

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) 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 the self-regulatory organization 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. Please include File Number SR-NYSEArca-2009-10 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-NYSEArca-2009-10. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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-NYSEArca-2009-10 and should be submitted on or before March 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59378; File No. SR-CBOE-2009-001]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to the \$1 Strike Program

February 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 23, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change, and on February 4, 2009 filed Amendment No. 1 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange proposes to expand the \$1 Strike Program. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE and at the Commission.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 1 to SR-CBOE-2009-001 replaces the original filing in its entirety.³ The purpose of the proposed rule change is to expand the \$1 Strike Program (the "Program").⁴

The \$1 Strike Program currently allows CBOE to select a total of 10 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 \$3 to \$50, but no \$1 strike price may be listed that is greater than

³ In its original filing, CBOE also proposed to establish a \$.50 Strike Program in a limited number of classes. CBOE no longer seeks to adopt such a program in connection with this proposed rule change.

⁴ The Commission approved the \$1 Strike 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 Pilot 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 pilot 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).

\$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") at \$1 strike price intervals for any class selected for the Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

The Exchange now proposes to expand the Program to allow CBOE to select a total of 55 individual stocks on which option series may be listed at \$1 strike price intervals, and to expand slightly the price range on which the Exchange may list \$1 strikes, *i.e.*, from \$1 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.

As stated in the Commission order that initially approved CBOE's Program and in subsequent extensions and expansions of the Program, 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. Indeed, member firms representing customers have repeatedly requested that CBOE seek to expand the Program in terms of the number of classes on which option series may be listed at \$1 strike price intervals. The Exchange notes that current market conditions, in which the number of securities trading below \$50 has increased dramatically, further warrant the expansion of the Program.

The Exchange is also proposing to set forth a delisting policy. Specifically, the Exchange would, on a monthly basis, review series that were originally listed under the \$1 Strike Program with strike prices that are more than \$5 from the current values of the options classes in the Program. The Exchange would delist series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the proposed delisting policy, CBOE could grant member requests to add strikes and/or maintain strikes in certain options classes in series eligible for delisting.

Further, in connection with the proposed delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes. CBOE expects that the proposed delisting policy will be adopted by other options exchanges that amend their rules to employ a similar expansion of the Program.

CBOE also proposes to amend the \$1 Strike Program and Rule 24.9.11 to eliminate the provision that provides that if CBOE lists strike prices in \$1 intervals in the Mini-SPX options class, the number of classes CBOE can select to participate in the \$1 Strike Program is reduced by one. CBOE does not believe such a restriction is appropriate and necessary, particularly when it represents (see below) that it has sufficient capacity to handle the additional traffic associated with the listing and trading of an expanded number of options series as proposed by this filing.

With regard to the impact on system capacity, CBOE has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of an expanded number of series as proposed by this filing.

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 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, CBOE requests an expansion of the current Program.

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (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.⁵ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act⁶ 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) 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 the self-regulatory organization 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. Please include File

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

Number SR-CBOE-001 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-2009-001. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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-2009-001 and should be submitted on or before March 12, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-3423 Filed 2-18-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59379; File No. SR-CBOE-2009-002]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Broker-Dealer Transaction Fees for AIM Executions

February 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 30, 2009, Chicago Board Options Exchange, Incorporated ("CBOE" or the "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 prepared by CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule regarding broker-dealer transaction fees for Automated Improvement Mechanism ("AIM") executions. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 1, 2008, the Exchange reduced the transaction fee for non-member market-maker orders ("N" origin code orders) executed on AIM

from \$.45 per contract to \$.20 per contract.¹ In order to encourage more use of AIM, the Exchange proposes to reduce all broker-dealer transaction fees for orders executed on AIM from \$.45 per contract to \$.20 per contract. Broker-dealer transaction fees apply to broker-dealer orders (orders with "B" origin code), non-member market-maker orders (orders with "N" origin code) and orders from specialists in the underlying security (orders with "Y" origin code).²

The fee discount would apply to B, N and Y origin code orders initially entered into AIM as the contra party to an Agency Order. The Exchange proposes to implement this fee change on February 2, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")³, in general, and furthers the objectives of Section 6(b)(4)⁴ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities. The Exchange believes that reducing broker-dealer transaction fees for AIM executions should encourage more use of AIM.

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 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

¹ See Securities Exchange Act Release No. 59068 (December 8, 2008), 73 FR 76428 (December 16, 2008). AIM is an electronic auction system that exposes certain orders electronically in an auction to provide such orders with the opportunity to receive an execution at an improved price. AIM is governed by CBOE Rule 6.74A. The fee discount applies to non-member market-maker orders initially entered into AIM as the contra party to an Agency Order.

² See CBOE Fees Schedule, Footnote 16.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(4).

⁷ 17 CFR 200.30-3(a)(12).