

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-57365; File No. SR-CBOE-2007-109)

February 21, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Portfolios, or Indexes or Portfolios Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities

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 September 10, 2007, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On February 19, 2008, CBOE filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposal, as amended, and approves the proposal on an accelerated basis.

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

The Exchange proposes to revise its listing standards, adopted pursuant to Rule 19b-4(e) under the Act, in CBOE Rules 31.5(L) and 31.5(M) to include generic listing standards for Index Portfolio Receipts (“IPRs”) and Index Portfolio Shares (“IPs,” together with IPRs, referred to herein with as “exchange-traded funds” or “ETFs”) that are based on international or global indexes or portfolios, or on indexes or portfolios described in exchange rules that have been previously approved by the Commission for the trading of ETFs or other specified index-based securities.

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

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

The text of the proposed rule change is available from the Exchange's Web site (<http://www.cboe.org/Legal>), at the principal office of the Exchange, 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 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 these statements may be examined at the places specified in Item III below. The Exchange 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 Change

1. Purpose

The Exchange proposes to list and trade ETFs pursuant to Rule 19b-4(e) under the Act<sup>3</sup> if each of the conditions set forth in CBOE Rules 31.5(L) or (M) is satisfied. Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.<sup>4</sup>

This proposed rule change is based on SR-Phlx-2007-20, which was approved by the

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<sup>3</sup> 17 CFR 240.19b-4(e).

<sup>4</sup> When relying on Rule 19b-4(e), the SRO must submit Form 19b-4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. See 17 CFR 240.19b-4(e)(2)(ii).

Commission on July 11, 2007.<sup>5</sup>

a. Background

CBOE Rules 31.5(L) and (M) provide standards for listing Index Portfolio Receipts and Index Portfolio Shares, respectively, on CBOE. An Index Portfolio Receipt is a security that represent an interest in a unit investment trust that holds securities that comprise a stock index on which a series of IPR is based.<sup>6</sup> An Index Portfolio Share is a security that is issued by an open-end management investment company and based on a portfolio of stocks or fixed income securities designed to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities index.<sup>7</sup> Pursuant to CBOE Rule 1.1.02, IPRs must be issued in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock plus a cash amount. Pursuant to CBOE Rule 1.1.03, IPSs must be issued in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, or a specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value (“NAV”). When aggregated in the same specified minimum number, the ETFs must be redeemable by the issuer for stock and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day.

To meet the investment objective of providing investment returns that correspond to the price and the dividend and yield performance of the underlying index, an ETF may use a

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<sup>5</sup> See Securities Exchange Act Release No. 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007) (SR-Phlx-2007-20).

<sup>6</sup> The complete definition of IPRs is set forth in CBOE Rule 1.1.02.

<sup>7</sup> The complete definition of IPSs is set forth in CBOE Rule 1.1.03.

“replication” strategy or a “representative sampling” strategy with respect to the ETF portfolio.<sup>8</sup>

An ETF using a replication strategy will invest in each stock of the underlying index in about the same proportion as that stock is represented in the index itself. An ETF using a representative sampling strategy will generally invest in a significant number, but not all of the component securities of the underlying index, and will hold stocks that, in the aggregate, are intended to approximate the full index in terms of key characteristics, such as price/earnings ratio, earnings growth, and dividend yield.

In addition, an ETF portfolio may be adjusted in accordance with changes in the composition of the underlying index or to maintain compliance with requirements applicable to a regulated investment company under the Internal Revenue Code (“IRC”).

b. Generic Listing Standards for Exchange-Traded Funds

The Commission has previously approved generic listing standards for ETFs based on indexes that consist of stocks listed on U.S. exchanges.<sup>9</sup> In general, the proposed criteria for the underlying component securities in the international and global indexes are similar to those for the domestic indexes, but with modifications for the issues and risks associated with non-U.S. securities.

In addition, the Commission has previously approved generic listing standards of exchanges governing the listing and trading of ETFs based on indexes or portfolios composed of

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<sup>8</sup> In either case, an ETF, by its terms, may be considered invested in the securities of the underlying index to the extent the ETF invests in sponsored American Depositary Receipts (“ADRs”), Global Depositary Receipts (“GDRs”), or European Depositary Receipts (“EDRs”) that trade on exchanges with last-sale reporting representing securities in the underlying index.

<sup>9</sup> See, e.g., Securities Exchange Act Release No. 44046 (March 7, 2001), 66 FR 15152 (March 15, 2001) (SR-CBOE-00-51); Securities Exchange Act Release No. 45178 (December 20, 2001), 66 FR 67610 (December 31, 2001) (SR-Phlx-00-68); Securities Exchange Act Release No. 43912 (January 31, 2001), 66 FR 9401 (February 7, 2001) (SR-Phlx-00-91).

Non-U.S. Component Stocks, as well as indexes or portfolios based on both non-U.S. Component Stocks and U.S. Component Stocks.<sup>10</sup>

The Commission has also approved generic listing standards for index-based derivative securities products based on indexes or portfolios described in exchange rules that have been previously approved by the Commission under Section 19(b)(2) of the Act for the trading of other index-based securities on the condition that all of the standards set forth in those orders, including surveillance sharing agreements, continue to be satisfied.<sup>11</sup>

The Exchange believes that adopting generic listing standards and applying Rule 19b-4(e) should fulfill the intended objective of that rule by allowing those ETFs that satisfy the proposed generic listing standards to commence trading, without the need for a public comment period and Commission approval. The proposed rules have the potential to reduce the time frame for bringing ETFs to market, thereby reducing the burdens on issuers and other market participants. The failure of a particular ETF to comply with the proposed generic listing standards under Rule 19b-4(e) would not, however, preclude the Exchange from submitting a separate filing pursuant to Section 19(b)(2) requesting Commission approval to list and trade a particular ETF.

c. Proposed Requirements for Listing and Trading ETFs Based on International and Global Indexes or Portfolios

ETFs listed pursuant to the proposed generic listing standards or that are traded pursuant

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<sup>10</sup> See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-50); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (SR-NYSE-2006-101).

<sup>11</sup> See, e.g., Securities Exchange Act Release No. 51563 (April 15, 2005) 70 FR 21257 (April 25, 2005) (SR-Amex-2005-001); Securities Exchange Act Release No. 52204 (August 3, 2005), 70 FR 46559 (August 10, 2005) (SR-PCX-2005-63).

to UTP would be traded, in all other respects, under the Exchange’s existing trading rules and procedures that apply to ETFs and would be covered under the Exchange’s surveillance program for ETFs.<sup>12</sup>

To list an ETF pursuant to the proposed generic listing standards for an international or global index or portfolio, the index or portfolio would have to satisfy all the conditions contained in proposed CBOE Rules 31.5(L).01(a)(2) or 31.5(M).01(a)(2). As with the existing generic standards for ETFs based on domestic indexes or portfolios, these generic listing standards are intended to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of the index or portfolio. While the standards in this proposal are based on the standards contained in the current generic listing standards for ETFs based on domestic indexes or portfolios, they have been adapted as appropriate to apply to international and global indexes or portfolios.

As proposed, CBOE 31.5(L)(e) and 31.5(M)(c) would provide definitions of the terms U.S. Component Stock and Non-U.S. Component Stock. These new definitions would provide the basis for the standards for indexes or portfolios with either domestic or international stocks, or a combination of both. A “Non-U.S. Component Stock” would mean an equity security that is not registered under Section 12(b) or 12(g) of the Act,<sup>13</sup> and that is issued by an entity that (1) is not organized, domiciled, or incorporated in the United States; and (2) is an operating company (including a real estate investment trust or income trust, but excluding an investment trust, unit trust, mutual fund, or derivative). This definition is designed to create a category of component stocks that are issued by companies that are not based in the United States, are not subject to

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<sup>12</sup> See proposed CBOE Rules 31.5(L).01(g) and (M).01(g).

<sup>13</sup> 15 U.S.C. 78l(b) or (g).

oversight through Commission registration, and would include sponsored GDRs and EDRs. A “U.S. Component Stock” would mean an equity security that is registered under Section 12(b) or 12(g) of the Act or an ADR the underlying equity security of which is registered under Section 12(b) or 12(g) of the Act. An ADR with an underlying equity security that is registered pursuant to the Act is considered a U.S. Component Stock because the issuer of that security is subject to Commission jurisdiction and must comply with Commission rules.

The Exchange proposes that, to list an IPR or IPS based on an international or global index or portfolio pursuant to the generic listing standards, such index or portfolio must meet the following criteria:

- Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million (proposed CBOE Rules 31.5(L).01(a)(2)(A) and 31.5(M).01(a)(2)(A));
- Component stocks representing at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares (proposed CBOE Rules 31.5(L).01(a)(2)(B) and 31.5(M).01(a)(2)(B));
- The most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio (proposed CBOE Rules 31.5(L).01(a)(2)(C) and 31.5(M).01(a)(2)(C));
- The index or portfolio shall include a minimum of 20 component stocks (proposed CBOE Rules 31.5(L).01(a)(2)(D) and 31.5(M).01(a)(2)(D)); and
- Each U.S. Component Stock must be listed on a national securities exchange and an

NMS stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-U.S. Component Stock must be listed on an exchange that has last-sale reporting (proposed CBOE Rules 31.5(L).01(a)(2)(E) and 31.5(M).01(a)(2)(E)).

The Exchange believes that these proposed standards are reasonable for international and global indexes or portfolios, and, when applied in conjunction with the other listing requirements, would result in the listing and trading of ETFs that are sufficiently broad-based in scope and not readily susceptible to manipulation. The Exchange also believes that the proposed standards would result in ETFs that are adequately diversified in weighting for any single security or small group of securities to significantly reduce concerns that trading in an ETF based on an international or global index could become a surrogate for the trading in of securities not registered in the United States.

The Exchange further notes that, while these standards are similar to those for indexes or portfolios that include only U.S. Component Stocks, they differ in certain important respects and are generally more restrictive, reflecting greater concerns over portfolio diversification with respect to ETFs investing in components that are not individually registered with the Commission. First, in the proposed standards, component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million, compared to a minimum market value of at least \$75 million for indexes or portfolios with only U.S. Component Stocks. (Market value is calculated by multiplying the total shares outstanding by the price per share of the component stock.) Second, in the proposed standards, the most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, in contrast to a proposed 30% standard for an index or portfolio comprised of



only U.S. Component Stocks.<sup>14</sup> Third, in the proposed standards, the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio, compared to a 65% standard for indexes or portfolios comprised of only U.S. Component Stocks. Fourth, the minimum number of stocks in the proposed standards is 20, in contrast to a minimum of 13 in the standards for an index or portfolio with only U.S. Component Stocks. Finally, the proposed standards require that each Non-U.S. Component Stock included in the index or portfolio be listed and traded on an exchange that has last-sale reporting.

The Exchange also proposes to modify CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) to require that the index value for an ETF listed pursuant to this proposal be widely disseminated by one or more major market data vendors at least every 60 seconds during the time when the ETF shares trade on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Exchange trading hours. In contrast, the index value for an ETF listed pursuant to the existing standards for domestic indexes must be disseminated at least every 15 seconds during the trading day. This modification reflects limitations, in some instances, on the frequency of intra-day trading information with respect to Non-U.S. Component Stocks and that, in many cases, trading hours for overseas markets overlap only in part, or not at all, with Exchange trading hours.

In addition, CBOE Rules 31.5(L).01(c) and 31.5(M).01(c) would be modified to define the term “Intraday Indicative Value” (“IIV”) as the estimate of the value of a share of each ETF

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<sup>14</sup> See proposed CBOE Rules 31.5(L).01(a)(1)(C), 31.5(L).01(a)(2)(C), 31.5(M).01(a)(1)(C), and 31.5(M).01(a)(2)(C).

that is updated at least every 15 seconds during Normal Market Hours.<sup>15</sup> CBOE also proposes to clarify in these rules that the IIV would be updated at least every 15 seconds during trading in the ETF on the Exchange to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on the CBOE Stock Exchange (“CBSX”), CBOE’s equity trading platform, then the last official calculated IIV must remain available throughout CBSX’s trading hours.

CBOE is proposing that it may designate an ETF for trading during the trading hours specified in CBOE Rule 51.2(d)<sup>16</sup> for IPRs and IPSs as long as the index value and IIV dissemination requirements of CBOE Rules 31.5(L).01(b)(ii), 31.5(L).01(c), 31.5(M).01(b)(ii), and 31.5(M).01(c) are met.

The Exchange proposes to adopt CBOE Rules 31.5(L).01(g) and 31.5(M).01(g) to specify that CBOE will implement written surveillance procedures for ETFs. The Exchange also proposes to add new CBOE Rules 31.5(L).01(h) and 31.5(M).01(h) regarding the creation and redemption process for ETFs and compliance with federal securities laws for ETFs listed pursuant to the new generic listing standards. These new subsections would apply to ETFs listed pursuant to CBOE Rules 31.5(L) and (M), respectively. They would require that the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940<sup>17</sup> for the ETF state that the ETF must comply with the federal securities laws in accepting

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<sup>15</sup> Normal Market Hours are defined in proposed CBOE Rule 52.3(c)(2) as the time period from 8:30 a.m. until 3:15 p.m. Central Time (“CT”).

<sup>16</sup> CBOE Rule 51.2(d) provides that the hours during which IPR transactions may be made on CBSX are 8:15 a.m. until 3:15 p.m. CT, and that the hours during which IPS transactions may be made on CBSX are 8:15 a.m. until 3:00 p.m. or 3:15 p.m. CT for each series of IPSs, as specified by CBSX.

<sup>17</sup> 15 U.S.C. 80a et seq.

securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.<sup>18</sup>

The Commission has approved generic listing standards providing for the listing, pursuant to Rule 19b-4(e), of other derivative securities products based on indexes or portfolios described in rules previously approved by the Commission under Section 19(b)(2) of the Act.<sup>19</sup> The Exchange proposes to include in the generic listing standards for the listing of ETFs based on indexes or portfolios that have been approved by the Commission in connection with the listing of options, Index Portfolio Receipts, Index Portfolio Shares, index-linked securities, or Index-Linked Exchangeable Notes. The Exchange believes that the application of this standard to ETFs is appropriate because the underlying index would have been subject to detailed and specific Commission review in the context of the approval of listing of those other derivatives.

This new generic standard would be limited to stock indexes or portfolios, and would require that each component stock be either: (1) a U.S. Component Stock that is listed on a national securities exchange and is an NMS stock as defined in Rule 600 of Regulation NMS; or (2) a Non-U.S. Component Stock that is listed and traded on an exchange that has last-sale reporting.

The Exchange is also proposing to include additional continued listing standards relating to ETFs. The Exchange would commence delisting proceedings if the value of the index or portfolio of securities on which the ETF is based is no longer calculated or disseminated.

The Exchange proposes to adopt CBOE Rules 31.5(L)(f) and 31.5(M)(d) to formalize in the rules existing best practices for providing equal access to material information about the

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<sup>18</sup> 15 U.S.C. 77a et seq.

<sup>19</sup> See supra note 11.

value of ETFs. Prior to approving an ETF for listing, the Exchange would obtain a representation from the ETF issuer that the NAV per share would be calculated daily and made available to all market participants at the same time.

Proposed CBOE Rule 52.3(b) provides that the Exchange would halt trading in a Derivative Securities Product<sup>20</sup> if the circuit breaker parameter of CBOE Rule 6.3B has been reached. In exercising its discretion to halt or suspend trading in a Derivative Securities Product, the Exchange could consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other relevant factors.

Proposed CBOE Rule 52.3(c) sets forth the trading halt rules that apply to a Derivative Securities Product that is traded on the Exchange on a UTP basis. The rule provides that, during the hours for trading of Derivative Securities Products on the Exchange, if a temporary interruption occurs in the calculation or wide dissemination of the Required Value<sup>21</sup> by a major market data vendor and the listing market halts trading in the Derivative Securities Product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in the series of Derivative Securities Product. If the Required Value continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the series of Derivative Securities Product that day. If an interruption in the calculation or

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<sup>20</sup> Proposed Rule 52.3(c)(5)(i) defines “Derivative Securities Product” as a series of Equity-Linked Term Notes, Index-Linked Exchangeable Notes, Index Portfolio Receipts, Index Portfolio Shares, or Trust Issued Receipts that is based on an underlying security or index.

<sup>21</sup> Proposed Rule 52.3(c)(5)(ii) defines “Required Value” as the value of any security or index underlying a Derivative Securities Product, as well as the IIV, indicative optimized portfolio value, or other comparable estimate of the value of a share of a Derivative Securities Product, updated regularly during the trading day.

wide dissemination of the Required Value continues, the Exchange may resume trading in the series of Derivative Securities Product only if calculation and wide dissemination of the Required Value resumes or trading in such series resumes in the listing market.

The Exchange proposes to amend CBOE Rule 31.5 to stipulate that, as provided by the Commission Rule 12f-5,<sup>22</sup> the Exchange may extend UTP to any security, such as an ETF, for which the Exchange has in effect rules providing for transactions in such class or type of security.<sup>23</sup> The provision of CBOE Rule 31.5(L) and (M) that governs surveillance procedures, the provisions of CBOE Rule 54.1 and 54.2 that relate to information circulars and prospectus delivery, and CBOE Rule 51.2(d) that governs trading hours for transactions in IPRs and IPSs, would apply to securities traded on a UTP basis (as does the applicable proposed trading halt provision of CBOE Rule 52.3(b)). The Exchange would not, however, apply quantitative listing standards to securities traded on a UTP basis.

The Exchange is proposing other minor and clarifying changes to CBOE Rules 31.5(L) and (M). Current CBOE Rules 31.5L.01(b)(i) and 31.5M.01(b)(i) would be deleted, so that an index underlying a series of IPRs or IPSs need not be calculated according to the methodologies specified in those rules.<sup>24</sup> CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) would be amended to ensure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF. CBOE Rules 31.5(L).01(e) and 31.5(M).01(e) would be adopted to clarify that the minimum increment for bids and offers is set

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<sup>22</sup> 17 CFR 240.12f-5.

<sup>23</sup> See proposed CBOE Rule 31.5.

<sup>24</sup> This is consistent with the rules of other national securities exchanges. See, e.g., NYSE Arca Equities Rules 5.2(j)(3) and 8.200.

in Rule 51.2(d). CBOE Rules 31.5(L).01(f) and 31.5(M).01(f) are being adopted to clarify that the trading hours for IPRs and IPSs, respectively, are set in CBOE Rule 51.2. CBOE Rules 31.5(L).01(a)(1)(C) and 31.5(M).01(a)(1)(C) would be amended to change the maximum weighting requirement for the most heavily weighted component stock from 25% to 30% of the weight of the index or portfolio for IPRs and IPSs.<sup>25</sup>

The Exchange will closely monitor activity in ETFs to identify and deter any potential improper trading activity in ETFs. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of ETFs that would be listed or traded pursuant to UTP. Specifically, CBOE will rely on its existing surveillance procedures governing equities, options, and ETFs. Additionally, the Exchange states that it will develop procedures to closely monitor activity in ETFs and related securities to identify and deter any potential improper trading activity. In addition, the Exchange has a general policy prohibiting the dissemination of material, non-public information by its employees. Finally, the Exchange deems IPRs and IPSs to be equity securities. Therefore, IPRs and IPSs are subject to the Exchange's trading rules that apply to equity securities.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>26</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>27</sup> in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposal would permit the Exchange to more efficiently

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<sup>25</sup> This is consistent with the rules of other SROs. See, e.g., Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR-Amex-2001-25).

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

<sup>27</sup> 15 U.S.C. 78f(b)(5).

introduce products for trading on CBSX. In addition, the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to foster cooperation and coordination with persons engaged in facilitating transactions in securities.

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

CBOE does not believe that the proposed rule change would result in 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 neither solicited nor received comments on the proposal.

III. 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-2007-109 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-CBOE-2007-109. 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 20549-1520 on official business days between the hours of 10:00 a.m. and 3:00 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 available publicly. All submissions should refer to File Number SR-CBOE-2007-109 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>28</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act<sup>29</sup> 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, to

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<sup>28</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>29</sup> 15 U.S.C. 78f(b)(5).



remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Currently, the Exchange must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act<sup>30</sup> and Rule 19b-4 thereunder<sup>31</sup> to list and trade any ETF based on an index comprised of foreign securities. The Exchange also must file a proposed rule change to list and trade any ETF based on an index or portfolio described in a rule change that has previously been approved by the Commission as an underlying benchmark for derivative securities. However, Rule 19b-4(e) provides that the listing and trading of a new derivative securities product by an SRO will not be deemed a proposed rule change pursuant to Rule 19b-4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class. CBOE's proposed rules, which allow the listing and trading of ETFs pursuant to Rule 19b-4(e) based on certain indexes or portfolios with components that include foreign securities or indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities, fulfill these requirements. Use of Rule 19b-4(e) by the Exchange to list and trade such ETFs should promote competition, reduce burdens on issuers and other market participants, and make such ETFs available to investors more quickly.<sup>32</sup>

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<sup>30</sup> 15 U.S.C. 78s(b)(1).

<sup>31</sup> 17 CFR 240.19b-4.

<sup>32</sup> The Commission notes, however, that the failure of a particular ETF to meet these generic listing standards would not preclude the Exchange from submitting a separate proposed rule change to list and trade the ETF.

The Commission previously has approved generic listing standards for other exchanges that are substantially similar to those proposed here by the Exchange.<sup>33</sup> This proposal does not appear to raise any novel regulatory issues. Therefore, the Commission finds that CBOE's proposal is consistent with the Act on the same basis that it approved the other exchanges' generic listing standards for ETFs based on international or global indexes or portfolios, or on indexes or portfolios described in exchange rules that have been previously approved by the Commission as underlying benchmarks for derivative securities.

Proposed CBOE Rules 31.5(L).01(a)(2) and 31.5(M).01(a)(2) establish standards for the composition of indexes and portfolios underlying international ETFs. These requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one security dominates the index. The Commission believes that, taken together, these standards are reasonably designed to ensure that securities with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements will permit the listing and trading of only ETFs that are sufficiently broad-based in scope to minimize potential manipulation. The Commission further believes that the proposed listing standards are reasonably designed to preclude CBOE from listing and trading ETFs that might be used as surrogate for trading in unregistered securities. The requirement that each component security underlying an ETF be an NMS Stock

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<sup>33</sup> See, e.g., Securities Exchange Act Release No. 56049 (July 11, 2007), 72 FR 39121 (July 17, 2007)(SR-Phlx-2007-20); Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 19571 (February 15, 2007) (SR-NASDAQ-2006-50); Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR-NYSEArca-2006-86); Securities Exchange Act Release No. 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR-NYSE-2006-101); Securities Exchange Act Release No. 54739 (November 9, 2006), 71 FR 66993 (November 17, 2007) (SR-Amex-2006-78)

(in the case of a U.S. Component Stock) or listed on an exchange and subject to last-sale reporting (in the case of a Non-U.S. Component Stock) also should contribute to the transparency of the market for these ETFs.

The proposed generic listing standards also will permit the Exchange to list and trade an ETF if the Commission has previously approved an SRO rule change that contemplates listing and trading a derivative product based on the same underlying index. CBOE would be able to rely on that earlier approval order, provided that: (1) the securities comprising the underlying index consist of U.S. Component Stocks or Non-U.S. Component Stocks; and (2) CBOE complies with the commitments undertaken by the other SRO set forth in the prior order, including any surveillance-sharing arrangements with a foreign market.

The Commission believes that CBOE's proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>34</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. CBOE's proposal requires the value of the index or portfolio underlying an ETF based on a global or international index to be disseminated at least once every 60 seconds during the time when the ETF shares trade on the Exchange.<sup>35</sup> CBOE has represented that, if an underlying index or portfolio value is no longer calculated or available, it would commence delisting proceedings for the associated ETF. In addition, an IIV, which represents an estimate of the value of a share of each ETF, must be updated and disseminated at least once every 15 seconds during CBOE Normal Market Hours trading session. The IIV must reflect changes in the exchange rate between the U.S. dollar and the currency in which any index

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<sup>34</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>35</sup> See proposed CBOE Rule 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii).

or portfolio component stock is denominated. If the IIV does not change during some or all of the period when trading is occurring on CBOE, then the last official calculated IIV must remain available throughout CBOE's trading hours.<sup>36</sup>

The Commission believes the proposal is reasonably designed to preclude trading of ETFs when transparency is impaired. Proposed CBOE Rule 52.3(b) provides that, when the Exchange is the listing market, CBOE may halt trading during the day in which the interruption occurs if the IIV or its equivalent or index value applicable to a Derivative Securities Product is not disseminated as required. If the interruption continues, CBOE will halt trading no later than the beginning of the next trading day. In addition, proposed CBOE Rule 52.3(c) sets forth trading halt procedures when the Exchange trades the Derivative Securities Product pursuant to UTP. This proposed rule is substantially similar to that recently adopted by other exchanges.<sup>37</sup>

The Commission believes that the proposed rules are reasonably designed to promote fair disclosure of information that may be necessary to price an ETF appropriately. These generic listing standards provide that the issuer of an ETF must represent that it will calculate the NAV and make it available daily to all market participants at the same time.<sup>38</sup> CBOE proposed to amend current CBOE Rules 31.5(L).01(b)(ii) and 31.5(M).01(b)(ii) to make sure that an entity that advises an index provider or calculator and related entities has in place procedures designed to prevent the use and dissemination of material non-public information regarding the index underlying the ETF.

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<sup>36</sup> See proposed CBOE Rules 31.5(L).01(c) and 31.5(M).01(c).

<sup>37</sup> See supra note 33; see also Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR-NYSEArca-2006-77).

<sup>38</sup> See proposed CBOE Rules 31.5(L)(f) and 31.5(M)(d).

CBOE has represented that its surveillance procedures are adequate to properly monitor the trading of the IPRs and IPSs listed pursuant to the proposed new listing standards or traded on a UTP basis. This approval is based on that representation.

#### Acceleration

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. The Commission notes that CBOE's proposal is substantially similar to other proposals that have been approved by the Commission.<sup>39</sup> The Commission does not believe that CBOE's proposal raises any novel regulatory issues and, therefore, that good cause exists for approving the filing before the conclusion of a notice-and-comment period. Accelerated approval of the proposal will expedite the listing and trading of additional ETFs by CBOE, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>40</sup> to approve the proposed rule change, as amended, on an accelerated basis.

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<sup>39</sup> See supra note 33.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-CBOE-2007-109), as amended, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>41</sup> Id.

<sup>42</sup> 17 CFR 200.30-3(a)(12).