

out. The notice will also reiterate the facts that the Company: (1) Will not exercise any rights reserved by it under any of the Contracts to impose additional charges for transfers until at least 30 days after the proposed substitutions, and (2) will, for at least 30 days following the proposed substitutions, permit such Contract owners to transfer Contract values out of the subaccounts holding shares of the Replacement Portfolios to other subaccounts and the fixed account without those transfers being treated as transfers for purposes of determining the remaining number of transfers permitted in the Contract year without a transfer charge. The notice as delivered in certain jurisdictions may also explain that the right of a Contract owner to make transfers in connection with the proposed substitutions will not affect such Contract owner's right, under insurance regulations in those jurisdictions, to exchange his or her Contract for a fixed-benefit life insurance contract or a fixed-benefit annuity Contract during the 60 days following the substitutions.

40. The Company will carry out the proposed substitutions by redeeming shares of each Replaced Portfolio held by the Accounts for cash and applying the proceeds to the purchase of shares of the Replacement Portfolios. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the Company's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions and legal, accounting, and other fees and expenses, will be paid by the Company. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

#### Applicants' Legal Analysis

1. The Applicants request that the Commission issue an order pursuant to Section 26(c) of the Act approving the substitution by the Company of Service Class shares of Replacement Portfolio A for shares of Replaced Portfolio A, and the substitution of shares of Replacement Portfolio B for shares of

Replaced Portfolio B held by the Accounts.

2. The Applicants assert that all the Contracts expressly reserve for the Company the right, subject to compliance with applicable law, to substitute shares of one fund or portfolio held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

3. Applicants maintain that Contract owners will be better served by the proposed substitutions and that the proposed substitutions are appropriate given the Replacement Portfolios, the Replaced Portfolios, and other investment options available under the Contracts. In the last three years, Replacement Portfolio A has had investment performance superior to that of Replaced Portfolio A, and Replacement Portfolio B has had investment performance superior to that of Replaced Portfolio B. In addition, Replacement Portfolio A has had substantially lower expenses over this same period than Replaced Portfolio A, and Replacement Portfolio B has had substantially lower expenses over this same period than Replaced Portfolio B.

4. Applicants believe that Replacement Portfolio A and Replaced Portfolio A are substantially the same in their stated investment objectives and principal investment strategies, and that Replacement Portfolio B and Replaced Portfolio B are substantially similar in their stated investment objectives and principal investment strategies, as to afford investors continuity of investment and risk.

5. Although each Replaced Portfolio benefits from an expense reimbursement arrangement that reduces the Portfolio's expenses, even after the reimbursement for each Replaced Portfolio has been taken into account, the expenses of the corresponding Replacement Portfolio are still significantly lower.

6. The Applicants represent that the proposed substitutions retain for Contract owners the investment flexibility that is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values between and among the remaining subaccounts as they could before the proposed substitutions.

7. The Applicants maintain that the proposed substitutions are not the type of substitution that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which

permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract values into other subaccounts and the fixed account. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

#### Conclusion

Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57519; File No. SR-CBOE-2008-29]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs

March 18, 2008.

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 March 13, 2008, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 substantially prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing with the Commission.<sup>4</sup> The

<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).

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

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**

CBOE proposes to amend its rules to extend for an additional year, until March 14, 2009, two existing pilot programs.

The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of Secretary, 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, CBOE 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 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 purpose of this rule change is to extend for an additional year, until March 14, 2009, two existing pilot programs.

First, CBOE proposes to amend CBOE Rules 8.4(c)(i), 8.85, 8.91 and 8.93(vii) to extend, until March 14, 2009, the pilot programs that allow a Remote Market Maker ("RMM"), an Off-Floor DPM, and an e-DPM to have up to one separate affiliated Market-Maker physically present in the trading crowds where it operates as an RMM, Off-Floor DPM, or e-DPM, respectively. (Such Market-Makers would be required to trade on a separate membership.)<sup>5</sup>

Second, CBOE proposes to amend Rules 8.3(c)(viii) and 8.4(c)(ii) to extend, until March 14, 2009, the pilot program which allows a CBOE member or member firm to have multiple

aggregation units operating as separate Market-Makers or RMMs within the same class, provided they satisfy certain criteria set forth in CBOE Rule 8.4(c)(ii)(A)–(C).<sup>6</sup>

CBOE initially proposed to extend these two pilot programs in its pending rule filing, SR-CBOE-2007-120, which filing proposes to amend CBOE rules relating Market-Makers and RMMs in various respects.<sup>7</sup> SR-CBOE-2007-120 has been published for comment in the **Federal Register**, and the comment period expires on March 21, 2008.<sup>8</sup> Because these pilot programs are scheduled to expire prior to when the comment period expires on SR-CBOE-2007-120 and the time by when the SEC may approve SR-CBOE-2007-120, CBOE determined to seek a one-year extension of the two pilot programs in this rule filing.

As noted in SR-CBOE-2007-120, CBOE believes that both of these two pilot programs have been successful, and CBOE has not experienced any negative effects with respect to the pilot programs. Accordingly, CBOE believes that the proposed rule change is designed to promote just and equitable principles of trade, and will enhance competition and liquidity in the option classes in which the market participants who participate in the pilot programs trade.

Finally, CBOE notes that these pilot programs were initially adopted, in part, due to CBOE's usage of an algorithm that allocates electronic trades, in whole or in part, in an equal percentage based on the number of market participants quoting at the best bid or offer—specifically CBOE's ultimate matching algorithm, "UMA." In January 2008, CBOE determined to utilize a pro-rata algorithm, instead of UMA, as the applicable matching algorithm in all Hybrid classes. In the event CBOE determines to utilize the UMA algorithm in the future in a Hybrid option class, CBOE commits to providing data to the Commission relating to the pilot programs which allow an RMM, an Off-Floor DPM, and an e-DPM to have up to one separate

affiliated Market-Maker physically present in the trading crowds where it operates as an RMM, Off-Floor DPM, or e-DPM, respectively.

##### **2. Statutory Basis**

CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, 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 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 has neither solicited nor received written comments on the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>13</sup>

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> Rule 19b-4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of 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 Exchange has satisfied the pre-filing requirement.

<sup>5</sup> These pilot programs previously were extended for one year until March 14, 2008. See Securities Exchange Act Release No. 55438 (March 9, 2007), 72 FR 12642 (March 16, 2007) (SR-CBOE-2007-19) (granting immediate effectiveness to SR-CBOE-2007-19). See also Securities Exchange Act Release No. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR-CBOE-2006-94) (order allowing DPM's to operate away from CBOE's trading floor).

<sup>6</sup> This pilot program previously was extended for one year until March 14, 2008. See Securities Exchange Act Release No. 55474 (March 15, 2007), 72 FR 13324 (March 21, 2007) (SR-CBOE-2007-20) (granting immediate effectiveness to SR-CBOE-2007-20).

<sup>7</sup> Among other changes, SR-CBOE-2007-120 proposes to delete reference to RMMs in CBOE's rules, amend CBOE Rules 8.3 and 8.7 relating to the appointment of Market-Makers and Market-Maker obligations, respectively, and update or delete outdated provisions in other rules, including CBOE Rule 8.3A relating to Class Quoting Limits.

<sup>8</sup> See Securities Exchange Act Release No. 57367 (February 21, 2008), 73 FR 11168 (February 29, 2008) (SR-CBOE-2007-120).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>14</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to continue the pilot programs without undue delay, which it believes is in the public interest as it will avoid inconvenience and interruption to the public. The Commission believes such waiver is consistent with the protection of investors and the public interest because it presents no new issues and will allow the pilot programs to operate without interruption. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.<sup>15</sup>

At any time within 60 days of the filing of the 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-2008-29 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2008-29. 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 such filing will also 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-2008-29 and should be submitted on or before April 15, 2008.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57524; File No. SR-Amex-2008-05]

#### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Smaller Reporting Companies

March 18, 2008.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 25, 2008, the American Stock Exchange LLC ("Amex" 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. On March 13, 2008, Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> This order provides notice of the proposed rule change and approves the proposed rule change, as amended, 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 Sections 801, 802, 803, 807, and 809 of the Amex Company Guide ("Company Guide") to conform to recent Commission amendments to rules and forms under the Securities Act of 1933<sup>4</sup> ("Securities Act") and the Exchange Act relating to smaller reporting companies.

The text of the proposed rule change is available on the Amex's Web site at <http://www.amex.com>, the Office of the Secretary, the Amex 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission recently adopted amendments to the disclosure and reporting requirements under the Securities Act and the Exchange Act in order to simplify and provide regulatory relief for smaller companies (the "Smaller Reporting Company

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 was filed to make revisions to the rule filing and to the text of the proposed rule change to reflect recently approved changes to the Amex Company Guide. See Securities Exchange Act Release No. 57393 (February 27, 2008), 73 FR 11962 (March 5, 2008) (order approving SR-Amex-2007-79). Amendment No. 1 also made other, technical corrections.

<sup>4</sup> 15 U.S.C. 77(a) *et seq.*

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>17</sup> 15 U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 240.19b-4.