

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58864; File No. SR-BSE-2008-45]

### Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Amend the By-Laws of the Boston Stock Exchange, Inc.

October 27, 2008.

On September 5, 2008, the Boston Stock Exchange, Inc. ("BSE" 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 proposed rule change to amend the by-laws of BSE in accordance with SR-BSE-2008-23.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on September 22, 2008.<sup>4</sup> The Commission received no comments on the proposal.

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> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. Specifically, as discussed more fully in the Acquisition Approval Order,<sup>7</sup> the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>8</sup> which requires among other things, that a national securities exchange be so organized to carry out the purposes of the Act and comply with the requirements of the Act; and Section 6(b)(3) of the Act,<sup>9</sup> which requires, among other things, that a national securities exchange assure the fair representation of its members in the

<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. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (order approving proposed rule changes by BSE and the Boston Stock Clearing Corporation relating to, among other things, the acquisition of BSE by The NASDAQ OMX Group, Inc. ("Acquisition")) ("Acquisition Approval Order"). In connection with SR-BSE-2008-23, BSE committed to propose to its Board of Directors immediately following the closing of the Acquisition certain amendments to the bylaws of BSE. See *id.* at notes 73, 75, 214, and accompanying text.

<sup>4</sup> See Securities Exchange Act Release No. 58547 (September 15, 2008), 73 FR 54648.

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

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> See Acquisition Approval Order, *supra* note 3, at notes 78-84, 216, and accompanying text.

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b)(3).

selection of its directors and administration of its affairs. The proposal is designed to clarify the procedures for the selection of directors to the BSE board of directors that are representative of members; limit the influence that a single member, or group of members, may exercise over the Exchange; and clarify the procedures for ensuring that participants in BSE's options exchange facility have fair representation on the BSE board of directors.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (File No. SR-BSE-2008-45) 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,**

*Acting Secretary.*

[FR Doc. E8-26109 Filed 10-31-08; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58870; File No. SR-CBOE-2008-110]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Short Term Option Series

October 28, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 27, 2008, 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 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.

<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).

<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).

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

The Exchange proposes to amend its Short Term Option Series pilot program ("Pilot Program") to increase the number of series that may be listed for a class selected to participate in the Pilot Program from seven series to twenty series. 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 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

On July 12, 2005, the Commission approved the Pilot Program.<sup>5</sup> The Pilot Program allows CBOE to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the Pilot Program, CBOE can select up to five approved option classes on which Short Term Option Series could be opened.

<sup>5</sup> See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63) ("Pilot Program Approval Order"). The Pilot Program has since been extended and is currently scheduled to expire on July 12, 2009. See Securities Exchange Act Release No. 53984 (June 14, 2006), 71 FR 35718 (June 21, 2006) (SR-CBOE-2006-48) (immediately effective rule change extending the Pilot Program, which would have otherwise expired on July 12, 2006, through July 12, 2007), 56050 (July 11, 2007), 72 FR 39472 (July 18, 2007) (SR-CBOE-2007-76) (immediately effective rule change extending the Pilot Program through July 12, 2008); and 58094 (July 3, 2008), 73 FR 40000 (July 11, 2008) (SR-CBOE-2008-70) (immediately effective rule change extending the Pilot Program through July 12, 2009); see also Securities Exchange Act Release No. 54338 (August 21, 2006), 71 FR 50952 (August 28, 2006) (SR-CBOE-2006-49) (order approving an amendment to the Pilot Program that increased the number of series that may be listed for a class selected to participate in the Pilot Program from five series to seven series).

If selected for the Pilot Program, the Exchange may open up to seven Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series are fixed at a price per share, with approximately the same number of strike prices above and below the value of the underlying security or calculated index value at about the time that the Short Term Option Series is opened.<sup>6</sup> If the Exchange opens less than seven Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened. In any event, the total number of series for a given expiration date will not exceed seven series.

The Exchange has selected the following four options classes to participate in the Pilot Program: S&P 500 Index options (SPX), S&P 100 Index American-style options (OEX), Mini-S&P 500 Index options (XSP), and S&P 100 Index European-style options (XEO). CBOE believes the Pilot Program has been successful and well received by its members and the investing public.

CBOE is now proposing to modify the terms of the Pilot Program to provide that up to twenty (as opposed to seven) Short Term Option Series may be opened for each expiration date. The Exchange believes this increase in the number of series would provide investors with greater flexibility in the trading of Short Term Option Series by allowing investors to establish options positions that are better tailored to meet their investment objectives. CBOE also believes that allowing for the increased number of series would allow us to better maintain an orderly market, meet customer demand and respond in scenarios when the market price of the underlying moves substantially from the exercise price or prices of the series already opened, which has been our experience recently with the recent volatility in the market. Indeed, member firms representing customers have repeatedly requested that CBOE seek to increase the number of available series.

Consistent with the existing Pilot Program provisions: (i) Approximately the same number of strike prices would be opened above and below the value of the underlying security or calculated

index value at about the time the Short Term Option Series are initially opened for trading; (ii) if the Exchange has opened less than twenty Short Term Option Series for a given expiration date, additional series may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the current value of the underlying security or index moves substantially from the exercise price or prices of the series already opened; and (iii) in any event, the total number of series for a given expiration date will not exceed twenty series.

The Exchange is also changing the Pilot Program rules to include a condition that any strike prices initially listed by the Exchange shall be within thirty percent (30%) above or below the closing price of the underlying security on the preceding day or the current value of the underlying index, as applicable. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security or current value of the underlying index, as applicable. Under the rule change, the Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security or current value of the underlying index, as applicable, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new Short Term Option Series shall not affect the series of options of the same class previously opened.<sup>7</sup>

In support of the rule change, and as required by the Pilot Program Approval Order, the Exchange has submitted to the Commission a Pilot Program report (the "Report") detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains data and written analysis regarding the four options classes included in the Pilot Program. The Report was submitted under separate cover and seeks

<sup>7</sup> These new parameters are similar to parameters that are already in place for the Exchange's Quarterly Options Series pilot program. See CBOE Rule 5.5(e)(4). The Exchange is also making a non-substantive change to delete an errant phrase, "or calculated index value," in two locations in the text of CBOE Rule 5.5.03. Weekly options overlying indexes are addressed in CBOE Rule 24.9(a)(2), so the reference to a calculated index value in CBOE Rule 5.5.03 is unnecessary.

confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand to increase the number of series. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any capacity-related problems with respect to Short Term Option Series. The Exchange also represents that it has the necessary system capacity to support the option series listed under the Pilot Program and the proposed increase in number of series.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>8</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</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. The Exchange believes that increasing the number of series will result in a continuing benefit to investors, by allowing them additional means to manage their risk exposures and carry out their investment objectives.

### *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*

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 foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii)

<sup>8</sup> 15 U.S.C. 78s(b)(1).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> For example, if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security or calculated index value.

impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<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 Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will enable CBOE to better meet customer demand in light of recent increased volatility in the marketplace.<sup>13</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such 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 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-CBOE-2008-110 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2008-110. 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 No. SR-CBOE-2008-110 and should be submitted on or before November 24, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58778; File No. SR-CBOE-2008-90]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change Related to Trades in Restricted Classes

October 14, 2008.

#### *Correction*

In notice document E8-24971 beginning on page 62577 in the issue of Tuesday, October 21, 2008, the date is corrected to read as set forth above.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58861; File No. SR-ISE-2008-78]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Quoting Obligations for Competitive Market Makers

October 27, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 21, 2008, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE proposes to amend ISE Rules 713, 804 and 805 to establish a new quoting obligation for the Exchange's Competitive Market Makers ("CMMs"). The text of the proposed rule change is as follows, with deletions in [brackets] and additions *italicized*:

#### Rule 713. Priority of Quotes and Orders

(a) through (f) no change.

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

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</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>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).