

contract, it believes it should have the flexibility to change the minimum size requirement on a class by class basis depending on market conditions and the trading and liquidity in a particular option class and its underlying security. CBOE notes that the minimum quotation size requirement for market-makers on NYSEArca and the Nasdaq Options Market is only one contract. (See NYSEArca Rule 6.37B and Nasdaq Options Market Rule Section 6(a).) As a result, CBOE believes the proposed rule change is based on and similar to the rules of other options exchanges.

CBOE also proposes to make a technical change to Rule 6.2B, Interpretation .03 to delete the reference to RMM, which CBOE previously deleted from its rules.

2. Statutory Basis

The proposed rule change would permit the Exchange to set a minimum quotation size requirement on a class by class basis, provided the minimum size is at least one contract. CBOE believes that this flexibility will enable the Exchange to take into consideration market conditions and the trading and liquidity in a particular option class and its underlying security. As a result, the Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 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.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act⁸ 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 foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of such 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-2008-107 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-107. This file

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) under the Act requires that a self-regulatory organization 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 notice requirement.

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 the 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-2008-107 and should be submitted on or before November 17, 2008.

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

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-25537 Filed 10-24-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58829; File No. SR-CBOE-2008-108]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Immediately Add Two New VIX Option Series Within Five Days of Expiration

October 21, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 16, 2008, the Chicago Board Options

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “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 is seeking to immediately list two new series of CBOE Volatility Index (“VIX”) options prior to expiration next Wednesday, October 22, 2008, notwithstanding Interpretation and Policy .01(c) to Rule 24.9, *Terms of Index Option Contracts*. The Exchange is not proposing any rule text changes. Although the proposed rule change would not amend the text of Rule 24.9.01(c), the proposed change would have the effect of permitting the Exchange to immediately add two new series of VIX options within five business days prior to VIX expiration on Wednesday, October 22, 2008.

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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to allow the Exchange to immediately list two new series of VIX options prior to expiration next Wednesday, October 22, 2008.

The Exchange notes the exceptional market circumstances giving rise to this limited request relate only to VIX options. The Exchange states that this

request will facilitate the functioning of the Exchange’s market and will not harm investors or the public interest. VIX options are a unique product traded only at CBOE and unprecedented market volatility has caused the Exchange to respond to requests from market participants to offer the limited request sought by this proposal.

Interpretation and Policy .01(c) to Rule 24.9 provides, “[n]ew series of index option contracts may be added up to the fifth business day prior to expiration.” Under this Rule 24.9.01(c), the last day for the Exchange to add new series of expiring October VIX option was Wednesday, October 15, 2008.

However, given the current extraordinary market conditions and considerable market volatility, the Exchange has received user requests to add two new additional VIX option series—110 and 120 strikes expiring next Wednesday, October 22, 2008. The Exchange believes that these requests are reasonable and will allow for more efficient risk management. Specifically, liquidity providers are selling the 100 October 2008 VIX option contracts without the ability to hedge those positions with an option having a higher strike. Currently, the highest strike listed for expiring October 2008 VIX options is 100. In addition, the Exchange believes that because of the recent volatility in the market, the addition of the two VIX option series will help prepare the market in the event there are large shifts in the time remaining until expiration. On the day of this filing, the VIX level reached 81.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)⁵ of the Act, 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. The addition of the two requested VIX option series will facilitate the functioning of the Exchange’s market by allowing for more efficient risk management and will 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.

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 foregoing rule does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.⁸ However, Rule 19b-4(f)(6)(iii)⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. 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 to immediately list the two new VIX option series prior to expiration on Wednesday, October 22, 2008.¹⁰ In particular, the addition by the Exchange of these two VIX option series has been necessitated, in the opinion of CBOE, by the current extraordinary market conditions and unusual levels of volatility. Allowing CBOE to immediately offer these new series will allow market participants to efficiently manage their volatility risk in current market conditions and will help market participants prepare for any potential significant movements in the VIX that may occur prior to expiration.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

⁸ 17 CFR 240.19b-4(f)(6)(iii).

⁹ *Id.*

¹⁰ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule’s effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78(f)(b)(5).

At any time within 60 days of the filing of such 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-2008-108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2008-108. 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 the 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-2008-108 and should be submitted on or before November 17, 2008.

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

Florence E. Harmon,
Acting Secretary.

[FR Doc. E8-25538 Filed 10-24-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58818; File No. 4-569]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and BATS Exchange, Inc.

October 20, 2008.

On August 27, 2008, BATS Exchange, Inc. ("BATS") and the Financial Industry Regulatory Authority, Inc. ("FINRA") (together with BATS, the "Parties") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² a plan for the allocation of regulatory responsibilities, dated August 25, 2008 ("17d-2 Plan" or the "Plan"). The Plan was published for comment on September 24, 2008.³ The Commission received no comments on the Plan. This order approves and declares effective the Plan.

I. Introduction

Section 19(g)(1) of the Act,⁴ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or section 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a

pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ See Securities Exchange Act Release No. 58563 (September 17, 2008), 73 FR 55180.

⁴ 15 U.S.C. 78s(g)(1).

⁵ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.