

diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment.

### Applicants' Legal Analysis

1. Applicants believe that the Funds will not be "investment companies" under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Funds are deemed to be investment companies, however, applicants request an exemption under section 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections, except rule 38a-1 thereunder.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Funds will not be investment companies under section 3(a)(1)(A) because each Fund will be in the business of investing in and being a beneficial owner of Apartment Complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed "investment securities," they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the Apartment Complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Commission's release concerning two-tier real estate partnerships (the "Release").<sup>1</sup> The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section

6(c) provides that the Commission may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants represent that Units will be sold only to persons for whom investment in limited profit, essentially tax shelter, investments would be suitable. Applicants further state that the requirements for fair dealing by the Manager with the Members are included in the basic organizational documents of each Fund. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Operating Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to Accredited Investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

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

**Cathy H. Ahn,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange

Commission will hold a Closed Meeting on Thursday, July 14, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 14, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551-5400.

Dated: July 7, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64817; File No. SR-CBOE-2011-059]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Waiver of the Transaction Fee for Public Customer Orders in SPY Options Executed in Open Outcry or in the Automated Improvement Mechanism**

July 6, 2011.

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>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>1</sup> Investment Company Act Release No. 8456 (Aug. 9, 1974).