

proposed rule change is consistent with the section 6(b)(5)<sup>8</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 would help the Exchange more efficiently address scenarios where an opening transaction that does not satisfy the requirements of Rule 5.4 may occur inadvertently.

#### *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 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 Exchange consents, the Commission will:

- (A) By order approve 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-2008-90 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-2008-90. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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 Number SR-CBOE-2008-90 and should be submitted on or before September 29, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-58462; File No. SR-CBOE-2008-91]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Chicago Board Options Exchange, Inc. Amending CBOE Rule 52.3**

September 4, 2008.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 27, 2008, Chicago Board Options Exchange, Inc. ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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**

The Exchange proposes to amend CBOE Rule 52.3 in order to clarify a circumstance under which the Exchange will commence a trading halt in Derivative Securities Products listed and trading on the Exchange.

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

<sup>2</sup> 15 U.S.C. 78a.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

In order to provide clarity to CBSX Traders,<sup>4</sup> the Exchange proposes to amend its Rules by adding new CBOE Rule 52.3(d), in order to clarify that the Exchange will halt trading in Derivative Securities Products<sup>5</sup> listed and trading on the CBOE Stock Exchange<sup>6</sup> ("CBSX") when the Exchange becomes aware that the Net Asset Value ("NAV") of the Derivative Securities Products (and in the case of managed fund shares, the disclosed portfolio) is not being disseminated to all market participants at the same time.

Specifically, with respect to Derivative Securities Products listed on CBSX for which an NAV (and in the case of managed fund shares, a disclosed portfolio) is disseminated, if the Exchange becomes aware that the NAV (or in the case of managed fund shares, the disclosed portfolio) is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on CBSX until such time as the NAV (or in the case of managed fund shares, the disclosed portfolio, as applicable) is available to all market participants. The Exchange believes that adding this clarification to its rules promotes the just and equitable principles of trade and promotes a fair and transparent marketplace.

The Exchange notes that, in the event the NAV (or disclosed portfolio, as applicable) for one of the securities referred to above is no longer calculated or disseminated, the Exchange would halt trading in such security and would resume trading at such time as the NAV (or disclosed portfolio, as applicable) is available.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose 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**

The Exchange has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not 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. Additionally, the Exchange provided the Commission with written notice of its intention to file the proposed rule change at least five business days before its filing. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

The Exchange has requested that the Commission waive the 30-day operative delay, which would make the rule change operative upon filing. The Exchange believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest as it will clarify a circumstance under which the Exchange will halt trading in Derivative Securities Products listed on the Exchange. This proposal is similar to rule changes by other national securities exchanges, and does not raise any new or unique issues.<sup>10</sup> Therefore, the Commission

designates the proposed rule change as operative immediately.<sup>11</sup>

**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-2008-91 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-2008-91. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will 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-

<sup>4</sup> See CBOE Rule 50.3 for the definition of "CBSX Traders."

<sup>5</sup> Pursuant to Rule 52.3(c)(5)(i), the term Derivative Securities Product includes a series of Equity-Linked Term Notes, Index-Linked Exchangeable Notes, IPRs, IPSs, or TIRs, which is based on an underlying security or index. Those products are described in CBOE Rules 31.5I, 31.5O, 31.5L, 31.5M, and 31.5N, respectively.

<sup>6</sup> The CBOE Stock Exchange is the stock trading facility of CBOE.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> See Securities Exchange Act Release No. 58111 (July 7, 2008), 73 FR 40643 (July 15, 2008) (SR-Amex-2008-40; SR-NASDAQ-2008-046; SR-NYSE-2008-39; SR-NYSEArca-2008-50).

<sup>11</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

2008-91 and should be submitted on or before October 3, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58467; File No. SR-NYSE-2008-77]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Its Rule Governing Equity-Linked Debt Securities To Permit the Listing of Equity-Linked Debt Securities Linked To Baskets of Up to Thirty Underlying Securities and To Provide for Greater Flexibility in Listing Criteria

September 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 26, 2008, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("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 and order to solicit comments on the proposed rule change from interested persons and to approve 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 amend Section 703.21 of the Exchange's Listed Company Manual (the "Manual") to permit the listing of Equity-Linked Debt Securities ("ELDS") related to up to thirty (30) underlying stocks and to provide for greater flexibility in the listing criteria for ELDS. The text of the proposed rule change is available at NYSE, <http://www.nyse.com>, and 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 these statements may be examined at the places specified in Item III below. The NYSE 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 amend Section 703.21 of the Manual to permit the listing of ELDS related to up to thirty (30) underlying stocks and to provide for greater flexibility in the listing criteria for ELDS. The Exchange wishes to make this change in order to harmonize Section 703.21 with the comparable rules of the American Stock Exchange (the "Amex"),<sup>3</sup> as well as the rules of NYSE Arca, Inc., which were recently conformed to the Amex rules.<sup>4</sup>

###### Number of Linked Securities

Currently, the Exchange defines ELDS as non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock, non-convertible preferred stock, common units of a master limited partnership or any other common equity security of a type classified for trading as stocks by the Exchange. The Exchange proposes to amend the definition to state that ELDS

<sup>3</sup> Amex's initial listing standards for Equity-Linked Notes are set forth in Section 107A of the Amex Company Guide, which was approved by the Commission in March 1990, and Section 107B of the Amex Company Guide, which was approved by the Commission in May 1993. These sections have been amended several times. The filings that are relevant to the topics discussed in this filing follow. See Securities Exchange Act Release Nos. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (SR-Amex-89-29); 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (SR-Amex-92-42); 34549 (August 18, 1994), 59 FR 43873 (August 25, 1994) (SR-Amex-93-46); 36990 (March 20, 1996), 61 FR 13545 (March 27, 1996) (SR-Amex-95-44); 37783 (October 4, 1996), 61 FR 53246 (October 10, 1996) (SR-Amex-96-31); 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (SR-Amex-2002-110); 55733 (May 10, 2007), 72 FR 27602 (May 16, 2007) (SR-Amex-2007-34) (collectively, "Amex Releases").

<sup>4</sup> See Securities Exchange Act Release No. 56924 (December 7, 2007), 72 FR 70918 (December 13, 2007) (SR-NYSEArca-2007-98) ("NYSE Arca Release").

are defined as debt securities that are linked, in whole or in part, to the value of up to thirty (30) underlying stocks. This change conforms to NYSE Arca Equities Rule 5.1(b)(14), NYSE Arca Equities Rule 5.2(j)(2), and Section 107B of the Amex Company Guide.<sup>5</sup> The Exchange proposes to expand the number of stocks that may be linked to ELDS in order to accommodate the varying types of ELDS products that are currently offered in the marketplace. The Exchange believes that expanding the number of stocks that may be linked to ELDS will also provide investors with enhanced investment flexibility. The Exchange also believes that there would be no investor protection concerns with expanding the number of stocks linked to ELDS because each linked stock is required to individually satisfy the applicable listing standards set forth in Section 703.21.

###### Equity-Linked Debt Security Listing Standards

Section 703.21(B) currently provides that an issue of ELDS must have a minimum public distribution of one million ELDS, a minimum of 400 holders, a minimum market value of \$4 million, and a minimum term of one year.

The Exchange proposes to add an exception to the minimum holders standard in Section 703.21(B) to provide that, if the ELDS is traded in \$1,000 denominations, there will be no minimum number of holders. The Exchange also proposes to add an exception to the public distribution standard to provide that, if an issuance of ELDS is traded in \$1,000 denominations, there will be no minimum public distribution requirement. These changes correspond to NYSE Arca Equities Rule 5.2(j)(2)(B) and Section 107A(b) of the Amex Company Guide.<sup>6</sup> The Exchange notes that, without the exception to the one million ELDS minimum public distribution requirement, the Exchange would be unable to list ELDS in \$1,000 dollar denominations having a market value of less than \$1 billion. The Exchange believes that the proposed exception is a reasonable accommodation for those issuances in \$1,000 denominations.

In addition, the Exchange proposes to add an exception to the holders requirement in Section 703.21(B) to provide that, if the ELDS are redeemable at the option of the holders thereof on

<sup>12</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>5</sup> See Amex Company Guide Section 107 and NYSE Arca Equities Rules 5.1(b)(14) and 5.2(j)(2).

<sup>6</sup> See Amex Company Guide Section 107 and NYSE Arca Equities Rule 5.2(j)(2)(B).