

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

Elizabeth M. Murphy,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62443; File No. SR-CBOE-2010-064]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand Its \$1 Strike Program

July 2, 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 July 1, 2010, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Rule 5.5.01 to expand the Exchange's \$1 Strike Program (the "\$1 Strike Program" or "Program") to allow the Exchange to select 150 individual stocks on which options may be listed at \$1 strike price intervals. The text of the rule proposal is available on the Exchange's website (<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, 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 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 expand the \$1 Strike Program.<sup>3</sup>

The \$1 Strike Program currently allows CBOE to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below \$50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at \$1 intervals from \$1 to \$50, but no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list \$1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series ("LEAPS")<sup>4</sup> at \$1 strike price intervals for any class selected for the Program, except as specified in subparagraph (2) to Interpretation and Policy .01 to Rule 5.5.<sup>5</sup> The Exchange is also restricted from listing series with \$1 intervals within \$0.50 of an existing strike price in the same series, except that strike prices of \$2, \$3, and \$4 shall

be permitted within \$0.50 of an existing strike price for classes also selected to participate in the \$0.50 Strike Program.<sup>6</sup>

The Exchange now proposes to expand the Program to allow CBOE to select a total of 150 individual stocks on which option series may be listed at \$1 strike price intervals. The existing restrictions on listing \$1 strikes would continue, *i.e.*, no \$1 strike price may be listed that is greater than \$5 from the underlying stock's closing price in its primary market on the previous day, and CBOE is restricted from listing any series that would result in strike prices being \$0.50 apart (unless an option class is selected to participate in both the \$1 Strike Program and the \$0.50 Strike Program).

As stated in the Commission order that initially approved CBOE's Program and in subsequent extensions and expansions of the Program,<sup>7</sup> CBOE believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.

During the time that the \$1 Strike Program was a pilot, the Exchange submitted three pilot reports to the Commission in which the Exchange discussed, among other things, the strength and efficacy of the Program based upon the steady increase in volume and open interest of options traded on the Exchange at \$1 strike price intervals; and that the Program had not and, in the future, should not create capacity problems for CBOE or the Options Price Reporting Authority ("OPRA") systems.<sup>8</sup> This has not changed. Moreover, the number of \$1 strike options traded on the Exchange has continued to increase since the inception of the Program such that these options are now among some of the

<sup>3</sup> The Commission approved the Program as a pilot on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003). The Program was subsequently extended through June 5, 2008. See Securities Exchange Act Release No. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (SR-CBOE-2004-34); SEC Release No. 51771 (May 31, 2005), 70 FR 33228 (June 7, 2005) (SR-CBOE-2005-37); SEC Release No. 53805 (May 15, 2006), 71 FR 29690 (May 23, 2006) (SR-CBOE-2006-31); and SEC Release No. 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38). The Program was subsequently expanded and permanently approved in 2007. See Exchange Act Release No. 57049 (December 27, 2007), 73 FR 528 (January 3, 2008) (SR-CBOE-2007-125). The Program was last expanded in 2009. See Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR-CBOE-2009-01).

<sup>4</sup> LEAPS are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. See Rule 5.8, *Long-Term Equity Option Series (LEAPS)*. Long-term FLEX options and index options are considered separately in Rules 24A.4, 24B.4 and 24.9(b), respectively.

<sup>5</sup> Interpretation and Policy .01(a)(3) states that the Exchange may list \$1 strike prices up to \$5 in LEAPS in up to 200 option classes in individual stocks. See Securities Exchange Act Release No. 60978 (November 10, 2009), 74 FR 59296 (November 17, 2009) (SR-CBOE-2009-068).

<sup>6</sup> Regarding the \$0.50 Strike Program, which allows \$0.50 strike price intervals for options on stocks trading at or below \$3.00, see Interpretation and Policy .01(b) to Rule 5.5 and Securities Exchange Act Release No. 60695 (September 18, 2009), 74 FR 49055 (September 25, 2009) (SR-CBOE-2009-069). See also Securities Exchange Act Release No. 61331 (January 12, 2010), 75 FR 2911 (January 19, 2010) (SR-CBOE-2010-002) (allowing concurrent listing of \$3.50 and \$4 strikes for classes that participate in both the \$0.50 Strike Program and the \$1 Strike Program).

<sup>7</sup> See *supra* note 1.

<sup>8</sup> See Securities Exchange Act Release Nos. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (SR-CBOE-2004-34); 51771 (May 31, 2005), 70 FR 33228 (June 7, 2005) (SR-CBOE-2005-37); 53805 (May 15, 2006), 71 FR 29690 (May 23, 2006) (SR-CBOE-2006-31); and 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38).

<sup>38</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.

most popular products traded on the Exchange.

The Exchange believes that market conditions have led to an increase in the number of securities trading below \$50 warranting the proposed expansion of the \$1 Strike Program.<sup>9</sup> In addition, the Exchange notes that this filing is based on a filing previously submitted by NASDAQ OMX PHLX, Inc (“PHLX”) that the Commission recently noticed.<sup>10</sup> With regard to previous expansions of the Program, the Commission has approved proposals from the options exchanges that employ a \$1 Strike Program in lockstep.

The Exchange notes that, in addition to options classes that are trading pursuant to the \$1 strike programs of options exchanges, there are also options trading at \$1 strike intervals on approximately 282 exchange-traded fund shares (“ETFs”),<sup>11</sup> ETF options trading at \$1 intervals has not, however, negatively impacted the system capacity of the Exchange or OPRA.

With regard to the impact of this proposal on system capacity, CBOE has analyzed its capacity and represents that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the \$1 Strike Program.

The Exchange believes that the \$1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 59590 (March 17, 2009), 74 FR 12412 (March 24, 2009) (SR-CBOE-2009-21) (more than five-fold increase in the number of individual stocks on which options may be listed at \$1 intervals).

<sup>10</sup> See Securities Exchange Act Release No. 62151 (May 21, 2010), 75 FR 30078 (May 28, 2010) (SR-Phlx-2010-72).

<sup>11</sup> Options on ETFs have been trading for more than a decade. See Securities Exchange Act Release Nos. 37340 (July 2, 1998), 63 FR 37430 (July 10, 1998) (SR-CBOE-97-03) (original filing to list options on ETFs); and 46507 (September 25, 2002), 67 FR 60266 (September 25, 2002) (SR-CBOE005-54) (\$1 strike price intervals for ETF options). See also Interpretation and Policy .08 to Rule 5.5 allowing \$1 strike price intervals for ETF options where the strike price is \$200 or less.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>12</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. The Exchange believes that expanding the current \$1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

### 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 significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is

<sup>12</sup> 15 U.S.C. 78f(b)(5).

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

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.<sup>15</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>16</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-2010-064 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-2010-064. 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

<sup>15</sup> See Securities Exchange Act Release No. 62420 (June 30, 2010) (SR-Phlx-2010-72) (order approving expansion of \$1 strike program to 150 classes).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 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-2010-064 and should be submitted on or before July 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Elizabeth M. Murphy,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62429; File No. SR-FINRA-2010-031]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Financial Industry Regulatory Authority, Inc. Online Form NMA

July 1, 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 June 24, 2010, 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") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under 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 receipt of this filing by the Commission. 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

FINRA is proposing to amend online Form NMA, the standardized membership application form applicants must file pursuant to NASD Rule 1013 (New Member Application and Interview) as part of their new membership application. The proposed change would amend Form NMA's hyperlink reference to SEC Form D (Notice of Exempt Offering of Securities) from "high net worth," to "accredited investor," the term used in SEC Form D.

The proposed rule change does not propose amendments to existing 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, 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, 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

Form NMA is the standardized online membership application form applicants must file pursuant to NASD Rule 1013 (New Member Application and Interview) as part of their new membership application. Form NMA assists applicants by identifying the information and supporting documentation required by Rule 1013. To that end, Form NMA Section I, Question 8a requires an applicant to identify (by indicating all that apply) the following types of customers the applicant will service: (1) Retail excluding high net worth; (2) high net worth; (3) institutional excluding high net worth; or (4) other (as described by the applicant). Form NMA does not provide a definition of a "high net worth" retail or institutional customer; rather, the form provides guidance to

applicants responding to the question by providing a hyperlink for the term "high net worth" to SEC Form D (Notice of Exempt Offering of Securities), which references the term "accredited investor" as defined in Rule 501(a) of the Securities Act of 1933 ("Securities Act").<sup>5</sup>

The proposed rule change will replace the hyperlink reference "high net worth" with "accredited investor," thereby conforming the terminology used in Question I, Section 8a to SEC Form D.<sup>6</sup>

The effective date will be the date of filing; FINRA anticipates implementing the proposed rule change as part of a software release scheduled for July 31, 2010.

###### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is consistent with the provisions stated above, as it updates a hyperlink reference in online Form NMA, providing greater clarity to applicants for FINRA membership.

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

FINRA does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

<sup>5</sup> 17 CFR 230.501(a). Securities Act Rule 501(a) defines the term "accredited investor" to mean any person who comes within certain categories, as specified in the definition, at the time of the sale of the securities to that person. Those categories include, among others, institutions, such as banks, insurance companies, and employee benefit plans; trusts with total assets in excess of \$5,000,000; and any natural persons with either an individual income for the past two years over \$200,000 (or joint income over \$300,000 if married) or an individual net worth (or joint net worth if married) exceeding \$1,000,000.

<sup>6</sup> The proposed rule change also will update the nonworking hyperlink address to SEC Form D with the current hyperlink address, <http://www.sec.gov/about/forms/formd.pdf>.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>17</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)(i).

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