

through better displayed prices for ETFs Options available on other exchanges and, thereby, satisfy each exchange's obligation under the Options Order Protection and Locked/Crossed Market Plan.<sup>20</sup> Series of the ETFs Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFs Silver and ETF Gold Trusts. Shares of the ETFs Silver and ETFs Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>21</sup> In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.<sup>22</sup> If the ETFs Silver or ETFs Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFs Options.

CBOE, ISE, NYSE Amex, and NYSE Arca have all represented that they have surveillance programs in place for the listing and trading of ETFs Options. For example, these exchanges may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, silver or gold.

Additionally, the listing and trading of ETFs Options will be subject to the exchanges' rules pertaining to position and exercise limits<sup>23</sup> and margin.<sup>24</sup>

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> for approving the proposed rule change of CBOE prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that CBOE's proposal is substantively identical to the proposals of ISE, NYSE Amex, and NYSE Arca, which were published for a 21-day comment period and generated no comments. Therefore, the Commission does not believe that

<sup>20</sup> See CBOE Rule 6.81; ISE Rule 1902; NYSE Amex Rule 991NY; and NYSE Arca Rule 6.94. Specifically, each of the exchanges is a participant in the Options Order Protection and Locked/Crossed Market Plan.

<sup>21</sup> 17 CFR 242.600.

<sup>22</sup> See Interpretation and Policy .06 to CBOE Rule 5.3; ISE Rule 502(a)-(b); NYSE Amex Rule 915 Commentary .06; and NYSE Arca Rule 5.3(a)-(b).

<sup>23</sup> See CBOE Rules 4.11 and 4.12; ISE Rules 412 and 414; NYSE Amex Rules 904 and 905; and NYSE Arca Rules 6.8 and 6.9.

<sup>24</sup> See CBOE Rule 12.3; ISE Rule 1202; NYSE Amex Rule 462; and NYSE Arca Rules 4.15 and 4.16. See also FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

<sup>25</sup> 15 U.S.C. 78s(b)(2).

the CBOE proposal raises any new regulatory issues different from that of the ISE, NYSE Amex, and NYSE Arca proposals. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,<sup>26</sup> to approve the CBOE proposal on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule changes (SR-ISE-2009-106; SR-NYSEAmex-2009-86; and SR-NYSEArca-2009-110) be, and are hereby, approved and that the proposed rule change (SR-CBOE-2010-007) be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61494; File No. SR-CBOE-2010-012]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 8.85 and Rule 8.92 Regarding the Requirement To Own an Exchange Membership

February 4, 2010.

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 February 2, 2010, 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 the Exchange. 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

CBOE proposes to amend proposes to amend proposes to amend [sic] Rule

<sup>26</sup> 15 U.S.C. 78s(b)(5).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</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.

8.85 and Rule 8.92 regarding the requirement to own an Exchange membership. 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, 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

CBOE proposes to amend Rule 8.85 and Rule 8.92 to eliminate the requirement that a DPM organization and an e-DPM organization are required to own at least one Exchange membership. Instead, each DPM organization and each e-DPM organization will be required to own or lease such number of Exchange memberships as may be necessary based on the aggregate "appointment cost" for the classes allocated to the DPM organization or e-DPM organization. CBOE established this ownership requirement with respect to DPMs in 2000 and, at the time, believed that it was appropriate and would encourage DPMs to have a long-term commitment to CBOE.<sup>3</sup> CBOE later included this requirement when its e-DPM program was adopted.

CBOE no longer believes that this requirement is necessary particularly as its proposed restructuring approaches, and eliminating it may attract new DPM organizations to CBOE who otherwise may not be willing to apply to be a DPM due to this membership ownership requirement. CBOE notes that in connection with its plan to restructure from a Delaware non-stock corporation owned by its members to a Delaware stock corporation that will be a wholly-owned subsidiary of CBOE Holdings, this requirement will be eliminated.

<sup>3</sup> See Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (SR-CBOE-99-37).

Specifically, as part of CBOE's restructuring, the owners of membership interests will become stockholders of CBOE Holdings through the conversion of their memberships into shares of common stock of CBOE Holdings. Additionally, Trading Permits will provide trading access to the Exchange, and not Exchange memberships as is currently the case. A Trading Permit will not convey any ownership interest in the Exchange, and will only be available through the Exchange.<sup>4</sup> As part of this proposed rule change, CBOE proposes conforming changes to Rule 3.27, and proposes to delete Interpretation .04 of Rule 8.85 and Interpretation .01 of Rule 8.92 which are no longer necessary in light of the elimination of the membership ownership requirement.<sup>5</sup>

In connection with this proposed rule change, CBOE proposes to delete Interpretation .03 of Rule 8.85, which was adopted in 2003 for the purpose of allowing a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization, but only if the senior principal meets certain criteria. In light of the fact that CBOE is eliminating the membership ownership requirement, Interpretation .03 no longer is applicable or necessary.

## 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.<sup>6</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>7</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. The DPM and e-DPM membership ownership requirement is no longer necessary and eliminating it may attract new organizations to act in the capacity of a DPM (or e-DPM). Additionally, this

<sup>4</sup> See Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 (September 4, 2008) (noticing for comment SR-CBOE-2008-088). CBOE has consented to an extension of time for Commission action on this proposed rule change pending a membership vote.

<sup>5</sup> CBOE notes that Temporary Members under Rule 3.19.02 will not be adversely impacted by this proposed rule change.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

requirement will be eliminated in connection with CBOE's restructuring.

### 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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) 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>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2010-012 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-2010-012. 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 Web site viewing and printing in the Commission's Public Reference Room, 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 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-2010-012 and should be submitted on or before March 3, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).