

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58890; File No. SR-CBOE-2008-98]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Maximum Term for FLEX Options

October 30, 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 24, 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

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

The Exchange proposes to amend Rules 24A.4 and 24B.4 to increase the maximum term for Flexible Exchange Options ("FLEX Options")<sup>5</sup> to fifteen years. 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 Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to increase the maximum term for FLEX Options. Currently, the term for a FLEX Options varies based upon the type of underlying. For example, for FLEX Equity Options, the maximum term is currently 3 years, provided a member may request a longer term to a maximum of 5 years (and upon assessment by the FLEX Official that sufficient liquidity exists, such request will be granted). For FLEX Index Options, the maximum term is currently 5 years, provided a member may request a longer term to a maximum of 10 years (and upon assessment by the FLEX Official that sufficient liquidity exists, such request will be granted).<sup>6</sup> For FLEX Credit Options, the maximum term is currently 10.25 years.<sup>7</sup>

We are proposing to increase the maximum term for all FLEX Options to fifteen years and to eliminate the requirement that a FLEX Official make a liquidity assessment. The changes are being proposed to simplify the process and in response to numerous member requests that we expand the maximum term in order to accommodate their desire to bring trades that are otherwise conducted in the over-the-counter ("OTC") market to an exchange environment. Though we want to accommodate these requests, we are not able to do so under the existing term limitations imposed in our rules.

CBOE believes that expanding the eligible term for FLEX Options as proposed is important and necessary to the Exchange's efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved

but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar FLEX Options but are not subject to the same maximum term restriction. By expanding the eligible term for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of FLEX Options. Finally, the Exchange has confirmed with the OCC that OCC can configure its systems to support FLEX Options that have a maximum expiration of fifteen years.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>8</sup> and the rules and regulations under the Act applicable to national securities exchanges 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 proposed rule change will provide members and investors with additional opportunities to trade customized options in an exchange environment, and investors will benefit as a result.

##### 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>10</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> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

<sup>6</sup> See Rules 24A.4(a)(4)(i) and 24B.4(a)(5)(i).

<sup>7</sup> See Rule 29.18.

<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).

*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**

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, it 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> 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 Number SR-CBOE-2008-98 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-2008-98. 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 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-2008-98 and should be submitted on or before November 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-58886; File No. SR-FINRA-2008-010]**

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure To Establish Procedures for Arbitrators To Follow When Considering Requests for Expungement Relief**

October 30, 2008.

**I. Introduction**

On March 13, 2008, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission")

or "SEC"), 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 adopt Rule 12805 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rule 13805 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to establish procedures that arbitrators must follow when considering requests for expungement relief under Rule 2130.

The proposed rule change was published in the **Federal Register** on April 3, 2008.<sup>3</sup> The Commission received eleven comment letters on the proposed rule change.<sup>4</sup> FINRA responded to the comments on June 11, 2008.<sup>5</sup> The Commission received an additional letter from one commenter in furtherance of its original comments.<sup>6</sup> On September 3, 2008, FINRA submitted a second response to comments.<sup>7</sup> This order approves the proposed rule change.

<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. 57572 (March 27, 2008), 73 FR 18308 (April 3, 2008) (the "Notice").

<sup>4</sup> See letters to Nancy M. Morris, Secretary, Commission, from Seth E. Lipner, Professor of Law, Bernard M. Baruch College, CUNY, and Member Deutsch Lipner, dated April 8, 2008 ("Lipner letter"); Steven B. Caruso, Maddox Hargett Caruso, P.C., dated April 8, 2008 ("Caruso letter"); Jill Gross, Director, Pace University, Investor Rights Clinic, and Teresa Milano, dated April 15, 2008 ("Gross and Milano letter"); Raghavan Sathianathan, dated April 17, 2008 ("Sathianathan letter"); William A. Jacobson, Associate Clinical Professor, Director, Cornell Securities Law Clinic, Cornell Law School and Arthur A. Andersen III, dated April 23, 2008 ("Cornell I letter"); Barbara Black, Charles Hartsock Professor of Law, director of Corporate Law Center, University of Cincinnati dated April 24, 2008 ("Black letter"); Karen Tyler, President, North American Securities Administrators Association, North Dakota Securities Commissioner, dated April 24, 2008 ("NASAA letter"); Scott R. Shewan, Born, Pape Shewan, LLP, dated April 24, 2008 ("Shewan letter"); Barry D. Estell, dated May 7, 2008 ("Estell letter"); Brian N. Smiley, Smiley Bishop Porter LLP, dated May 8, 2008 ("Smiley letter"); and Laurence S. Schultz, President, Public Investors Arbitration Bar Association, dated May 16, 2008 ("PIABA letter").

<sup>5</sup> See letter to Nancy M. Morris, Secretary, Commission, from Margo A. Hassan, Counsel, FINRA, dated June 11, 2008 ("First Response").

<sup>6</sup> See letter to Nancy M. Morris, Secretary, Commission, from William A. Jacobsen, Associate Clinical Professor, Director, Cornell Securities Law Clinic, Cornell Law School, dated June 17, 2008 ("Cornell II letter").

<sup>7</sup> See letter to Florence Harmon, Deputy Secretary [sic], Commission, from Margo A. Hassan, dated September 3, 2008 ("Second Response").

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

<sup>12</sup> 17 CFR 240.19b-4(f)(6). In addition, when filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an Exchange is required to give the Commission 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 provided such notice to the Commission.

<sup>13</sup> 17 CFR 200.30-3(a)(12).