SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57044; File No. SR–CBOE–2007–130]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to Anti-Money Laundering Program Rule 4.20

December 27, 2007.

I. Introduction

On November 2, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to CBOE Rule 4.20. On November 9, 2007, CBOE file Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 26, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

The proposed rule change amends CBOE's Anti-Money Laundering Compliance Program (''the AML Program'') as codified in CBOE Rule 4.20 (''the Anti-Money Laundering Compliance Rule''), to: (1) Establish that independent testing for compliance must be conducted at least annually by members with a public business, or every two years if no public business is conducted; and (2) clarify the persons designated to implement and monitor the Anti-Money Laundering Compliance Rule. The amendments also establish a standard to determine who is adequately qualified and sufficiently independent to conduct the required testing. In addition, the amendment clarifies that the person designated to implement and monitor the Anti-Money Laundering Compliance Rule must be an associated person of the Exchange member.

Background and Detail

Financial institutions, including broker-dealers, must develop and implement AML Programs pursuant to the Bank Secrecy Act,[4] as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (''PATRIOT Act'').[5] Consistent with the Department of Treasury's (''Treasury'') regulation 31 CFR 103.120 under the Bank Secrecy Act, CBOE Rule 4.20 requires each member organization and each member not associated with a member organization to develop and implement a written AML program and specifies the minimum requirements for these programs.

The AML program must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an ''AML Officer''); ongoing training for appropriate persons; and an independent testing function for overall compliance.

In order to provide interpretive clarity to the requirements under CBOE Rule 4.20 with respect to independent testing and AML Officers, as well as to clarify references to the Bank Secrecy Act, CBOE proposed the following amendments to CBOE Rule 4.20.

References to Bank Secrecy Act

The proposed rule change would delete references to certain sections of the Bank Secrecy Act and a reference to the USA PATRIOT Act to more clearly reflect the requirements under CBOE Rule 4.20.

Timeframes for Independent Testing

The proposed rule change would require that independent testing of AML programs be conducted, at a minimum, on an annual (calendar-year) basis by members or member organizations, unless the member or member organization does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers), in which case such independent testing would be required every two years (on a calendar-year basis). CBOE believes these timeframes are reasonable in that they require more frequent testing of AML programs designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers. Further, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. However, the proposed rule change establishes only a minimum requirement, and makes clear that members should undertake more frequent testing when circumstances warrant (e.g., should the business mix of the member or member organization materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AML Program; or in response to any other ''red flags'').

Qualification and Independence Standards for Testing

The proposed rule change would further require that testing be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Such person need not be an employee of the member or member organization since the responsibility is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party.

The proposed rule change does not preclude an employee of the member or member organization from conducting the required independent testing of the AML Program; however the proposed ''independence'' standard would prohibit testing from being conducted by a person who performs the functions being tested, by the designated AML Officer or by a person who reports toeither.

The proposed rule change would be generally consistent with the approach taken by the regulatory arms of the New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD''), n/k/a the Financial Industry Regulatory Authority, Inc., (''FINRA''),[6] regarding independent testing of AML Programs, with variations where necessary to account for the differences in CBOE membership—in particular, differences

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56816 (Nov. 19, 2007); 72 FR 66006 (Nov. 26, 2007) (''Notice'').

[4] 31 U.S.C. 5311 *et seq.*

[5] Pub. L. No. 107–56, 115 Stat. 272 (2001).

[6] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

in firm size, types of businesses conducted, and overall business models. It should be noted that the over whelming majority of CBOE's membership consists of broker-dealers that are not members of either NYSE or FINRA and that conduct business only with other broker-dealers.

AML Officer

The proposed rule change would also clarify that the AML Officer(s) must be an associated person of the member. This would not prohibit a member that is part of a diversified financial institution from designating an AML Officer that is employed by the member's parent company, sister company, or other affiliate. However, if such a person is designated as a member's AML Officer, CBOE would consider that person to be an associated person of the member with respect those activities performed on behalf of the member.

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5)[7] of the Exchange Act.[8] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change is designed to accomplish these ends by requiring members to conduct periodic tests of their AML compliance programs, preserve the independence of their testing personnel, and ensure the accuracy of their AML compliance programs.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change, as amended (SR–CBOE–2007–130), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57049; File No. SR–CBOE–2007–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2 Thereto, Relating to the $1 Strike Pilot Program

December 27, 2007.

I. Introduction

On October 31, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposal to amend its rules relating to the $1 Strike Pilot Program (''$1 Strike Program''). On November 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Exchange subsequently withdrew Amendment No. 1 and filed Amendment No. 2 to the proposed rule change on November 15, 2007. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 23, 2007.[3] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The purpose of the proposed rule change is to expand the $1 Strike Program and to request permanent approval of the $1 Strike Program. The $1 Strike Program currently allows CBOE to select a total of 5 individual stocks on which option series may be listed at $1 strike price intervals. To be eligible for selection into the $1 Strike Program, the underlying stock must close below $20 in its primary market on the previous trading day. If selected for the $1 Strike Program, the Exchange may list strike prices at $1 intervals from $3 to $20, 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 also may list $1 strikes on any other option class designated by another securities exchange that employs a similar $1 Strike Program under their respective rules. The Exchange may not list long-term option series (''LEAPS'') at $1 strike price intervals for any class selected for the $1 Strike Program. The Exchange also is restricted from listing any series that would result in strike prices being $0.50 apart.

The Exchange proposes to amend Interpretation and Policy .01 to CBOE Rule 5.5 to expand the $1 Strike Program to allow it to select a total of 10 individual stocks on which option series may be listed at $1 strike price intervals. Additionally, CBOE proposes to raise the upper limit of the price range on which it may list $1 strikes from $20 to $50. The existing restrictions on listing $1 strikes would continue, *e.g.*, 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 would be restricted from listing any series that would result in strike prices being $0.50 apart. In addition, because it believes that the $1 Strike Program has been very successful by allowing investors to establish equity options positions that are better tailored to meet their investment objectives, CBOE requests that the $1 Strike Program be approved on a permanent basis.

In its filing with the Commission, CBOE stated its belief that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower priced stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. According to CBOE, member firms representing customers have repeatedly requested that CBOE seek to expand the $1 Strike Program, both in terms of the number of classes that can be selected and the range in which $1 strikes may be listed. CBOE concluded from its analysis of the $1 Strike Program that the impact on CBOE's, OPRA's, and market data vendors' respective automated systems has been minimal.[4] CBOE has represented that is has sufficient capacity to handle an expansion of the $1 Strike Program, as proposed.

Finally, the Exchange proposes to make a corresponding change to

[7] 15 U.S.C. 78f(b)(5).

[8] 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).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56801 (November 16, 2007), 72 FR 65784 (''Notice'').

[4] *See* Notice, *supra* note 3, at 65785 (providing CBOE's $1 Strike Program analysis on systems capacity).