

Market-Maker (like the FLEX Appointed Market-Maker) must submit a FLEX Quote if called upon by a FLEX Official, including when no FLEX Quotes are submitted in response to a specific RFQ.<sup>69</sup> FLEX Appointed Market-Makers may be awarded a participation entitlement, noted above. Both FLEX Market-Makers qualify for the market-maker exception to section 11(a) of the Act.

#### C. Position and Exercise Limits

The Commission believes that the proposed position and exercise limits in FLEX Options are reasonable and consistent with the Act. They appear reasonably designed to prevent a member from establishing an imprudent position in FLEX Options. Moreover, the Commission believes that these rules are reasonably designed to prevent a FLEX Trader from using FLEX Options to evade the position limits applicable to comparable Non-FLEX Options. In view of the explicit standards for position and exercise limits set forth in Rules 24A.7, 24A.8, 24B.7, and 24B.8, the Commission believes it is reasonable to relieve the Exchange of the obligation to propose new position and exercise limits for FLEX Options whenever it lists and trades a comparable non-FLEX product.

#### D. Sponsored Access

The Commission believes that the proposed sponsored access provisions are reasonable and consistent with the Act. The Commission notes that these provisions are substantially similar to those of another exchange, which previously were approved by the Commission.<sup>70</sup> The Exchange has proposed to offer sponsored access only to the new FLEX Hybrid Trading System, not to open-outcry FLEX trading or to other Exchange trading facilities. If the Exchange in the future would seek to offer sponsored access to its other trading facilities, it would have to file a proposed rule change pursuant to section 19(b) of the Act.

#### E. Acceleration

The Commission finds good cause for approving the proposal, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. Amendment Nos. 2 and 3 made only

minor changes to the overall proposal, which was subject to a notice-and-comment period. Because no comments were received, the Commission believes that good cause exists to grant accelerated approval and thereby allow the Exchange to implement the proposal without further delay.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 2 and 3, including whether it 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-2006-99 on the subject line.

##### 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-2006-99. 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 such 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-2006-99 and should be submitted on or before December 14, 2007.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>71</sup> that the proposed rule change (SR-CBOE-2006-99), as amended, is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>72</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56801; File No. SR-CBOE-2007-125]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change and Amendment No. 2 Thereto Relating to the \$1 Strike Pilot Program

November 16, 2007.

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 31, 2007, 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, II, and III below, which Items have been substantially prepared by the Exchange. 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 Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 \$1 Strike Pilot Program ("Pilot Program").<sup>3</sup> The text of the

<sup>71</sup> 15 U.S.C. 78s(b)(2).

<sup>72</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> The Commission approved the Pilot Program on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (SR-CBOE-2001-60). The Pilot Program has been subsequently extended through June 5, 2008.

<sup>69</sup> See proposed Rule 24B.9(d).

<sup>70</sup> See NYSE Arca Equities Rule 7.29; Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR-PCX-00-25) (approving proposal to establish Archipelago Exchange as the equities trading facility of the Pacific Exchange).

proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.cboe.com>.

## 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 Exchange 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 Exchange 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

The purpose of the proposed rule change is to expand the Pilot Program and to request permanent approval of the Pilot Program. The Pilot Program currently allows CBOE to select a total of 5 individual stocks on which option series may be listed at \$1 strike price intervals.<sup>4</sup> In order to be eligible for selection into the Pilot Program, the underlying stock must close below \$20 in its primary market on the previous trading day. If selected for the Pilot 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 Pilot 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 Pilot 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 Pilot Program and 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 expand the price range on which it may list \$1 strikes from \$3 to \$50. 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. In addition, because the Pilot 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 Pilot Program be approved on a permanent basis.

As stated in the Commission order approving CBOE's Pilot Program and in the subsequent extensions of the Pilot Program,<sup>5</sup> CBOE believes 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. Indeed, member firms representing customers have repeatedly requested that CBOE seek to expand the Pilot Program, both in terms of the number of classes which can be selected and the range in which \$1 strikes may be listed.

With regard to the impact on systems capacities, CBOE's analysis of the Pilot Program shows that the impact on CBOE's, OPRA's, and market data vendors' respective automated systems has been minimal. Specifically, in March 2007, CBOE states that the 21 classes participating in the Pilot Program industry-wide accounted for 12,950,404 average quotes per day or 1.20% of the industry's 337,744,725 average quotes per day. The 21 classes averaged 412,007 contracts per day or

3.96% of the industry's 10,412,091 average contracts per day. The 21 classes involved totaled 2,754 series or 1.80% of all series listed.<sup>6</sup> CBOE notes that these quoting statistics may overstate the contribution of \$1 strike prices because these figures also include quotes for series listed in intervals higher than \$1 (*i.e.*, \$2.50 strikes) in the same option classes. Even with the non-\$1 strike series quotes included in these figures, CBOE believes that the overall impact on capacity is still minimal. CBOE represents that it has sufficient capacity to handle an expansion of the Pilot Program, as proposed.

Finally, the Exchange proposes to make a corresponding change to Interpretation and Policy .11(e) to CBOE Rule 24.9, which pertains to the expansion of the Pilot Program. In addition, CBOE proposes to make a technical correction to paragraph (a) of Interpretation and Policy .01 to CBOE Rule 5.5 where it references "Interpretation and Policy .14 to Rule 24.9." Paragraph (a) of Interpretation .01 should reference Interpretation .11 to Rule 24.9.

#### 2. Statutory Basis

The Exchange believes the proposed rule change 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 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

The Exchange 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

The Exchange neither solicited nor received comments on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

See Securities Exchange Act Release Nos. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (SR-CBOE-2004-34) (extending the Pilot Program through June 5, 2005); 51771 (May 31, 2005), 70 FR 33228 (June 7, 2005) (SR-CBOE-2005-37) (extending the Pilot Program through June 5, 2006); 53805 (May 15, 2006), 71 FR 29690 (May 23, 2006) (SR-CBOE-2006-31) (extending the Pilot Program through June 5, 2007); and 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38) (extending the Pilot Program through June 5, 2008).

<sup>4</sup> Although the Pilot Program generally allows CBOE to select a total of 5 individual stocks on which option series may be listed at \$1 strike price interval, the Pilot Program was amended to provide that CBOE can designate no more than 4 individual stocks for inclusion in the Pilot Program at the same time there are strike prices listed for \$1 intervals on Mini-SPX options in accordance with Interpretation and Policy .11 to CBOE Rule 24.9. If CBOE decides to discontinue listing Mini-SPX option series at \$1 strike price intervals, CBOE would again be free to select up to 5 option classes for inclusion in the Pilot Program. See Securities Exchange Act Release No. 52625 (October 18, 2005), 70 FR 61479 (October 24, 2005) (SR-CBOE-2005-81) (providing that as long as there are open Mini-SPX option series listed at \$1 strike price intervals, the Exchange would be required to surrender one of its five selections under the Pilot Program).

<sup>5</sup> See *supra* note 3.

<sup>6</sup> See Securities Exchange Act Release No. 55673 (April 26, 2007), 72 FR 24646 (May 3, 2007) (SR-CBOE-2007-38) (Pilot Program report).

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

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

as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CBOE consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### 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-2007-125 on the subject line.

##### *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-2007-125. 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 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-2007-125 and should be submitted on or before December 14, 2007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56796; File No. SR-MSRB-2007-05]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule G-27, on Supervision

November 15, 2007.

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 November 8, 2007, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the MSRB. The MSRB has filed the proposal as a "non-controversial" 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> which renders 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

The MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G-27 to clarify that the requirements of the rule apply solely in connection with the municipal securities activities of brokers, dealers and municipal securities dealers ("dealers") and their associated persons. The text of the proposed rule change is available on the

MSRB's Web site (<http://www.msrb.org>), at the MSRB, 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 MSRB 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 MSRB 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

The proposed rule change will amend Rule G-27, on supervision, to clarify that the requirements of the rule apply solely in connection with the municipal securities activities of dealers and their associated persons. Rule G-27 has previously been amended, with an effective date of February 29, 2008, to strengthen the supervisory procedures and controls of dealers effecting transactions in municipal securities, as well as to ensure a coordinated regulatory approach with, and to facilitate inspection and enforcement in this area by, the Financial Industry Regulatory Authority (the "new supervisory requirements").<sup>5</sup> In its filing with the SEC of the new supervisory requirements, the MSRB had stated that, as a general principle, the requirements of Rule G-27 apply only with respect to those registered persons who engage in municipal securities activities and those offices in which municipal securities activities are undertaken.<sup>6</sup> The proposed rule change will explicitly incorporate this limitation on the applicability of Rule G-27 throughout the language of the rule, in addition to correcting certain cross-references and making certain formatting changes to improve clarity.

##### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section

<sup>9</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. 55830 (May 30, 2007), 72 FR 31122 (June 5, 2007) (SR-MSRB-2006-09). See also Securities Exchange Act Release No. 56478 (September 20, 2007), 72 FR 54702 (September 26, 2007) (SR-MSRB-2007-03).

<sup>6</sup> See Securities Exchange Act Release No. 54930 (December 13, 2006), 71 FR 76400 (December 20, 2006) (SR-MSRB-2006-10).