

### 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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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 Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

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.

"Act"), in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that it harmonizes the Exchange's immediate release policies with the SEC's requirements in Regulation FD.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> The Commission notes that pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give 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.

### 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-2009-40 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-NYSE-2009-40. 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, 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-NYSE-2009-40 and should be submitted on or before May 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59824; File No. SR-CBOE-2009-018]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Permanently Establish the Short Term Option Series Pilot Program

April 27, 2009.

On March 13, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 permanently establish its Short Term Option Series pilot program (the "Weeklys Program"). The proposed rule change was published for comment in the **Federal Register** on March 26, 2009.<sup>3</sup> The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

The Commission approved the Weeklys Program on a pilot basis on July 12, 2005.<sup>4</sup> The proposed rule change permanently establishes the Weeklys Program. The proposal also consolidates the subsections of Rules 5.5 and 24.9 and make conforming, non-

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 59601 (March 19, 2009), 74 FR 13281.

<sup>4</sup> See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63) ("Weeklys Pilot Program Approval Order"). The Weeklys Program has since been extended and is currently scheduled to expire on July 12, 2009. See Securities Exchange Act Release Nos. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR-CBOE-2006-48), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR-CBOE-2007-76); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR-CBOE-2008-70). See also Securities Exchange Act Release Nos. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR-CBOE-2006-49) (order approving an increase in the number of series that may be listed for a class selected to participate in the Weeklys Program from five to seven) and 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR-CBOE-2008-110) (immediately effective rule change increasing the number of series that may be listed for a classes selected to participate in the Weeklys Program from seven series to 20 series).

substantive changes to the rule text related to the Exchange's Quarterly Option Series Pilot Program.

The Weeklys Program allows CBOE to list and trade Short Term Option Series, which expire one week after the date on which a series is opened. Under the Weeklys Program, CBOE may select up to five approved option classes on which Short Term Option Series could be opened. For each class selected for the Weeklys Program, the Exchange may open up to 20 Short Term Option Series for each expiration date in that class, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened. If the Exchange opens less than 20 Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the current value of the underlying security or index moves substantially from the previously listed exercise prices. In any event, the total number of series for a given expiration date will not exceed 20 series.

The Exchange has selected the following four options classes to participate in the Weeklys Program: S&P 500 Index options (SPX); S&P 100 Index American-style options (OEX); Mini-S&P 500 Index options (XSP); and S&P 100 Index European-style options (XEO).

In support of its proposal seeking permanent approval of the Weeklys Program, and as required by the Weeklys Pilot Program Approval Order, the Exchange submitted to the Commission a report on the Weeklys Program (the "Report") detailing the Exchange's experience with the Weeklys Program. In addition to the Report, the Exchange represented that it has not experienced any capacity-related problems with respect to Short Term Option Series, and also that it has the necessary system capacity to continue to support the option series listed under the Weeklys Program.

After careful review, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and, in particular, the requirements of Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that the rules of a

national securities exchange be designed 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 Commission finds that the Weeklys Program, as evidenced by the Report, has furthered the public interest by offering investors an alternative means of managing their risk exposures and carrying out their investment objectives. The Commission notes CBOE's representation that there is sufficient investor interest and demand in the Weeklys Program to warrant its permanent approval. The Commission further notes CBOE's representations that it has not experienced any capacity-related problems with respect to Short Term Option Series, and that the Exchange has the necessary system capacity to continue to support the option series listed under the Weeklys Program. Accordingly, the Commission finds that the proposed Weeklys Program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid the unnecessary proliferation of option series that could compromise systems capacity. The Commission expects CBOE to continue to monitor the trading and quotation volume associated with the Weeklys Program, and the effect the Weeklys Program has on the capacity of the Exchange's, OPRA's, and vendors' systems.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CBOE-2009-018) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59836; File No. SR-FINRA-2009-011]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Panel Composition Rules of the Code of Arbitration Procedure for Industry Disputes

April 28, 2009.

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 Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") on March 4, 2009 the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On April 7, 2009, FINRA filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

FINRA is proposing to amend the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to change the criteria for determining the panel composition when the claim involves an associated person in industry disputes.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, and at the Commission's Public Reference Room.

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

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in Sections A, B,

<sup>5</sup> In approving this proposed rule change, the Commission 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).

<sup>7</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.

<sup>3</sup> Amendment No. 1 replaces and supersedes the initial filing in its entirety.