

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57558; File No. SR-CBOE-2008-08]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding CBOE Rules 6.45A and 6.45B

March 26, 2008.

On February 6, 2008, 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 amend CBOE Rules 6.45A and 6.45B regarding the application of participation entitlements to orders executed electronically on the CBOE Hybrid Trading System (“Hybrid system”). The proposed rule change was published for comment in the **Federal Register** on February 21, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

CBOE Rules 6.45A and 6.45B govern priority and allocation of trades on the Hybrid system for equity options and index/ETF options, respectively. Paragraph (a) of both rules set forth the manner in which incoming electronic orders are allocated (the rules are substantially the same). First, the appropriate Procedure Committee selects a base matching algorithm (price-time priority, pro-rata priority, or CBOE’s Ultimate Matching Algorithm). If price-time or pro-rata priority matching algorithms are selected, additional optional priority overlays may be applied on a trade before the matching algorithm is used to allocate the order. These additional optional priority overlays are public customer priority, market-turner priority, and a Market-Maker participation entitlement.<sup>4</sup>

Currently, participation entitlements may be established for Hybrid electronic executions pursuant to different Exchange rules. Specifically, CBOE Rule 8.13 allows for the establishment of a participation entitlement for a Preferred Market-Maker, if that Market-Maker is

quoting at the Exchange’s best bid/offer at the time the order is received. CBOE Rule 8.87 allows for a designated participation entitlement applicable to the DPM in the class (or the DPM and the e-DPMs combined, if there are e-DPMs in the class), if the DPM is quoting at the Exchange best bid/offer at the time the order is received. CBOE Rule 8.15B is virtually identical to Rule 8.87 except that it applies to LMMs. In each case, the Market-Maker must be quoting at the best bid/offer on the Exchange (the “Exchanges BBO”) in order to receive a participation entitlement.

This proposed rule change will allow for more than one participation entitlement to be activated for an option class (for purposes of electronic trading on the Hybrid system under Rules 6.45A and 6.45B), including in different priority sequences, provided that no more than one entitlement could be applied on any given trade. Thus, the Exchange could set up an allocation structure for a given option class that contemplates using both the Preferred Market-Maker entitlement and the DPM or LMM entitlement (DPMs and LMMs cannot be assigned to the same class) with different priority positions. Since participation entitlements are only awarded when a Market-Maker is quoting at the Exchange’s BBO, if the first designated Market-Maker is not quoting at the Exchange’s BBO, the proposed rule change will allow for another designated Market-Maker later in the sequence to receive a participation entitlement as long as it is quoting at the Exchange’s BBO.

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>5</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Although this change will allow for more than one participation entitlement to be activated for a class, it will not increase the participation entitlement percentage applicable to any

individual transaction above the existing level, because only one entitlement will be applied on any given transaction. The Commission therefore believes that the proposal is consistent with the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CBOE-2008-08) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority:<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57555; File No. SR-NYSE-2008-18]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Compliance Deadline for NYSE Members To Complete Required 2007 Continuing Education Modules Under NYSE Rule 103A

March 26, 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 March 13, 2008, the New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared substantially by the Exchange. The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to 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 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>6</sup> 17 CFR 240.19b-4(f)(1).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 57332 (February 14, 2008), 73 FR 9610.

<sup>4</sup> The appropriate Procedure Committee determines, on a class-by-class basis, whether one or more such optional priority overlays may be applied and the sequence in which they are applied.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange proposes to extend the compliance deadline for NYSE members to complete required 2007 continuing education modules pursuant to NYSE Rule 103A. There is no proposed rule text.

## 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.

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

#### 1. Purpose

NYSE Rule 103A requires that the Exchange provide continuing education programs for Floor members. All NYSE members who work on the Floor of the Exchange must complete the education programs; failure to do so within the prescribed time frame results in the member being barred from entering the Exchange Floor.

Over the past year, NYSE Regulation, Inc., which supervises the creation and delivery of content for the Floor Member Continuing Education ("FMCE") program, has been developing a Learning Management System ("LMS") that automates the delivery of program content to members via a Web-based interactive program that participants can access from an Internet-capable computer. Because the new LMS changed certain details about how the program was delivered, the Exchange filed certain amendments to Rule 103A to update the Rule in light of the new system requirements.<sup>5</sup> The Exchange expects to launch the LMS during March 2008. In order to meet its requirements for 2007, NYSE Regulation delivered certain FMCE modules via in-person classes held in November and December 2007. Approximately 300 members failed to participate in each of

the three modules. Under the previous version of Rule 103A, which applied to the 2007 FMCE program, a member had 120 days from original assignment date to make up missed classes. (The deadline for making up a missed element has since been shortened pursuant to amended NYSE Rule 103A.) Under the former version of the Rule, the deadline by which the first module must be completed via a make-up session is March 18, 2008; the latest will be April 18, 2008.

NYSE Regulation intended to employ the LMS to allow members to make-up missed classes within the allotted 120 days. (All live sessions were videotaped and these archived sessions will be available through the LMS.) However, technical difficulties have delayed the LMS's launch. We now anticipate launching the LMS during the week of March 10, 2008.<sup>6</sup>

Given the delays in rolling out the LMS, NYSE Regulation proposes to grant all members with open 2007 FMCE assignments an extension to their deadline under the Rule. The extension will be relatively short in time and will apply only to 2007 FMCE modules. At this time, we will be giving each member 30 days to complete a 2007 module from the time a make-up assignment is made available through the LMS. This filing seeks authorization from the Commission to grant the necessary extensions.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,<sup>7</sup> in that it is 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.

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

The Exchange 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 proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2008-18 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSE-2008-18. 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

<sup>5</sup> See Securities Exchange Act Release No. 56851 (November 28, 2007), 72 FR 68932 (December 6, 2007) (SR-NYSE-2007-106).

<sup>6</sup> See NYSE Regulation, Inc. Information Memo 08-9 (March 14, 2008) (announcing implementation of the LMS).

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

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

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

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 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 publicly available. All submissions should refer to File Number SR-NYSE-2008-18 and should be submitted on or before April 22, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57561; File No. SR-NYSEArca-2008-29]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units

March 26, 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 March 13, 2008, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), 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. On March 24, 2008, the Exchange filed Amendment No. 1 to the proposed rule

change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) to modify the eligibility criteria for components of an index underlying Investment Company Units ("Units").<sup>3</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and [www.nyse.com](http://www.nyse.com).

#### 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.

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

###### 1. Purpose

Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) provides that NYSE Arca Equities may approve a series of Units for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,<sup>4</sup> if such series satisfies the criteria set forth in Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3). The Exchange proposes to exclude Units

<sup>3</sup> Units are securities that represent an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity, that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities or securities in another registered investment company that holds securities. See NYSE Arca Equities 5.2(j)(3).

<sup>4</sup> Rule 19b-4(e) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to Rule 19b-4(c)(1) under the Act (17 CFR 240.19b-4(c)(1)), if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class. See 17 CFR 240.19b-4(e).

and certain other securities defined in Section 2 of NYSE Arca Equities Rule 8 (collectively, "Derivative Securities Products")<sup>5</sup> when applying the quantitative listing requirements of Commentary .01(a)(A) and (B) of NYSE Arca Equities Rule 5.2(j)(3) relating to the listing of Units based on a U.S. index or portfolio or an international or global index or portfolio, respectively.

With respect to Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange proposes to exclude Derivative Securities Products, as components, when applying the following existing component eligibility requirements: (1) Component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$75 million (Commentary .01(a)(A)(1)); (2) component stocks that, in the aggregate, account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares (Commentary .01(a)(A)(2)); and (3) the most heavily weighted component stock must not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks must not exceed 65% of the weight of the index or portfolio (Commentary .01(a)(A)(3)). Component stocks, in the aggregate, excluding Derivative Securities Products, would still be required to meet the criteria of these provisions. Thus, for example, when determining compliance with Commentaries .01(a)(A)(1) and (2) to NYSE Arca Equities Rule 5.2(j)(3), component stocks that, in the aggregate, account for at least 90% of the remaining index weight, after excluding any Derivative Securities Products, would be required to have a minimum market value of at least \$75 million and minimum monthly trading volume of 250,000 shares during each of the last six months, respectively. In addition, with respect to Commentary .01(a)(A)(3) to NYSE Arca Equities Rule 5.2(j)(3), when determining the component weight for the most heavily weighted stock and the

<sup>5</sup> The following securities are included in Section 2 of NYSE Arca Equities Rule 8: Portfolio Depositary Receipts (Rule 8.100); Trust Issued Receipts (Rule 8.200); Commodity-Based Trust Shares (Rule 8.201); Currency Trust Shares (Rule 8.202); Commodity Index Trust Shares (Rule 8.203); Partnership Units (Rule 8.300); and Paired Trust Shares (Rule 8.400). The Exchange has also proposed to adopt new NYSE Arca Equities Rule 8.600 (Managed Fund Shares). See Securities Exchange Act Release No. 57395 (February 28, 2008), 73 FR 11974 (March 5, 2008) (SR-NYSEArca-2008-25) (proposing, among other things, to adopt listing standards for Managed Fund Shares).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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