

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58718; File No. SR-CBOE-2008-102)

October 2, 2008

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Change the Permissible Exercise Price and Premium Calculations for FLEX Equity Options

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 30, 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Rules 24A.4 and 24B.4 to change the permissible exercise price and premium calculations for FLEX Equity Options.<sup>5</sup> The text of the proposed rule change is available on the Exchange’s website ([www.cboe.org/Legal](http://www.cboe.org/Legal)), at the Exchange’s Office of the Secretary and at the Commission’s Public Reference Room.

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<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)(iii).

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

<sup>5</sup> FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

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

Currently, our rules provide that FLEX Equity Options exercise prices and premiums may be stated in dollar amount or percentage of the price of the underlying security, rounded to the nearest minimum tick (which may be as small as \$0.01) or, in the case of exercise prices, to the nearest one-eighth of a dollar or \$0.10.<sup>6</sup> The purpose of this rule change is to revise the permissible exercise price and premium calculations for FLEX Equity Options to be more aligned with the permissible calculations for FLEX Index Options.<sup>7</sup> Under the proposed rule:

- Exercise prices and premiums for FLEX Equity Options may be stated in a dollar amount, which is the same as the current rule allows.
- Exercise prices and premiums may also be stated in a percentage of the price of the underlying security at the time of the trade, which is the same as the current rule allows, or as of the open or close of trading on the Exchange on the trade date.

Providing the flexibility to use a percentage based on the open or close of the

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<sup>6</sup> See Rules 24A.4(c)(2), 24A.5(f), 24B.4(c)(2) and 24B.5(e).

<sup>7</sup> FLEX Index Options are options on specified underlying indexes and, like FLEX Equity Options, provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

underlying security is consistent with our FLEX Index Option rules, which permit exercise prices to be specified in terms of a percentage of the index value calculated as of the open or close of trading on the Exchange on the trade date.<sup>8</sup>

- Exercise prices and premiums may also be stated in a method for fixing such a number at the time a FLEX Request for Quote or FLEX Order is traded. For example, the exercise price and premium for a FLEX Equity Option might be based on the volume-weighted average price (“VWAP”) of the underlying for the trade day. Providing the flexibility to determine a particular method for fixing the exercise prices or premiums at the time of a trade is consistent with our FLEX Index Option rules, which permit exercise prices to be specified in terms of a method for fixing such a number at the time of a trade.<sup>9</sup>

We are also proposing to update the rounding formula for FLEX Equity Option exercises. As indicated above, the existing rules provide that the exercise price will be rounded to the nearest minimum increment, one-eighth of a dollar or \$0.10. We are proposing to change the \$0.10 parameter to instead be a decimal increment determined by the Exchange on a class-by-class basis, provided the increment cannot be smaller than \$0.01. This change will provide the Exchange with more flexibility to determine to make a smaller increment available. We note that the minimum increment for each FLEX Equity Option is determined by the Exchange on a class-by-class basis and can be as small as \$0.01.<sup>10</sup> As a result, having an exercise price in a

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<sup>8</sup> See Rules 24A.4(b)(2)(i)(c) and 24B.4(b)(2)(i)(c).

<sup>9</sup> See Rules 24A.4(b)(2)(i)(b) and 24B.4(b)(2)(i)(b).

<sup>10</sup> See Rules 24A.5(f) and 24B.5(e).

\$0.01 increment is already permissible under our rules in those FLEX Equity Option classes where the minimum increment is \$0.01.

The Exchange believes that expanding the permissible exercise price and premium calculations is important and necessary to the Exchange's efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter ("OTC") market in customized options, which can take on contract characteristics similar to FLEX Equity Options but are not subject to the same restrictions. By expanding the permissible calculations for FLEX Equity Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Equity Options.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")<sup>11</sup> and the rules and regulations under the Act applicable to national securities exchanges and, in particular, the requirements of Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section

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<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 15 U.S.C. 78f(b).

6(b)(5)<sup>13</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will provide more flexibility to calculate exercise prices and premiums for FLEX Equity Options in a manner that is consistent with the calculations for FLEX Index Options, which should provide members and investors interested in FLEX Equity Options with additional opportunities to trade customized options in an exchange environment, and investors will benefit as a result.

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 the proposal.

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

Because the foregoing 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

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<sup>13</sup> 15 U.S.C. 78f(b)(5).

Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-102 on the subject line.

##### 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-2008-102. 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

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-2008-102 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

Florence E. Harmon  
Acting Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).