

unsolicited written comments from members or other interested parties.

### 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) of the Act<sup>10</sup> and Rule 19b-4(f)(2)<sup>11</sup> thereunder. 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2010-10 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-ISE-2010-10. 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,<sup>12</sup> 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 Web site viewing and printing 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 ISE. 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-ISE-2010-10 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2956 Filed 2-9-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61478; File No. SR-CBOE-2010-009]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Penny Pilot Program

February 3, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 29, 2010, the Chicago Board Options Exchange, Incorporated ("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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 [sic] its rules relating to the Penny Pilot Program. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room and on the Commission's Web site <http://www.sec.gov>.

### 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

CBOE proposes to amend its rules in connection with the expansion of the Penny Pilot on February 1, 2010. Specifically, CBOE proposes to amend Rule 6.42 to provide that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010. Currently, the minimum increments in these two classes are \$0.01 for all option series quoted below \$3 (including LEAPS), and \$0.05 for all option series \$3 and above (including LEAPS). CBOE notes that the SEC recently approved an NYSEArca rule filing which provides that the minimum increment for all option series in the IWM and SPY option classes will be \$0.01 effective February 1, 2010.<sup>5</sup>

CBOE also proposes to identify the 75 option classes that will be added to the Penny Pilot Program beginning on February 1, 2010. CBOE recently extended and expanded the Penny Pilot Program through December 31, 2010.<sup>6</sup> As described in its filing, the Pilot

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 19b-4(f)(2).

<sup>12</sup> The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

<sup>13</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>5</sup> See Securities Exchange Act Release No. 61061 (November 24, 2009), granting partial approval of SR-NYSEArca-2009-44, as modified by Amendment No. 4 thereto.

<sup>6</sup> See Securities Exchange Act Release No. 60864 (October 22, 2009), granting immediate effectiveness to SR-CBOE-2009-76.

Program will be expanded by adding 300 option classes, in groups of 75 classes each quarter on the following dates: November 2, 2009, February 1, 2010, May 3, 2010, and August 2, 2010.<sup>7</sup> The option classes will be identified

based on national average daily volume in the six calendar months preceding their addition to the Pilot Program using data compiled by The Options Clearing Corporation, except that the month immediately preceding their addition to

the Pilot Program will not be utilized for purposes of the six-month analysis.

The following 75 option classes will be added to the Pilot Program beginning on February 1, 2010:

Symbol	Company name	Symbol	Company name
ABT .....	Abbott Laboratories.	LEAP .....	Leap Wireless International Inc.
AEM .....	Agnico-Eagle Mines Ltd.	LLY .....	Eli Lilly & Co.
AET .....	Aetna Inc.	LO .....	Lorillard Inc.
AFL .....	Aflac Inc.	LOW .....	Lowe's Cos Inc.
AKAM .....	Akamai Technologies Inc.	M .....	Macy's Inc
AMAT .....	Applied Materials Inc.	MCO .....	Moody's Corp.
AMR .....	AMR Corp.	MET .....	MetLife Inc.
ANF .....	Abercrombie & Fitch Co.	MMM .....	3M Co.
APC .....	Anadarko Petroleum Corp.	MU .....	Micron Technology Inc.
ATVI .....	Activision Blizzard Inc.	NUE .....	Nucor Corp.
BBD .....	Banco Bradesco SA.	OXY .....	Occidental Petroleum Corp.
BCRX .....	BioCryst Pharmaceuticals Inc.	PARD .....	Ponard Pharmaceuticals Inc.
BK .....	Bank of New York Mellon Corp/The.	PEP .....	PepsiCo Inc/NC.
BRCM .....	Broadcom Corp.	PM .....	Philip Morris International Inc.
BTU .....	Peabody Energy Corp.	PNC .....	PNC Financial Services Group Inc.
BX .....	Blackstone Group LP.	QID .....	ProShares UltraShort QQQ.
CAL .....	Continental Airlines Inc.	SHLD .....	Sears Holdings Corp.
CF .....	CF Industries Holdings Inc.	SLM .....	SLM Corp.
CMCSA .....	Comcast Corp.	SLW .....	Silver Wheaton Corp.
CSX .....	CSX Corp.	SQNM .....	Sequenom Inc.
CVS .....	CVS Caremark Corp.	STEC .....	STEC Inc.
CX .....	Cemex SAB de CV.	STX .....	Seagate Technology.
DD .....	El du Pont de Nemours & Co.	SU .....	Suncor Energy Inc.
ERTS .....	Electronic Arts Inc.	TCK .....	Teck Resources Ltd.
EWJ .....	iShares MSCI Japan Index Fund.	TEVA .....	Teva Pharmaceutical Industries Ltd.
FDX .....	FedEx Corp.	TLT .....	iShares Barclays 20+ Year Treasury Bond Fund.
FNM .....	Federal National Mortgage Association.	TZA .....	Direxion Daily Small Cap Bear 3X Shares.
FRE .....	Federal Home Loan Mortgage Corp.	UAUA .....	UAL Corp.
GILD .....	Gilead Sciences Inc.	URE .....	ProShares Ultra Real Estate.
GLW .....	Corning Inc.	UTX .....	United Technologies Corp.
HBC .....	HSBC Holdings PLC.	WFR .....	MEMC Electronic Materials Inc.
HES .....	Hess Corp.	WFT .....	Weatherford International Ltd.
HL .....	Hecla Mining Co.	WLP .....	WellPoint Inc.
HOG .....	Harley-Davidson Inc.	XLB .....	Materials Select Sector SPDR Fund.
HON .....	Honeywell International Inc.	XRX .....	Xerox Corp.
JOYG .....	Joy Global Inc.	XTO .....	XTO Energy Inc.
JWN .....	Nordstrom Inc.	YRCW .....	YRC Worldwide Inc.
KFT .....	Kraft Foods Inc.		

## 2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the "Act") 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.<sup>8</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>9</sup> 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. In particular, the proposed rule change allows for an

expansion of the Penny Pilot Program for the benefit of market participants and identifies the option classes to be added to the Pilot Program in a manner consistent with CBOE's rule filing SR-CBOE-2009-76 to extend and expand the Pilot Program. The proposed rule change also allows for reductions in the minimum increments in IWM and SPY, which has been shown to reduce spreads.

### 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 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

<sup>7</sup> The classes to be added are among the most actively-traded, multiply-listed option classes that are not currently in the Pilot Program, excluding option classes with high premiums. An option class

would be designated as "high premium" if, at the time of selection, the underlying security was priced at \$200 per share or above, or the underlying index level was at 200 or above.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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<sup>10</sup> and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>12</sup> which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal is based on a recent Commission-approved proposal submitted by another options exchange<sup>13</sup> and therefore does not raise any novel regulatory issues. Further, waiving the operative delay will allow the Exchange to commence quoting all series of IWM and SPY in increments of \$0.01 effective February 1, 2010, contemporaneously with other options exchanges. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.<sup>14</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.

#### 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-CBOE-2010-009 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-2010-009. 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 Web site viewing and printing 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 self-regulatory organization. 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-2010-009 and should be submitted on or before March 3, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2010-2865 Filed 2-9-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61489; File No. SR-CBOE-2010-008]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Co-location Service Fees

February 4, 2010.

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 January 28, 2010, Chicago Board Options Exchange, Inc. ("CBOE" or the "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 prepared by CBOE. 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 the Proposed Rule Change

Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to co-location service fees. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, 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, 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

For a monthly fee, the Exchange provides members with cabinet space in CBOE's building for placement of network and server hardware. The fee is

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

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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to give the Commission 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. CBOE has satisfied this requirement.

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

<sup>13</sup> See *supra* note 5.

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).