

specified in the SROT program, which include:

- (i) Adequacy of resources including capital, technology, and personnel;
- (ii) History of stability, superior electronic capacity, and superior operational capacity;
- (iii) Level of market-making and/or specialist experience in a broad array of securities;
- (iv) Ability to interact with order flow in all types of markets;
- (v) Existence of order flow commitments;
- (vi) Willingness and ability to make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the equity and ETF securities it trades; and
- (vii) The number of member organizations requesting approval to act as a DART.

The regulatory requirements applicable to DARTs will be surveilled for by the FINRA Market Regulation Amex Division ("FINRA") consistent with current surveillance procedures for Registered Traders on the Exchange. FINRA staff will work with Amex technical staff on planning the necessary changes to AEMI to capture required surveillance data and in 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 the DARTs will not be physically located on the floor of the Exchange.

### 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>5</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>6</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 equities and ETFs from off the

Exchange's physical trading floor. Introducing a new class of market participant able to enter quotes from off the physical trading floor should attract new market makers to the Exchange, which should increase the liquidity available in those classes to which DARTs are assigned.

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 Exchange represents, and the Commission emphasizes, 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 Committee 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 Exchange represents, and the Commission emphasizes, 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 an 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 securities that are on at least one side of the NBBO for a specified percentage of the time. A DART's affirmative obligations appear to be sufficient to justify the benefits it would receive as a market maker.

The proposal also requires information barriers to be in place 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. DARTs would also be required to comply with

Amex Rule 193 regarding the misuse of material non-public information.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-Amex-2007-85) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56448; File No. SR-CBOE-2007-111]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Retire Two Existing Pilot Programs that Permit the Exchange To list Options on the Vanguard Emerging Markets Exchange Traded Fund and the iShares MSCI Emerging Markets Index Fund

September 17, 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 September 11, 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. The Exchange has designated the proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing of this proposal with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</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>6</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange submits this rule filing to retire two existing pilot programs that permit the Exchange to list options on the Vanguard Emerging Markets Exchange Traded Fund ("VVO Fund") and on the iShares MSCI Emerging Markets Index Fund ("EEM Fund").<sup>5</sup> The Exchange is proposing to retire the two pilot programs because both the VVO Fund and the EEM Fund now meet all of the Exchange's generic initial and maintenance listings standards, which permit the Exchange to list options on the VVO Fund and the EEM Fund without having to file for Commission approval. The text of the proposed rule change is available on the Exchange's Web site (<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, 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>5</sup> The VVO Fund pilot program commenced on March 19, 2007 and is scheduled to expire on September 19, 2007. See Securities Exchange Act Release No. 55491 (March 19, 2006), 72 FR 14145 (March 26, 2007) (order granting accelerated approval of SR-CBOE-2006-95). The EEM Fund pilot program commenced on April 10, 2006 and has been renewed four times. The EEM Fund pilot program is scheduled to expire on December 7, 2007. See Securities Exchange Act Release No. 53621 (April 10, 2006), 71 FR 19568 (April 14, 2006) (approval of SR-CBOE-2006-32, which established EEM Fund pilot program to expire on June 9, 2006); Securities Exchange Act Release No. 53930 (June 1, 2006), 71 FR 33322 (June 8, 2006) (granting immediate effectiveness to SR-CBOE-2006-56, which renewed EEM Fund pilot through September 7, 2006); Securities Exchange Act Release No. 54347 (August 22, 2006), 71 FR 51242 (August 29, 2006) (granting immediate effectiveness to SR-CBOE-2006-72, which renewed EEM Fund pilot program through December 7, 2006); Securities Exchange Act Release No. 54876 (December 5, 2006), 71 FR 74968 (December 13, 2006) (granting immediate effectiveness to SR-CBOE-2006-103, which renewed EEM Fund pilot program through June 7, 2007); Securities Exchange Act Release No. 55758 (May 14, 2007), 72 FR 28090 (May 18, 2007) (granting immediate effectiveness to SR-CBOE-2007-43, which renewed EEM Fund pilot program through December 7, 2007).

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The purpose of this rule filing is to retire two existing pilot programs that permit the Exchange to list options on the VVO Fund and the EEM Fund.<sup>6</sup> The Exchange is proposing to retire the two pilot programs because both the VVO Fund and the EEM Fund now meet all of the Exchange's generic initial and maintenance standards. Specifically, the Exchange has in place initial and maintenance listing standards set forth in Rules 5.3.06 and 5.4.08, respectively ("Listing Standards"), that are designed to allow the Exchange to list funds structured as open-end investment companies, such as the VVO Fund and the EEM Fund, without having to file for Commission approval to list for trading options on these types of funds.<sup>7</sup>

When the Exchange first sought to list options on the VVO Fund and EEM Fund, the Exchange had determined that the VVO Fund and the EEM Fund both met substantially all of the Exchange's Listing Standards requirements, but did not meet the Listing Standards requirement that no more than 50% of the weight of the securities in the VVO Fund and the EEM Fund be comprised of securities that are not subject to a comprehensive surveillance sharing agreement ("CSSA").<sup>8</sup> As to the VVO Fund, the Exchange had in place CSSAs with foreign exchanges that covered 48.10% of the securities in the VVO Fund. As to the EEM Fund, the Exchange had in place CSSAs with foreign exchanges that covered 49.76% of the securities in the EEM Fund. In order to meet the 50% threshold, the Exchange requested the

<sup>6</sup> The VVO Fund is an open-end investment company that is designed to hold a portfolio of securities that tracks the Morgan Stanley Capital International, Inc. ("MSCI") Emerging Markets Select Index, which consists of stocks that can be purchased free of restrictions in 18 emerging markets in Europe, Asia, Africa and Latin America. The EEM Fund is an open-end investment company that is designed to hold a portfolio of securities that tracks the MSCI Emerging Markets Free Index, which is designed to measure equity market performance in the global emerging markets.

<sup>7</sup> Rules 5.3.06 and 5.4.08 set forth the initial listing and maintenance standards for registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trust or other similar entities traded on a national securities exchange or through the facilities of a national securities exchange. See Exchange Act Release, No. 40166 (July 2, 1998), 63 FR 37430 (July 10, 1998) (approval order for SR-CBOE-97-045, predating the Commission's adoption of Rule 19b-4(e) of the Act; see also Exchange Act Release No. 34-40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

<sup>8</sup> See Rule 5.3.06(A).

Commission's approval to rely upon a memorandum of understanding that the Commission had entered into with the Mexican Bolsa ("MOU") because the securities traded on that exchange represented 6.6% of the weight of the securities in the VVO Fund and 7.54% of the weight of the securities in the EEM Fund.<sup>9</sup>

Since the Commission approved the VVO Fund pilot program in March 2007 and since the last renewal of the EEM Fund pilot program in May 2007, the VVO Fund and the EEM Fund have both become compliant with Rule 5.3.06(A) and more than 50% of the weight of the securities in the VVO Fund and the EEM Fund are now subject to a CSSA. Specifically, the Exchange represents that the Korean Exchange ("KRX") recently became a member of the Intermarket Surveillance Group; therefore, securities and other products trading on its markets are now subject to a CSSA.<sup>10</sup> As a result, the percentage of the weight of the VVO Fund and the EEM Fund represented by South Korean securities now renders both the VVO Fund and the EEM Fund compliant with the Exchange's Listing Standards requirements.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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.<sup>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act<sup>12</sup> 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.

### 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.

<sup>9</sup> See supra note 5. The Commission permitted the Exchange to rely on the MOU, and the Exchange agreed to use its best efforts to obtain a CSSA with the Bolsa during the respective pilot periods, which to date has not been obtained.

<sup>10</sup> The KRX was created on January 27, 2005 through the consolidation of three domestic Korean exchanges: Korea Stock Exchange (KSE), KOSDAQ Market and Korea Futures Market (KOFEX). See <http://eng.krx.co.kr/index.html>.

<sup>11</sup> 15 U.S.C. 78f(b).

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

*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**

Because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>14</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 the 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-2007-111 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-2007-111. 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 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-2007-111 and should be submitted on or before October 15, 2007.

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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**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56449; File No. SR-CBOE-2007-52]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to \$1 Strikes for VXD and VXN Options and \$1 Strikes for RVX, VIX, VXD and VXN LEAPs**

September 17, 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 July 11, 2007, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 20, 2007, CBOE filed Amendment No. 1 to the proposed rule change. 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 rules that would permit the Exchange to: (i) List and trade CBOE Dow Jones Industrial Average Volatility Index ("VXD") options and Nasdaq-100 Volatility Index ("VXN") options in \$1 strike price intervals; and (ii) list and trade CBOE Russell 2000 Volatility Index ("RVX"), VXD, VXN and CBOE Volatility Index ("VIX") LEAPs in \$1 strike price intervals. The text of the rule proposal is available on the Exchange's Web site (<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

The purpose of the proposed rule change is to permit the Exchange to list and trade options on the CBOE Dow Jones Industrial Average Volatility Index ("VXD") and the Nasdaq-100 Volatility Index ("VXN") in \$1 strike price intervals within certain parameters described below.<sup>3</sup> Additionally, the rule change proposes to permit the Exchange to list and trade CBOE Russell Volatility Index ("RVX"), CBOE Volatility Index ("VIX"), VXD, and VXN LEAPs in \$1 strike price intervals within certain parameters also described below.

*\$1 Strikes for VXD and VXN Options*

Similar to other volatility indexes, VXD and VXN are calculated using real-

<sup>3</sup> The SEC previously approved the listing and trading of VXD and VXN options, which the Exchange anticipates trading shortly. See Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (April 21, 2004) (approving SR-CBOE-2003-40).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(1).

<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.