

- Ability to transact in any ETF underlying markets.

The regulatory requirements applicable to DARTs will be surveilled for by the FINRA Amex Regulation Division ("FINRA Amex") consistent with current surveillance procedures for Registered Traders on the Exchange. FINRA Amex staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and surveilling the increased number of market makers that the program is expected to attract. Adjustments to current technology and surveillance procedures will likely also be necessitated by the fact that DARTs will not be physically located on the floor of the Exchange.

DARTs will interface with the Amex's Floor Officials in the case of trade disputes substantially in accordance with existing procedures used for SROs. Each DART accordingly will be required to designate persons on and/or off-floor to be in direct real-time contact with Floor Officials on such matters. Regulation M will apply to DARTs in the same way that it applies to other market participants, as will Amex Rule 193 to the extent a DART is affiliated with a specialist member organization. However, no expansion of the application of Amex Rule 193 beyond current practice is intended.<sup>10</sup>

Finally, the Comment Letter had observed that a provision proposed in SR-Amex-2007-85 relating to minimum capital requirements for DARTs is unnecessary due to its current inapplicability to DARTs (who will be subject to the Commission's net capital rule).<sup>11</sup> The Exchange has eliminated that provision from the current proposed rule change.

### III. Discussion

After careful review, 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>12</sup> In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the

Act,<sup>13</sup> which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the proposal, DARTs would be permitted to quote electronically in ETFs from off the Exchange's physical trading floor. Amex's rules already provide for one type of competing market maker in ETF securities—Registered Traders. Like Registered Traders, DARTs will not be permitted to enter quotations in equity securities. In addition, similar rules would govern the allocations of DARTs and Registered Traders, except DARTs will not be permitted to participate in a post-trade allocation in connection with an auction trade. The Commission believes it is reasonable and consistent with the Act for Amex to establish DARTs as remote competitive market makers subject to the allocation rules described in the proposal.

The Commission notes that DARTs will be required to meet certain eligibility requirements. The existence of order flow commitments between a DART applicant and order flow providers is one such factor. The Commission notes the Exchange's representation that a future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against a DART, and that the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Similarly, the Exchange has included the "willingness to promote the Exchange" as a factor that the Committee may consider when making its application decisions. The Commission notes the Exchange's representation that the Committee would not apply this factor to in any way restrict, either directly or indirectly, a DART's activities as a market maker or specialist on other exchanges, or to restrict how a DART handles orders it holds in a fiduciary capacity to which it owes a duty of best execution.

The Commission also notes that, should the Committee decide not to approve a DART applicant, or should a DART's appointment be suspended or terminated in one or more classes, a DART applicant or DART, respectively, would be entitled to a hearing under

Article IV, section 1(g) of the Amex Constitution and Amex Rule 40.

Proposed Amex Rule 110A(b)—AEMI sets forth the obligations that a DART would be required to fulfill. Specifically, a DART would be required to generate continuous, two-sided quotations in all assigned ETF securities. A DART's affirmative market making obligations appear to be sufficient to justify the benefits it would receive as a market maker.

The proposal also appears reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in securities assigned to a DART, or that may act as a specialist or market maker in any security underlying a derivative security assigned to a DART.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2007-138) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57250; File No. SR-CBOE-2008-11]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to CBOE's Holdback Timer

February 1, 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 January 29, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)

<sup>10</sup> The language in Rule 110A-AEMI(c)(ii) cross-referencing Amex Rule 193 is substantively identical to language also contained in Amex Rules 993-ANTE(d)(iii) (Supplemental Registered Options Traders) and 994-ANTE(d)(iii) (Remote Registered Options Traders), neither of which have been interpreted to expand the applicability of Amex Rule 193 beyond affiliates of specialists.

<sup>11</sup> Rule 15c3-1 under the Act, 17 CFR 240.15c3-1.

<sup>12</sup> In approving 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>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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.

of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which rendered 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.

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

CBOE proposes to amend its rules relating to the usage of its holdback timer. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and <http://www.cboe.org/Legal>.

### 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 proposal. 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

On May 16, 2007, the Commission approved CBOE's proposed rule change, which implemented an additional quote mitigation strategy, namely, a holdback timer.<sup>5</sup> In its filing, CBOE stated that it would utilize a holdback timer that delays quotation updates to OPRA for no longer than one (1) second, and that it would be used in option classes trading on the Hybrid Trading System and Hybrid 2.0 Platform. Subsequently, CBOE implemented a new trading platform, the Hybrid 3.0 Platform, which allows a single quoter to submit an electronic quote which represents the aggregate Market-Maker quoting interest in a series in the trading crowd.<sup>6</sup>

CBOE now proposes to clarify that it may utilize the holdback timer in any option classes traded on CBOE, including option classes traded on the Hybrid 3.0 Platform. CBOE believes that the holdback timer is an appropriate

and useful tool in mitigating quotations, as it reduces the number of quotations that CBOE disseminates to OPRA, without negatively impacting transparency. CBOE also notes that the holdback timer has been endorsed by the Securities Information and Financial Markets Association. CBOE is not proposing to change the manner in which the holdback timer functions, as described in its original rule filing SR-CBOE-2007-45.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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 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 either solicited or received by the Exchange.

### 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) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder,<sup>10</sup> because the foregoing proposed 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.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 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.<sup>12</sup> 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 CBOE to implement the holdback timer in Hybrid 3.0 option classes immediately, and thus reduce the number of quotations it disseminates to OPRA. Furthermore, the proposed rule change does not present any novel regulatory issues as the holdback timer is already implemented with respect to options classes trading on the Hybrid Trading System and Hybrid 2.0 Platform. For these reasons, the Commission designates the proposal to be operative upon filing with the Commission.<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.<sup>14</sup>

### 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-2008-11 on the subject line.

<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 the five-day pre-filing requirement.

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

<sup>13</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. 15 U.S.C. 78c(f).

<sup>14</sup> See 15 U.S.C. 78s(b)(3)(C).

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

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

<sup>5</sup> See Securities Exchange Act Release 55772 (May 16, 2007), 72 FR 28732 (May 22, 2007) (SR-CBOE-2007-45).

<sup>6</sup> See CBOE Rule 1.1(aaa).

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2008-11. 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 CBOE. 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-2008-11 and should be submitted on or before February 28, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57256; File No. SR-CBOE-2008-09]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Establishing a Voluntary Professional Designation

February 1, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on January 18, 2008, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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. 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

The Exchange proposes to adopt a voluntary professional designation. The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and (<http://www.cboe.org/Legal>).

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

This filing proposes to allow non-broker-dealer customers to voluntarily have their orders categorized as broker-dealer orders for order handling, order execution, and cancel fee calculation purposes ("Voluntary Professional(s)").

Specifically, these orders would be treated as broker-dealer orders for purposes of CBOE Rules 6.13 (CBOE Hybrid System's Automatic Execution Feature), 6.45 (Priority of Bids and Offers—Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System), and 6.53C (Complex Orders on the Hybrid System).

Some Exchange users have requested this flexibility because it is more suitable to their trading strategies that involve high volume order submission and cancellation. These Voluntary Professionals would participate on trades on the same terms as broker-dealer orders for purposes of the rules set forth above. Orders from Voluntary Professionals would continue to be treated as public customer orders for purposes of the linkage-related rules. CBOE would provide the same away-market protection for orders from Voluntary Professionals as for orders from public customers. Additionally, orders from Voluntary Professionals that are cancelled would not be counted as public customer order cancellations in connection with the cancellation fee calculation applicable to clearing members. The Exchange intends to establish, via a separate rule filing under Section 19(b) of the Act, a transaction fee applicable to Voluntary Professionals and the Exchange would not commence the Voluntary Professional program until such fee was in place.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and 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 that is not necessary or appropriate in furtherance of the purposes of the Act.

<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. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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