SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-59336; File No. SR-CBOE-2008-127)

February 2, 2009

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposal to Eliminate the $3 Underlying Price Requirement for Continued Listing and Listing of Additional Series

On December 18, 2008, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to eliminate the $3 underlying price requirement for continued listing and for the listing of additional series. The proposed rule change was published for comment in the Federal Register on January 2, 2009.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

The proposed rule change amends CBOE 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 and amends CBOE Rule 5.4.02 to eliminate 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 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

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1 15 U.S.C. 78s(b)(l).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 59152 (December 23, 2008), 74 FR 149 (January 2, 2009) ("Notice").

4 See letter to Florence E. Harmon, Acting Secretary, Commission, from Janet M. Kissane, Senior Vice President – Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext dated January 9, 2009 ("NYSE Euronext Letter").

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.

After carefully reviewing the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to 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.

CBOE's rules provide that a security underlying an option will not be deemed to meet the requirements for continued approval if the underlying security ceases to be an NMS stock.[7]

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5 In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

6 15 U.S.C. 78f(b)(5).

7 See CBOE Rule 5.4.01(f). Rule 600 of Regulation NMS defines an NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options," and an NMS stock as "any NMS security other than an option."

CBOE's rules also include other minimum standards for continued approval, including requirements related to the minimum number of outstanding shares, number of holders, and trading volume of the underlying security.[8] The Commission believes that securities underlying options traded on CBOE will remain subject to adequate minimum standards for continued approval, which should help to ensure that only options on liquid underlying securities are permitted to trade on CBOE. The Commission also notes that the NYSE Euronext letter generally supports the proposal.[9] Accordingly, the Commission believes that CBOE's proposed rule change is consistent with the Act.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR-CBOE-2008-127), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon
Deputy Secretary

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8 See CBOE Rule 5.4.01(a)-(c).

9 See NYSE Euronext Letter, supra note 4.

10 15 U.S.C. 78s(b)(2).

11 17 CFR 200.30-3(a)(12).