

applicable in connection with security-based swap agreements (*i.e.*, paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), paragraphs (a) and (b) of Section 16, Section 20(d) and Section 21A(a)(1) and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (b)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(c) Exemption for certain LIFFE A&M members.

Any member of LIFFE A&M that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling or holding Cleared Index CDS positions for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared Index CDS, subject to the following conditions:

(1) The member shall be in material compliance with the rules of LIFFE A&M and, if a clearing member, with the rules of LCH.Clearnet, and applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared Index CDS; and

(2) To the extent that the member receives or holds funds or securities of U.S. persons for the purpose of purchasing, selling, clearing, settling, or holding Cleared Index CDS positions:

(i) The U.S. persons shall not be natural persons;

(ii) The member shall segregate such funds and securities of such U.S.

persons from the member's own assets (*i.e.*, the member may not permit U.S. persons to "opt out" of applicable segregation requirements for such funds and securities even if regulations or laws would permit the person to "opt out"); and

(iii) The member shall disclose to such U.S. persons that the member is not regulated by the Commission and that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the member.

(d) Exemption for certain registered broker-dealers.

A broker or dealer registered under section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (b)(2), solely with respect to Cleared Index CDS, except:

(1) Section 7(c);

(2) Section 15(c)(3);

(3) Section 17(a);

(4) Section 17(b);

(5) Regulation T, 12 CFR 200.1 *et seq.*;

(6) Rule 15c3-1;

(7) Rule 15c3-3;

(8) Rule 17a-3;

(9) Rule 17a-4;

(10) Rule 17a-5; and

(11) Rule 17a-13.

(e) For purposes of this Order, "Cleared Index CDS" shall mean a credit default swap that is submitted (or offered, purchased or sold on terms providing for submission) to LCH.Clearnet, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described below:

(1) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(2) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(3) A foreign sovereign debt security;

(4) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(5) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac or Ginnie Mae.

By the Commission.

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59152; File No. SR-CBOE-2008-127]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposal To Eliminate \$3 Underlying Price Requirement for Continued Listing and Listing of Additional Series

December 23, 2008.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 18, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 5.4.01 to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security. The Exchange also proposes to amend Rule 5.4.02 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to eliminate the \$3 market price per share requirement from the Exchange's requirements for continued approval for an underlying security from Rule 5.4.01(d). In addition, the rule filing would amend Rule 5.4.02 by eliminating the prohibition against listing additional series of options on an underlying security at any time when the price per share of such underlying security is less than \$3. Also, the Exchange proposes to make technical changes throughout the Interpretations and Policies to Rule 5.4 to eliminate references to paragraph (d) of Interpretation and Policy .01 to Rule 5.4.

The Exchange believes that the \$3 market price per share requirement is no longer necessary or appropriate, and states that only those underlying securities meeting the remaining maintenance listing criteria set forth in Rule 5.4.01 will be eligible for continued listing and the listing of additional option series. The Exchange believes that the current \$3 market price per share requirement could have a negative effect on investors. For example, in the current volatile market environment, the Exchange is currently unable to list new series on underlying securities trading below \$3. If there is market demand for series below \$3, the Exchange would be unable to accommodate such requests and investors would be unable to hedge their positions with options series with strikes below \$3.

2. Statutory Basis

Because the current rule proposal will permit the Exchange to make options on underlying securities available even if the price of the underlying security is less than \$3, the Exchange believes the

rule proposal is consistent with 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.⁴ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act⁵ 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.

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

The Exchange neither solicited nor received comments on this proposal.

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

Within 35 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 the 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. Please include File Number SR-CBOE-2008-127 on the subject line.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2008-127. 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 Section, 100 F Street, NE., Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2008-127 and should be submitted on or before January 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59147; File No. SR-CBOE-2008-123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Adopt a Trade, Flash and Cancel Order Type for CBSX

December 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

⁶ 17 CFR 200.30-3(a)(12).