

Number SR-CBOE-2010-095 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-2010-095. 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 such 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-2010-095 and should be submitted on or before November 23, 2010.

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. 34-63185; File No. SR-CBOE-2010-097]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a Pilot Program To List Series With Additional Expiration Months for Each Class of Options Opened for Trading on the Exchange

October 27, 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 October 26, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 its rules to adopt a pilot program to list additional expiration months for each class of options opened for trading on the Exchange. The text of the rule proposal 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, 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 Exchange proposes to amend its rules to adopt a pilot program to list additional expiration months for each class of options opened for trading on the Exchange. Pursuant to Interpretation and Policy .03 to Rule 5.5, the Exchange currently opens four expiration months for each class of options open for trading on the Exchange: the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific class. For example, if the Exchange listed, in late April, a new stock option on a January-April-July-October quarterly cycle, the Exchange would list the two nearest term months (May and June) and the next two expiration months of the cycle (July and October). When the May series expires, the Exchange would add January series. When the June series expires, the Exchange would add August series as the next month, and would not add April.

The Exchange believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a pilot program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.<sup>5</sup> The proposal will become effective on a pilot basis for a period of twelve months to commence on the next full month after approval is received to establish the pilot program. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, the Exchange would additionally list the August and September series. For option classes in the February quarterly cycle that have expiration months of October, November, February and May, the

<sup>5</sup> CBOE does not believe that Rule 5.5.03 limits the maximum number of expiration months that may be listed. Rule 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expiration months, which the Exchange has previously done. By establishing the pilot program proposed in this filing, CBOE is not limited to its existing ability.

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

Exchange would additionally list the December and January series. Under the proposal, no additional LEAP series will be created.

The Exchange seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, the Exchange will be able to gauge interest in the pilot while limiting any additional demands on system resources. CBOE estimates that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior will likely reduce that increase by up to half. The Exchange believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, CBOE will submit, along with any filing proposing such amendments to the pilot program, a pilot program report ("Report") that will provide an analysis of the pilot program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the option classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on CBOE, OPRA and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how CBOE addressed such problems; (5) any complaints that CBOE received during the operation of the pilot program and how CBOE addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the pilot program.

Finally, the Exchange represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>6</sup> and the rules and regulations

thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the Exchange believes listing additional near-term expiration months will offer investors more variety in trading options series that were previously not available. The Exchange believes this proposed rule change will also generate additional volume in these option classes without significantly taxing system resources.

### *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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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

waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.<sup>11</sup> Therefore, the Commission designates the proposal operative upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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-2010-097 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-2010-097. 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

<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). 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 this requirement.

<sup>11</sup> See Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR-ISE-2010-91) (order approving Additional Expiration Months Pilot Program).

<sup>12</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).

<sup>6</sup> 15 U.S.C. 78s(b)(1).

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 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-2010-097 and should be submitted on or before November 23, 2010.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63196; File No. SR-FINRA-2010-046]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Remove the Exemption From the Trading Activity Fee for Transactions in Exchange Listed Options Effected by a Member When FINRA Is Not the Designated Options Examining Authority for That Member

October 27, 2010.

#### I. Introduction

On September 7, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 amend its By-Laws to remove the exemption from the trading activity fee ("TAF") for transactions in exchange listed options effected by a member when FINRA is not the designated options examining authority ("DOEA") for that member. The proposed rule change was published for comment in the **Federal**

**Register** on September 23, 2010.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

In its proposal, FINRA sought to amend Section 1(b) of Schedule A to the FINRA By-Laws to remove the exemption from the TAF for transactions in exchange listed options effected by a member for whom FINRA is not the DOEA. The TAF is one of three member regulatory fees FINRA uses to fund its member regulation activities.<sup>4</sup> Because the TAF funds FINRA's member regulation functions, it is intended to apply to transactions in a way that corresponds to FINRA's regulatory responsibilities.<sup>5</sup> In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE-eligible), over-the-counter equity securities, security futures, TRACE-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to the reporting requirements of the Municipal Securities Rulemaking Board.<sup>6</sup> The TAF rules also include numerous exemptions for certain types of transactions.<sup>7</sup>

In 2003, FINRA exempted from the TAF "[t]ransactions in exchange listed options effected by a member when FINRA is not the designated options examining authority for that member."<sup>8</sup> FINRA represented that the exemption was added to reflect the fact that FINRA's regulatory responsibilities with respect to such activities were somewhat alleviated by its participation in a plan filed with the Commission under Rule 17d-2 of the Act<sup>9</sup> ("17d-2 Agreement") in which regulatory responsibilities for certain FINRA members that conducted a public options business were assumed by other self regulatory organizations ("SROs") that would act as the members' DOEA.<sup>10</sup>

<sup>3</sup> See Securities Exchange Act Release No. 62927 (September 17, 2010), 75 FR 58004.

<sup>4</sup> See FINRA By-Laws, Schedule A, § 1(b). In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment. See *id.* §§ 1(c), (d).

<sup>5</sup> See Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004) (SR-NASD-2003-201).

<sup>6</sup> See FINRA By-Laws, Schedule A, § 1(b)(1).

<sup>7</sup> See FINRA By-Laws, Schedule A, § 1(b)(2).

<sup>8</sup> FINRA By-Laws, Schedule A, § 1(b)(2)(K). See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR-NASD-2002-148).

<sup>9</sup> 17 CFR 240.17d-2.

<sup>10</sup> See Securities Exchange Act Release No. 46800 (November 8, 2002), 67 FR 69774 (November 19, 2002).

In view of the fact that another SRO performed certain regulatory responsibilities with respect to the options activities of some of its members, FINRA decided to exempt transactions in exchange listed options by such members from the TAF.<sup>11</sup> The exemption was also based on the fact that certain other SROs were assessing or preparing to assess specific regulatory fees for acting as DOEA,<sup>12</sup> which FINRA believed made its TAF on options transactions appear redundant. However, subsequent amendments to the 17d-2 Agreement have consolidated within FINRA sole regulatory responsibility for the public options activities of all of its members<sup>13</sup> and FINRA assumed all regulatory responsibility for FINRA members under the 17d-2 Agreement.<sup>14</sup> As a result of this increase in regulatory responsibility, FINRA filed the instant proposed rule change to delete the exemption from the TAF.<sup>15</sup>

FINRA represented that deleting this exemption would also remove any ambiguities over whether FINRA should collect the TAF from sole-FINRA members or from FINRA members that conduct only a proprietary options business. FINRA stated its belief that the existing language exempting a member's transactions in exchange listed options from the TAF when FINRA is not the DOEA for the member does not properly align with those situations where FINRA has regulatory responsibility over the member firm. First, the DOEA designation is established only under the 17d-2 Agreement, which by its own terms applies only with respect to firms that are members of more than one SRO. Thus, according to FINRA, while it has regulatory responsibilities for the

<sup>11</sup> Transactions in over-the-counter ("conventional") options are exempted from the TAF with respect to all FINRA members. See FINRA By-Laws, Schedule A, § 1(b)(2)(H).

<sup>12</sup> See, e.g., Securities Exchange Act Release No. 47577 (March 26, 2003), 68 FR 16109 (April 2, 2003) (SR-PCX-2003-03) (PCX rule filing establishing a DOEA fee).

<sup>13</sup> See Securities Exchange Act Release No. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008).

<sup>14</sup> Following the consolidation of National Association of Securities Dealers ("NASD") and NYSE member regulation operations in 2007, FINRA announced that it serves as the DOEA for all FINRA member firms. See *Regulatory Notice* 08-37 (July 2008).

<sup>15</sup> At the time FINRA (then NASD) proposed the exemption in Amendment No. 4 to SR-NASD-2002-148, it noted that "NASD does not believe it is precluded from seeking further amendments to the TAF with respect to the reduction or elimination of the proposed exemption \* \* \* in the event of a change of factors surrounding its sales practice and other regulatory responsibilities." Letter from Barbara Z. Sweeney, SVP and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Trading and Markets, Commission, dated May 19, 2003.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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