as long as the restricted series is listed on another national securities exchange. For this reason, the Commission designates the proposal operative upon filing.¹¹

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its 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.

¹¹ 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).

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 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. Please include File Number SR-CBOE-2009-066 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-2009-066. 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 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-2009-066 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).