

the PFOF fee for complex orders in the Penny Pilot Symbols is reasonable and equitable because it will benefit customers. The Exchange further believes that the Exchange's maker/taker fees are not unfairly discriminatory because the fee structure is consistent with fee structures that exist today at other options exchanges.

Finally, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other option exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is 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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>12</sup> At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

### **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-ISE-2011-45 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-ISE-2011-45. 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, 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 filings 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-ISE-2011-45 and should be submitted on or before August 30, 2011.

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

**Elizabeth M. Murphy,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65031; File No. SR-CBOE-2011-040]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule to Simplify the \$1 Strike Price Interval Program**

August 4, 2011.

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 July 26, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II 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 its rules in order to simplify the \$1 Strike Price Interval Program. 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's public reference room.

#### **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.

<sup>13</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.

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

1. Purpose

The Exchange proposes to amend Interpretation and Policy .01 to Rule 5.5 in order to simplify the \$1 Strike Price Interval Program ("Program").

In 2003, the Commission issued an order permitting the Exchange to establish the Program on a pilot basis.<sup>3</sup> At that time, the underlying stock had to close at \$20 on the previous trading day in order to qualify for the Program. The range of available \$1 strike price intervals was limited to a range between \$3 and \$20 and no strike price was permitted that was greater than \$5 from the underlying stock's closing price on the previous trading day. Series in \$1 strike price intervals were not permitted within \$0.50 an existing strike [sic]. In addition, the Exchange was limited to selecting five (5) classes and reciprocal listing was permitted. Furthermore, LEAPS in \$1 strike price intervals were not permitted for classes selected to participate in the Program.

The Exchange renewed the pilot program on a yearly basis and in 2007, the Commission granted permanent approval of the Program.<sup>4</sup> At that time, the Program was expanded to increase the upper limit of the permissible strike price range from \$20 to \$50. In addition, the number of class selections per exchange was increased from five (5) to ten (10).

Since the Program was made permanent, the number of class selections per exchange has been increased from ten (10) classes to 55 classes<sup>5</sup> and subsequently increased from 55 classes to 150 classes.<sup>6</sup>

Amendments To Simplify Non-LEAPS Rule Text

The most recent expansion of the Program was approved by the Commission in early 2011 and increased the number of \$1 strike price intervals permitted within the \$1 to \$50 range.<sup>7</sup> This expansion was a proposal of

another exchange and CBOE submitted its filing for competitive reasons. This expansion, however, has resulted in very lengthy rule text that is complicated and difficult to understand. CBOE believes that the proposed changes to simplify the rule text of the Program will benefit market participants since the Program will be easier to understand and will maintain the expansions made to the Program in early 2011. Through the current proposal, the Exchange also hopes to make administration of the Program easier, e.g., system programming efforts. To simply the rules of the Program and, as a proactive attempt to mitigate any unintentional listing of improper strikes, CBOE is proposing the following streamlining amendments:

- When the price of the underlying stock is equal to or less than \$20, permit \$1 strike price intervals with an exercise price up to 100% above and 100% below the price of the underlying stock.<sup>8</sup>

- However, the above restriction would not prohibit the listing of at least five (5) strike prices above and below the price of the underlying stock per expiration month in an option class.<sup>9</sup>

- For example, if the price of the underlying stock is \$2, the Exchange would be permitted to list the following series: \$1, \$2, \$3, \$4, \$5, \$6 and \$7.<sup>10</sup>

- When the price of the underlying stock is greater than \$20, permit \$1 strike price intervals with an exercise price up to 50% above and 50% below the price of the underlying security up to \$50.<sup>11</sup>

- For the purpose of adding strikes under the Program, the "price of the underlying stock" shall be measured in the same way as "the price of the underlying security" is as set forth in Rule 5.5A(b)(i).<sup>12</sup>

- Prohibit the listing of additional series in \$1 strike price intervals if the underlying stock closes at or above \$50 in its primary market and provide that additional series in \$1 strike price

intervals may not be added until the underlying stock closes again below \$50.<sup>13</sup>

Amendments To Simplify LEAPS Rule Text

The early 2011 expansion of the Program permitted for some limited listing of LEAPS in \$1 strike price intervals for classes that participate in the Program. The Exchange is proposing to maintain the expansion as to LEAPS, but simplify the language and provide examples of the simplified rule text. These changes are set forth subparagraph (v) to Rule 5.5.01(b)(2).

For stocks in the Program, the Exchange may list one \$1 strike price interval between each standard \$5 strike interval, with the \$1 strike price interval being \$2 above the standard strike for each interval above the price of the underlying stock, and \$2 below the standard strike for each interval below the price of the underlying stock ("2 wings"). For example, if the price of the underlying stock is \$24.50, the Exchange may list the following standard strikes in \$5 intervals: \$15, \$20, \$25, \$30 and \$35. Between these standard \$5 strikes, the Exchange may list the following \$2 wings: \$18, \$27 and \$32.<sup>14</sup>

In addition, the Exchange may list the \$1 strike price interval which is \$2 above the standard strike just below the underlying price at the time of listing. In the above example, since the standard strike just below the underlying price (\$24.50) is \$20, the Exchange may list a \$22 strike. The Exchange may add additional long-term options series strikes as the price of the underlying stock moves, consistent with the OLPP.

<sup>13</sup> See proposed new subparagraph (iv) to Rule 5.5.01(a)(2). The Exchange believes that it is important to codify this additional series criterion because there have been conflicting interpretations among the exchanges that have adopted similar programs. The \$50 price criterion for additional series was intended when the Program was originally established (as a pilot) in 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (SR-CBOE-2001-60). ("CBOE may list an additional expiration month provide that the underlying stock closes below \$20 on its primary market on expiration Friday. If the underlying stock closes at or above \$20 on expiration Friday, CBOE will not list an additional month for a \$1 strike series until the stock again closes below \$20.")

<sup>14</sup> The Exchange notes that a \$2 wing is not permitted between the standard \$20 and \$25 strikes in the above example. This is because the \$2 wings are added based on reference to the price of the underlying and as being between the standard strikes above and below the price of the underlying stock. Since the price of the underlying stock (\$24.50) straddles the standard strikes of \$20 and \$25, no \$2 wing is permitted between these standard strikes.

<sup>3</sup> See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (SR-CBOE-2001-60).

<sup>4</sup> See Securities Exchange Act Release No. 57049 (December 27, 2007), 73 FR 528 (January 3, 2008) (SR-CBOE-2007-125).

<sup>5</sup> See Securities Exchange Act Release No. 59587 (March 17, 2009), 74 FR 12414 (March 24, 2009) (SR-CBOE-2009-001).

<sup>6</sup> See Securities Exchange Act Release No. 62443 (July 2, 2010), 75 FR 39608 (July 9, 2010) (SR-CBOE-2010-064).

<sup>7</sup> See Securities Exchange Act Release No. 63772 (January 25, 2011), 76 FR 5644 (February 1, 2011) (SR-CBOE-2011-006).

<sup>8</sup> See proposed new subparagraph (i) to Rule 5.5.01(a)(2).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See proposed new subparagraph (ii) to Rule 5.5.01(a)(2).

<sup>12</sup> See proposed new subparagraph (iii) to Rule 5.5.01(a)(2). Rule 5.5A(b)(i) provides, "[t]he price of a security is measured by: (1) For intra-day add-on series and next-day series additions, the daily high and low of all prices reported by all national securities exchanges; (2) for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines it preliminary notification of new series; and (3) for option series to be added as a result of pre-market trading, the most recent share price reported by all national securities exchanges between 7:45 a.m. and 8:30 a.m. (Chicago time)."

## Non-Substantive Amendments to Rule Text

The early 2011 expansion of the Program prohibited the listing of \$2.50 strike price intervals for classes that participate in the Program. This prohibition applies to non-LEAP and LEAPS. The Exchange proposes to maintain this prohibition and codify it in Rule 5.5.01(a)(1) (Program Description).

For ease of reference, the Exchange is proposing to add the headings "Program Description," "Initial and Additional Series" and "LEAPS" to Rule 5.5.01.

The Exchange is proposing to more accurately reflect the nature of the Program and is proposing to make stylistic changes throughout Rule 5.5.01 by adding the phrase "price interval."

Lastly, the Exchange is making technical changes to Rule 5.5.01, e.g., replacing the word "security" with the word "stock."

The Exchange represents that it has the necessary systems capacity to support the increase in new options series that will result from the proposed streamlining changes to the Program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)<sup>15</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5)<sup>16</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and to simplify the provisions of the \$1 Strike Price Interval Program.

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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-2011-040 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-2011-040. 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, 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 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 publicly available. All submissions should refer to File Number SR-CBOE-2011-040 and should be submitted on or before August 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65025; File No. SR-FINRA-2011-027]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Amend FINRA Trade Reporting Rules Relating to OTC Transactions in Equity Securities That Are Part of a Distribution and Transfers of Equity Securities To Create or Redeem Instruments Such as ADRs and ETFs

August 3, 2011.

#### I. Introduction

On June 9, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA Rules 6282, 6380A, 6380B and 6622 relating to trade reporting of over-the-counter ("OTC") transactions in equity securities. The proposed rule change was published for comment in the

<sup>17</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> 15 U.S.C. 78f(b).

<sup>16</sup> 15 U.S.C. 78f(b)(5).