

will provide the last sale price of the Units as traded in the U.S. market. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Units from the previous day.

The Commission further believes that the proposal to list and trade the Units is reasonably designed to promote fair disclosure of information that may be necessary to price the Units appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it must halt trading on the NYSE Marketplace until such time as the NAV is available to all market participants. The Commission notes that the Exchange has received a representation from the Trust that, prior to listing, the NAV would be calculated daily and made available to all market participants at the same time.<sup>15</sup> Additionally, if the IIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>16</sup> Further, the Exchange will consider suspension of trading pursuant to NYSE Arca Rule 8.201(e)(2) if, after the initial 12 month period following commencement of trading: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, Trust, custodian or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value; or (2) if the IIV is no longer made available on at least a 15-second delayed basis. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary

market volatility pursuant to the Exchange's "circuit breaker" rule.<sup>17</sup>

In addition, NYSE Arca Equities Rule 8.201 sets forth certain requirements for ETP Holders acting as Market Makers in the Units. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Units is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Units from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying gold, related futures or options on futures or any other related derivative (including the Units).

In support of this proposal, the Exchange has made representations including:

(1) The Units will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.201.

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws. Pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Units and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members of the ISG.<sup>18</sup>

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Units; (2) NYSE Arca

<sup>17</sup> See NYSE Arca Equities Rule 7.12.

<sup>18</sup> The Exchange notes that the New York Mercantile Exchange, of which the COMEX is a division, is an ISG member, however, the Tokyo Commodity Exchange, Inc. ("TOCOM") is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Units may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>19</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-NYSEArca-2009-113) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-2960 Filed 2-9-10; 8:45 am]

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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

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</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>15</sup> See *supra* note 4.

<sup>16</sup> See e-mail, dated February 4, 2010, from Tim Malinowski, NYSE Arca, to Steve Varholik, Special Counsel, Division of Trading and Markets, 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 [sic] Rule 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.

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

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. 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

<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).

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 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.

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

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

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

#### 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-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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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61493; File No. SR-CHX-2010-03]

#### Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Provide Credit for Transactions Involving Issues Priced Less Than One Dollar

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 January 29, 2010, the Chicago Stock Exchange, Inc. ("CHX" 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 prepared by the Exchange. CHX has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 CHX proposes to amend its Schedule of Participant Fees and Assessments (the "Fee Schedule"), effective February 1, 2010, to change its transaction fees and rebates to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) and in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549.

<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).

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

#### 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 Changes*

###### 1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to increase the provide credit to Exchange Participants for transactions involving issues priced less than one dollar that occur within the Exchange's Matching System.

The Exchange proposes to increase the provide credit in the transactions described above from 0.10% to 0.15% of the trade value.<sup>5</sup> The Exchange believes that the increased rebate will help attract additional orders to be displayed and executed on our trading facilities. The Exchange notes that some of our competitors have recently raised their provide rebates for securities priced under \$1, and that our proposed increase will help us remain competitive with these entities.<sup>6</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members. Among other things, the change to the fee schedule would provide incentives to Participants to increase the amount of liquidity provided on our trading facilities for securities priced less than \$1, which may contribute to an increase

<sup>5</sup> "Trade value" is defined in our Fee Schedule as "a dollar amount equal to the price per share multiplied by the number of shares executed."

<sup>6</sup> The Direct Edge ECN raised its provide credit to 0.15% for transactions under \$1 in Tape A, B and C securities for its EDGX trading platform beginning in the month of January 2010.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).