

discrimination between customers, issuers, brokers, or dealers.

The Exchange noted that the expansion of the scope of potential Users of the Exchange's co-location services increases access to the Exchange's co-location facilities and that the co-location services would be offered to these additional Users in a manner that is not unfairly discriminatory.¹¹ The Commission believes that this expansion of the scope of potential Users is consistent with the Exchange Act and should increase access to the Exchange co-location facilities by allowing additional categories of market participants to access the Exchange's co-location services.

Regarding the proposed hosting fee, the Exchange represented that it will be applied uniformly and will not unfairly discriminate between Users of co-location services, as the hosting fee will be applicable to all interested Users that provide hosting services.¹² The Exchange also represented that the hosting fee is reasonable because it is designed to defray expenses incurred or resources expended by the Exchange.¹³ In light of the Exchange's representations, the Commission believes that the hosting fee is consistent with Section 6(b)(4) of the Exchange Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-NYSEAmex-2011-81) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65972; File No. SR-CBOE-2011-125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Expand the Weeklys Program

December 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on December 13, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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

CBOE proposes to amend Rules 5.5 and 24.9 to increase the number of option classes on which Short Term Options Series ("Weekly options") may be opened in the Exchange's Short Term Option Series Program ("Weeklys Program") from 25 to 30 classes. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary, and at the Commission.

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

The purpose of this proposed rule change is to amend Rules 5.5 and 24.9 by increasing the number of option classes on which Weekly options may be opened in the Exchange's Weeklys Program.⁵ Currently, the Exchange may select up to 25 currently listed option classes on which Weekly options may be opened in the Weeklys Program. The Exchange is proposing to increase this to a total of 30 classes on which Weekly options may be opened for trading. This is a competitive filing and is based on recently approved filings submitted by The NASDAQ Stock Market LLC for the NASDAQ Options Market ("NOM") and NASDAQ OMX PHLX, Inc. ("PHLX").⁶

On November 17, 2011, CBOE amended its Weeklys Program by increasing the number of strikes that may be listed per class (from 20 to 30) that participates in the Weeklys Program,⁷ and by increasing the number of classes (from 15 to 25) that are eligible to participate in CBOE's Weeklys Program.⁸ On that same day, NOM and PHLX each increased the number of classes that are eligible to participate in their Weeklys Programs from 15 classes to 30 classes. As a result, CBOE is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to selecting only 25 classes that may participate in CBOE Weeklys Program (whereas PHLX and NOM may each select 30 classes).⁹

The Exchange is not proposing any changes to these additional Weeklys

⁵ On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63). The Weeklys Program was made permanent on April 27, 2009. See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

⁶ See Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72476 (November 23, 2011) (SR-NASDAQ-2011-138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR-PHLX-2011-131).

⁷ See Securities Exchange Act Release No. 65772 (November 17, 2011), 76 FR 72484 (November 23, 2011) (SR-CBOE-2011-086).

⁸ See Securities Exchange Act Release No. 65774 (November 17, 2011), 76 FR 72488 (November 23, 2011) (SR-CBOE-2011-108).

⁹ CBOE is permitted to list Weekly options "on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules." See CBOE Rule 5.5(d)(1) and 24.9(a)(2)(A)(i).

¹¹ See Notice, 76 FR at 67521.

¹² *Id.*

¹³ *Id.*

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Program limitations other than to increase from 25 to 30 the number of option classes that may participate in the Weeklys Program.

The Exchange notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. The Exchange believes a modest increase to the number of classes that may participate in the Weeklys Program, such as the one proposed in this rule filing, will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of classes that participate in the Weeklys Program.

The proposed increase to the number of classes eligible to participate in the Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)¹⁰ of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that expanding the Weeklys Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in a greater number of securities. The Exchange also believes that expanding the Weeklys Program will provide the investing public and other market participants with additional opportunities to hedge their investment thus allowing these investors to better manage their risk

exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because the number of series per class also remains limited, and the Exchange does not believe that the additional price points will result in fractured liquidity.

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. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing NOM and PHLX rules. CBOE believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 Commission has waived the five-day pre-filing requirement in this case.

consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.¹⁴ Therefore, the Commission designates the proposal operative upon filing.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 email to rule-comments@sec.gov. Please include File Number SR-CBOE-2011-125 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CBOE-2011-125. This file number should be included on the subject line if email 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 Web site viewing and

¹⁴ See *supra* note 6.

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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

printing 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-2011-125 and should be submitted on or before January 11, 2012.

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

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65980; File No. SR-CBOE-2011-099]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Concerning Industry Directors and the Nomination of Representative Directors

December 15, 2011.

I. Introduction

On October 21, 2011, 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 amend its Bylaws concerning Industry Directors and the nomination of Representative Directors and to make conforming changes to the CBOE Certificate of Incorporation and the Voting Agreement between CBOE and CBOE Holdings, Inc. ("CBOE Holdings"). On November 1, 2011, the Exchange submitted a technical amendment ("Amendment No. 1") to the proposed rule change.³ On

November 9, 2011, the proposed rule change was published for comment in the **Federal Register**.⁴ The Commission received no comments on the proposed rule change. This order grants approval to the rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

(a) Elimination of 30% Industry Director Requirement

Currently, the Exchange's Bylaws contain a requirement that its Board of Directors be composed of at least 30% Industry Directors.⁵ The Exchange proposed to amend its Bylaws to eliminate this requirement. In its Notice, the Exchange said that this change was intended to give it flexibility as it evaluates the composition of its Board in the future.⁶ CBOE also proposed a conforming change to amend Section 4.4 of its Bylaws to delete the clause that requires the Nominating and Governance Committee ("NGC") to consist of both Industry and Non-Industry Directors.

(b) Nomination of Representative Directors

Currently, the Exchange Bylaws state that at least 20% of CBOE's directors must be Representative Directors.⁷ As described in Section 3.2 of the Bylaws, candidates for Representative Director positions are nominated by the Industry Director Subcommittee of the NGC.⁸ In addition, CBOE Trading Permit Holders may nominate alternative candidates (in addition to those nominated by the Industry Director Subcommittee) for

approval from its Board of Directors for the Bylaw, Certificate of Incorporation, and Voting Agreement changes set forth in this proposed rule change. The Exchange also noted that it needed to obtain, but had not yet obtained, approval from CBOE Holdings, the Exchange's sole stockholder, of the changes to the Certificate of Incorporation and Voting Agreement. The Exchange stated that once these approvals were obtained, it would file a technical amendment to this proposed rule change to reflect these approvals. Amendment No. 1 reflected that the requisite approvals were obtained on November 1, 2011, and represented that no further action in connection with this proposed rule change was required. In addition, Amendment No. 1 contained the Exchange's consent to an extension of time for Commission consideration of this proposed rule change for an additional thirty-five days after November 1, 2011 (the filing date of this amendment).

⁴ See Securities Exchange Act Release No. 65682 (November 3, 2011), 76 FR 69780 ("Notice").

⁵ See Section 3.1 of the Exchange's Bylaws. The term "Industry Directors" is defined in this Section.

⁶ See Notice, *supra* note 4, at 69781.

⁷ See Section 3.1 of Exchange Bylaws. The term "Representative Directors" is defined in Section 3.2 of the Exchange Bylaws.

⁸ The Industry Director Subcommittee is composed of all of the Industry Directors serving on the NGC.

election to the Representative Director positions via a petition process. In such case, a run-off election is held, in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the CBOE Board of Directors to serve as Representative Directors.

As proposed, the Exchange Bylaws will continue to require that at least 20% of CBOE's directors must be Representative Directors. However, the Exchange proposed to amend its Bylaws to revise the nomination process for the Representative Directors. First, the Exchange proposed to eliminate the requirement in Section 3.2 that the Representative Directors must be Industry Directors to reflect the fact that the other change it proposed with respect to Industry Directors could result in the Board potentially not having Industry Directors. Second, the Exchange proposed to incorporate into the Bylaws the concept of a Representative Director Nominating Body ("RDNB").⁹ Under proposed Section 1.1(k), RDNB would mean the current Industry Director Subcommittee of the NGC if there are at least two Industry Directors on the Exchange's NGC and would mean the Trading Permit Holders Subcommittee of the Advisory Board if the NGC has fewer than two Industry Directors. The RDNB would nominate the Representative Directors in accordance with the current provisions of proposed Section 3.2 of the Bylaws, and therefore would perform the functions currently performed by the Industry Director Subcommittee.

In addition, CBOE proposed to amend Section 3.2 of the Bylaws with regard to the time period by which the Representative Director nominees are announced via circular to the Trading Permit Holders, as well as the deadline for Trading Permit Holders to nominate alternative candidates via petition, and the timing of any run-off election. CBOE proposed to amend these deadlines in order to provide it with additional flexibility to complete the process for determining nominees at an earlier point in time. The Exchange did not propose to change the timeframes between the milestones in the process. In addition, CBOE intends the new timelines to allow it to synchronize the Exchange's nomination process to that of CBOE Holdings.

The NGC will continue to be bound to accept and nominate the Representative Director nominees recommended by the RDNB, provided

⁹ See proposed new Bylaws definition 1.1(k) and the proposed changes to Sections 4.4 and 6.1 of the Bylaws.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As provided in the instructions to Form 19b-4, the Exchange noted in Item 2 of its filing that it needed to obtain, but had not yet obtained, formal