

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-66701; File No. SR-CBOE-2012-027)

March 30, 2012

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Pilot Programs Relating to FLEX Exercise Settlement Values and Minimum Value Sizes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 27, 2012, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. 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 is proposing to extend the operation of its pilot programs regarding permissible exercise settlement values and the elimination of minimum value sizes for Flexible Exchange Options (“FLEX Options”),<sup>4</sup> which pilot programs are currently set to expire on

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. See CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of

March 30, 2012, through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis. The text of the proposed rule change is available on the Exchange's website ([www.cboe.org/Legal](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 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 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

On January 28, 2010, the Exchange received approval of a rule change that established two pilot programs regarding permissible exercise settlement values and the elimination of minimum value sizes for FLEX Options. The pilot programs are currently set to expire on March 30, 2012, unless otherwise extended or made permanent.<sup>5</sup> The purpose of this rule change filing is to extend the two pilot programs through the earlier of November 2, 2012 or the

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FLEX Options on the FLEX Request for Quote ("RFQ") System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

<sup>5</sup> Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010)(SR-CBOE-2009-087)(Approval Order); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010)(SR-CBOE-2010-026)(technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); and 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011)(SR-CBOE-2011-024)(extending the pilots through March 30, 2012).

date on which the respective pilot program is approved on a permanent basis. This filing does not propose any substantive changes to the pilot programs and contemplates that all other terms of FLEX Options will remain the same.

### Background on the Pilots

#### Exercise Settlement Values Pilot for FLEX Index Options

Under Rules 24A.4, Terms of FLEX Options, and 24B.4, Terms of FLEX Options, FLEX Options may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for FLEX Index Options can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (“a.m. settlement” or “p.m. settlement,” respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.<sup>6</sup> However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expires on, or within two business days of, a third-Friday-of-the-month expiration (“Expiration Friday”).<sup>7</sup>

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<sup>6</sup> See Rules 24A.4(b)(3) and 24B.4(b)(3); see also Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993)(SR-CBOE-92-17). The Exchange has determined to limit the averaging parameters to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

<sup>7</sup> For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.<sup>8</sup> The exercise settlement values pilot is operating on a pilot basis, which pilot is currently set to expire on March 30, 2012.

#### Minimum Value Size Pilot for All FLEX Options

Prior to the initiation of the pilot eliminating the minimum value size requirements, the minimum value size requirements under Rules 24A.4(a)(4) and 24B.4(a)(5) were as follows:

- For opening transactions in any FLEX series in which there is no open interest at the time a FLEX RFQ or FLEX Order, as applicable, is submitted, the minimum value size was (i) for FLEX Equity Options, the lesser of 250 contracts or the number of contracts overlying \$1 million in the underlying securities; and (ii) for FLEX Index Options, \$10 million Underlying Equivalent Value. Under a prior pilot program (which was superseded by the minimum value size pilot program), the “250 contracts” component above had been reduced to “150 contracts.”<sup>9</sup>
- For a transaction in any currently-opened FLEX series resulting from an RFQ or from trading against the electronic book (other than FLEX Quotes responsive to a FLEX Request for Quotes and FLEX Orders submitted to rest in the electronic book), the minimum value size was (i) for FLEX Equity Options, the lesser of 100 contracts or the number of contracts overlying \$1 million in the underlying securities in the case of opening transactions, and 25 contracts in the case of closing transactions; and (ii) for FLEX Index Options, \$1 million

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<sup>8</sup> No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

<sup>9</sup> See Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008)(SR-CBOE-2006-36)(approval of rule change that, among other things, established a one-and-a-half year pilot program that reduced the minimum number of contracts required for a FLEX Equity Option opening transaction in a new series).

Underlying Equivalent Value in the case of both opening and closing transactions; or (iii) in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less.

- The minimum value size for FLEX Quotes responsive to an RFQ and FLEX Orders (undecrement size) submitted to rest in the electronic book was 25 contracts in the case of FLEX Equity Options, and \$1 million Underlying Equivalent Value in the case of FLEX Index Options, or in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less. In addition, with respect to FLEX Index Appointed Market-Makers, FLEX Quotes and FLEX Orders (undecrement size) must have been for at least \$10 million Underlying Equivalent Value or the dollar amount indicated in the Request for Quote (if applicable), whichever is less.

Under the minimum value size pilot, these minimum value size requirements were eliminated.<sup>10</sup> Like the exercise settlement values pilot mentioned above, the minimum value size pilot is operating on a pilot basis, which pilot is currently set to expire on March 30, 2012.

### Proposal

CBOE is proposing to extend the two pilot programs through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot programs have been successful and well received by its membership and the investing public for the period that they have been in operation as pilots. CBOE intends to submit one or more separate rule changes that would seek permanent approval of each pilot. The present

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<sup>10</sup> The provisions in Rules 24A.9(b) and 24B.9(c) that provide that every FLEX Quote entered by a FLEX Appointed Market-Maker or a FLEX Qualified Market-Maker shall meet or exceed the minimum value size parameters set forth in Rules 24A.4(a)(4)(iv) and 24B.4(a)(5)(iv), respectively, have not been/are not applicable during the duration of the pilot program. This is because all minimum value size requirements under Rules 24A.4(a)(4) and 24B.4(a)(5) have been eliminated under the pilot program.

extension of the pilots is being submitted so that the pilots can continue without interruption while CBOE seeks permanent approval of the programs under a separate rule change filing(s).

In support of the proposed extension of the pilot programs, and as required by the pilot programs' Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the two pilots, which detail the Exchange's experience with the two programs. Specifically, for the expiration settlement values pilot, the Exchange provided the Commission an annual report analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.<sup>11</sup> The annual report also contained information and analysis of FLEX Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. For the minimum value size pilot, the Exchange provided the Commission an annual report containing data and analysis of underlying equivalent values, open interest and trading volume, and analysis of the types of investors that initiated opening FLEX Equity and Index Options transactions (i.e., institutional, high net worth, or retail). The reports were provided to the Commission on a confidential basis.

The Exchange believes there is sufficient investor interest and demand in the pilot programs to warrant their extensions. The Exchange believes that the programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the pilot programs.

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<sup>11</sup> The annual report also contained pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

As noted above, CBOE intends to seek permanent approval of the two pilot programs under a separate rule change filing(s). In the event a pilot program is not approved on a permanent basis by November 2, 2012, the Exchange will submit an additional pilot program report covering the extended period of the respective pilot. Such report would include the details referenced above and be consistent with the pilot programs' Approval Order. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot programs' Approval Order. All such pilot reports would continue to be provided on a confidential basis. The Exchange will also continue, on a periodic basis, to gather data and conduct analysis of underlying equivalent values, open interest and trading volume and to conduct analysis of the types of investors that initiated opening FLEX Equity and Index Options transactions consistent with the terms of the minimum value size pilot as described in the pilot programs' Approval Order. As noted in the pilot programs' Approval Order, any positions established under the respective pilot program would not be impacted by the expiration of the pilot program.<sup>12</sup>

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<sup>12</sup> For example, a position in a pm-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. As another example, a 10-contract FLEX Equity Option opening position that overlies less than \$1 million in the underlying security and expires in January 2015 could be established during the minimum value size pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series. See Approval Order, supra note 6, footnotes 9 and 10.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> 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 engaging in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the pilot programs, which permit additional exercise settlement values and eliminate minimum value size requirements, would provide greater opportunities for investors to manage risk through the use of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the pilot programs. The Exchange also believes that the extension of the exercise settlement values pilot and minimum value size pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).



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 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 neither solicited nor received comments on the proposal.

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

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>17</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>18</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the pilot programs on March 30, 2012, prior to the extension of the pilot programs

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 this requirement.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

taking effect, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>19</sup> Therefore, the Commission designates the proposal operative upon filing.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-027 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-2012-027. 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

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<sup>19</sup> 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).

all comments on the Commission's Internet website (<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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 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-2012-027 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).