

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

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>11</sup> The Exchange notes that the proposed rule change is based on a similar proposal recently approved by the Commission.<sup>12</sup> The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become operative prior to the 30th day after filing.

The Section 7(a) Pilot Program and the IWM Option Pilot Program were scheduled to expire on March 1, 2008. The Commission believes that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because it will allow the position and exercise limits to remain at consistent levels during the transition from the pilot programs to permanent status.<sup>13</sup> Therefore, the Commission designates the proposal to be operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR-BSE-2008-12 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-BSE-2008-12. 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-BSE-2008-12 and should be submitted on or before March 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57410; File No. SR-CBOE-2007-96]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Quarterly Option Series Pilot Program to Permit the Listing of Additional Series

March 3, 2008.

#### I. Introduction

On August 7, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend its rules relating to the quarterly option series ("QOS") pilot program ("Pilot Program") to permit the listing of additional series and to adopt a delisting program for outlying QOS series with no open interest. On January 17, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 28, 2008.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

Current Exchange rules permit, on a pilot basis, the listing and trading of QOS in options on indexes or options on exchange-traded funds ("ETFs") that satisfy the applicable listing criteria under CBOE rules.<sup>4</sup> QOS trade based on

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its 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 fulfilled this requirement.

<sup>12</sup> See Securities Exchange Act Release No. 57352 (February 19, 2008), 73 FR 10076 (February 25, 2008) (order granting accelerated approval to SR-CBOE-2008-07).

<sup>13</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>14</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> See Securities Exchange Act Release No. 57170 (January 18, 2008), 73 FR 4927 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65) ("Pilot Program Release"). Under the pilot program, the Exchange may list QOS in up to five currently listed option classes that are either options on ETFs or indexes. The Exchange is also permitted to list QOS in any options class

calendar quarters that end in March, June, September and December. The Exchange lists QOS that expire at the end of the next consecutive four calendar quarters, as well as the fourth quarter of the next calendar year. Currently, the Exchange lists QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock (QQQQ); (2) iShares Russell 2000 Index Fund (IWM); (3) DIAMONDS Trust, Series 1 (DIA); (4) Standard and Poor's Depository Receipts/SPDRs (SPY); and (5) Energy Select SPDR (XLE).

CBOE Rule 5.5(e)(3) provides that the Exchange shall list strike prices for a QOS that are within \$5 from the closing price of the underlying security on the preceding day. Recently, the Exchange has received requests from market participants to add additional strike prices for QOS that would be outside of the \$5 price range for setting strikes (hereinafter "+/- \$5 range"). Investors and other market participants have advised the Exchange that they are buying and selling QOS options to trade volatility. In order to adequately replicate the desired volatility exposure, these market participants need to trade several option series, many having strike prices that fall outside the +/- \$5 range currently allowed under the QOS rules.

In addition, other participants have advised the Exchange that their investment strategies involve trading options tied to a particular option "delta,"<sup>5</sup> rather than a particular level of the underlying security or index. At issue is the fact that delta depends on both the relative difference between the level of the underlying security or index and the option strike price, and time to expiration. For example, with IWM trading at \$85 per share, the strike price corresponding to a "25-delta" IWM call (*i.e.*, a call option with a delta of 25) with one month to expiration would be 89. However, the strike price corresponding to a "25-delta" IWM call with 3 months to expiration would be 93, and the strike price of a "25-delta" call with 1 year to expiration would be 106.

In short, CBOE has been advised that the +/- \$5 range for QOS in IWM options is insufficient to satisfy customer demand. In response, the Exchange proposes to amend Rule 5.5(e)

that is selected by other securities exchanges that employ a similar pilot program under their respective rules.

<sup>5</sup> "Delta" is a measure of how an option price will change in response to a \$1 price change in the underlying security or index. For example, an ABC option with a delta of "50" can be expected to change by \$0.50 in response to a \$1 change in the price of ABC.

to permit the Exchange to list strike prices for QOS in ETF options that fall within a percentage range (30%) above and below the price of the underlying ETF. Additionally, upon demonstrated customer interest, the Exchange also will be permitted to open additional strike prices of QOS in ETF options that are more than 30% above or below the current price of the underlying ETF. Market-Makers trading for their own account will not be considered when determining customer interest under this provision. In addition to the initial listed series, the proposal will permit the Exchange to list up to sixty (60) additional series per expiration month for each QOS in ETF options.

The Exchange also is proposing to implement a delisting policy. Under the proposed delisting policy, the Exchange will, on a monthly basis, review QOS series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delist series with no open interest in both the put and the call series having a strike price: (i) higher than the highest strike price with open interest in the put and/or call series for a given expiration month; or (ii) lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.<sup>6</sup> Notwithstanding the proposed delisting policy, the Exchange will grant customer requests to add strikes and/or maintain strikes in QOS eligible for delisting.

### III. Commission's Findings and Order Granting Approval of the Proposed Rule Change

After careful review and based on the Exchange's representations, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

<sup>6</sup> For a detailed example of how the delisting policy will work, see Notice, *supra* note 3, at 4928.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

Specifically, the Commission believes that the proposed expansion in the range and number of strike prices that the Exchange may list for QOS will provide investors with added flexibility in the trading of equity options and further the public interest by allowing investors to establish equity options positions that are better tailored to meet their investment objectives. The Commission also believes that the proposal strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wider array of investment opportunities and the need to avoid unnecessary proliferation of options series and the corresponding increase in quotes. The Commission notes that the delisting policy proposed by the Exchange is designed to mitigate the number of options series with no open interest, which would reduce quote traffic accordingly.

In approving the proposed rule change, the Commission has relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal. The Commission expects the Exchange to continue to monitor for option series with little or no open interest and trading activity and, consistent with the delisting policy approved today as part of this proposed rule change, to act promptly to delist such options. In addition, the Commission expects that CBOE will continue to monitor the trading volume associated with the additional option series listed as a result of this proposal and the effect of these additional series on market fragmentation and on the capacity of the Exchange's, OPRA's, and vendors' automated systems.

Finally, the Commission notes that this rule change will become part of the pilot program and, going forward, its effects will be considered by the Commission in the event that the Exchange seeks to renew or make permanent the pilot program.<sup>9</sup> Thus, in

<sup>9</sup> As set forth in the Pilot Program Release, if the Exchange were to propose an extension, expansion, or permanent approval of the Pilot Program, the Exchange must submit, along with any filing proposing such amendments to the program, a report that provides an analysis of the Pilot Program covering the entire period during which the Pilot Program was in effect. See Pilot Program Release, *supra* note 4. The Pilot Program Release requires the Exchange to include in its report, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which QOS 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 of the Exchange, OPRA, and market data vendors (to the extent data from market data vendors is available);

the Exchange's future reports on the Pilot Program, the Exchange should include analysis of (1) the impact of the additional series on the Exchange's market and quote capacity, and (2) the implementation and effects of the delisting policy, including the number of series eligible for delisting during the period covered by the report, the number of series actually delisted during that period (pursuant to the delisting policy or otherwise), and documentation of any customer requests to maintain QOS strikes that were otherwise eligible for delisting.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2007-96), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57392; File No. SR-DTC-2007-16]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Admission of Foreign Entities as Direct Depository Participants

February 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 16, 2007, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 5, 2008, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to

(4) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Exchange addressed such problems; (5) any complaints that the Exchange received during the operation of the Pilot Program and how the Exchange addressed them; and (6) any additional information that would assist in assessing the operation of the Pilot Program.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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 proposed rule change would amend DTC's policy statement regarding the admission of participants to permit entities that are organized in a foreign country and are not subject to U.S. federal or state regulation ("foreign entities") to become eligible to become direct DTC participants ("Foreign Entity Policy Statement").<sup>2</sup>

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

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

In 1990, DTC adopted a Policy Statement on the Admission of Participants ("1990 Policy Statement") to make clear that in determining whether to grant access to its services, DTC regards as a critical factor that an applicant is subject to comprehensive U.S. federal or state regulation relating to, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct.<sup>4</sup> Generally under the 1990 Policy Statement, unless an applicant is subject to U.S. federal or state regulatory agency oversight, the applicant would not be eligible to become a DTC participant.<sup>5</sup> Since 1990,

<sup>2</sup> The National Securities Clearing Corporation ("NSCC") has filed a similar proposed rule change that would permit NSCC to adopt a similar policy statement with respect to the admission of foreign entities as members. Securities Exchange Act Release No. 57391 (February 27, 2008) (File No. SR-NSCC-2007-15).

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (January 15, 1991) (File No. SR-DTC-90-01).

<sup>5</sup> DTC recognized, however, that any person designated by the Commission pursuant to Section 17A(b)(3)(B)(vi) of the Act, even if not subject to such regulatory oversight, would be eligible for admission. The 1990 Policy Statement was approved by the Commission on January 8, 1991.

DTC has admitted a small number of foreign entities where their obligations to DTC have been guaranteed by creditworthy DTC participants.

The purpose of the proposed Foreign Entity Policy Statement is to establish admissions criteria that will permit a well-qualified foreign entity to become a participant of DTC and to obtain direct access to DTC's services while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.<sup>6</sup>

The admission of foreign entities as participants raises a number of unique risks and issues, including that (1) the entity is not subject to federal or state regulation, (2) that the operation of the laws of the entity's home country and time zone differences<sup>7</sup> may impede the successful exercise of DTC's rights and remedies particularly in the event of the entity's failure to settle, and (3) financial information about the foreign entity made available to DTC for monitoring purposes may be less adequate than the financial information about U.S.-based entities.

The Foreign Participant Policy Statement would require that in addition to executing the standard DTC Participation Agreement the foreign entity enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that DTC is provided with audited financial information that is acceptable to DTC.<sup>8</sup> The proposed policy statement would also require that the foreign entity (1) be subject to regulation in its home country and (2) be in good standing with its home country regulator.

The Foreign Participant Policy Statement was previously approved by the Commission on a temporary basis in 1997.<sup>9</sup> As currently proposed, the

<sup>6</sup> DTC's proposed "Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants" is attached as Exhibit 5 to its filing, which can be found at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/dtc/2007-16.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-16.pdf).

<sup>7</sup> Time zone differences may complicate communications between a foreign participant and its U.S. Settling Bank with respect to the timely payment of the participant's net debit to DTC including intraday demands for payment. These differences may also delay DTC's receipt of information available in the foreign participant's home country to others including its other creditors about the foreign participant's financial condition on the basis of which DTC would have taken steps to protect the interests of DTC and its participants.

<sup>8</sup> In the Foreign Entity Policy Statement, DTC has reserved the right to waive certain of these criteria where such criteria are inappropriate to a particular applicant or class of applicants (e.g., a foreign government or international or national central securities depositories).

<sup>9</sup> Securities Exchange Act Release Nos. 38600 (May 9, 1997), 62 FR 27086 (May 16, 1997) (File No.