

and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance their ability to effectively take advantage of business opportunities as such opportunities arise.

19. Any entity that intends to rely on the requested exemptive order currently is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

### Conclusion

For the reasons summarized above, Applicants represent that: (a) The requested exemptions are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act; and

(b) their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57424; File No. SR-CBOE-2008-22]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Extending the Dividend, Merger, and Short Stock Interest Strategies Fee Cap Pilot Program

March 4, 2008.

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 February 29, 2008, 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 CBOE. On

March 3, 2008, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A),<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

CBOE proposes to amend its Fees Schedule to extend until March 1, 2009, the dividend, merger, and short stock interest strategies fee cap program. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.cboe.org/legal>.

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

In its filing with the Commission, CBOE 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.

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

##### 1. Purpose

The Exchange currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger, and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule ("Strategy Fee Cap"). The Strategy Fee Cap is in effect as a pilot program that expired on March 1, 2008.

The Exchange proposes to extend the Strategy Fee Cap pilot program until March 1, 2009. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap pilot program would enable the Exchange to remain competitive for these types of strategies by keeping fees low.

<sup>3</sup> Amendment No. 1 made clarifying changes to the statutory basis section of the original filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

##### 2. Statutory Basis

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)(4),<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes that the proposed extension of the Strategy Fee Cap pilot program will continue to benefit market participants who trade these strategies by lowering their fees.

#### 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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>9</sup> because it establishes or changes a due, fee or other charge imposed by the Exchange. 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.<sup>10</sup>

### 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:

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 3, 2008, the date on which CBOE filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

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

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

*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-2008-22 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-2008-22. 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 a.m. and 3 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 No. SR-CBOE-2008-22 and should be submitted on or before April 1, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57429; File No. SR-CBOE-2006-36]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendments No. 1, 2, and 3 Thereto, to Modify the Minimum Value Size for an Opening Transaction in a Currently-Opened FLEX Equity Series and to Establish a Pilot Program that Reduces the Minimum Number of Contracts Required for a FLEX Equity Option Opening Transaction in a New Series**

March 4, 2008.

**I. Introduction**

On April 14, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") 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> a proposed rule change to make changes to the minimum value size for an opening transaction in a currently-opened FLEX Equity series and to establish a one-and-a-half-year pilot program that reduces the minimum number of contracts required for a FLEX Equity Option opening transaction in a new series ("Pilot Program").<sup>3</sup> On December 24, 2007, CBOE filed Amendments No. 1 and 2 to the proposed rule change.<sup>4</sup> The amended proposed rule change was published for comment in the **Federal Register** on January 24, 2008.<sup>5</sup> The Commission received no comments on the proposal. On March 3, 2008, CBOE filed Amendment No. 3 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as modified by Amendments No. 1, 2, and 3.

**II. Description of the Proposal**

CBOE is proposing to reduce the minimum value size for an opening

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

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

<sup>3</sup> CBOE defines the term "FLEX Equity Option" to mean an option on a specified underlying equity security that is subject to the rules in Chapters 24A and 24B. See CBOE Rule 24A.1(e) and CBOE Rule 24B.1(f), respectively.

<sup>4</sup> Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 57161 (January 16, 2008), 73 FR 4293 (January 24, 2008).

<sup>6</sup> Amendment No. 3 is a technical amendment that corrects a typographical error in the proposed rule language and is not subject to notice and comment.

transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes) in any FLEX Equity Option<sup>7</sup> series in which there is no open interest at the time the Request for Quotes is submitted on a pilot basis for one-and-a-half years. Currently, the minimum opening transaction value size in the case of a FLEX Equity Options in a newly established series is the lesser of (i) 250 contracts or (ii) the number of contracts overlying \$1 million in the underlying securities.<sup>8</sup> Under the Pilot Program, the Exchange proposes to reduce the "250 contracts" component to "150 contracts;" the \$1 million underlying value component will continue to apply unchanged.<sup>9</sup> If the Exchange were to propose an extension, expansion, or permanent implementation of the Pilot Program, the Exchange would submit, along with a filing proposing any necessary amendments to the Pilot Program, a pilot program report. The report would be submitted to the Commission at least ninety days prior to the expiration date of the one-and-a-half year Pilot Program.

Given that FLEX Equity Option transactions can occur in increments of 100 or more contracts in subsequent opening transactions,<sup>10</sup> the Exchange believes it is reasonable to permit the initial series opening transaction size to

<sup>7</sup> FLEX Equity Options are flexible exchange-traded options contracts which overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

<sup>8</sup> Under this formula, an opening transaction in a FLEX Equity series in a stock priced at \$40 or more would reach the \$1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price (\$40) equals \$1 million in underlying value. For a FLEX Equity series in a stock priced at less than \$40, the 250 contract size limit applies.

<sup>9</sup> Under this proposed formula, an opening transaction in a FLEX Equity series in a stock priced at approximately \$66.67 or more would reach the \$1 million limit before it would reach the contract size limit, *i.e.*, 150 contracts times the multiplier (100) times the stock price (\$66.67) equals just over \$1 million in underlying value. For a FLEX Equity series in a stock priced at less than \$66.67, the 150 contract size limit would apply.

<sup>10</sup> Specifically, the minimum value size for a transaction in any currently-opened FLEX Equity Option series is 100 contracts in the case of opening transactions and 25 contracts in the case of closing transactions (or any lesser amount in a closing transaction that represents the remaining underlying size, whichever is less). Additionally, the minimum value size for a FLEX Quote entered in response to a Request for Quotes in FLEX Equity Options is the lesser of 25 contracts or the remaining underlying size in a closing transaction. See Exchange Rules 24A.4(a)(4)(iii)-(iv) and 24B.4(a)(5)(iii)-(iv). A "FLEX Quote" refers to (i) FLEX bids and offers entered by Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by Exchange members other than Market-Makers, in each case in response to a Request for Quotes. See CBOE Rules 24A.1(h) and 24B.1(k).

<sup>11</sup> 17 CFR 200.30-3(a)(12).