

number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

*Applicants' Representations:*

1. The Company, a Delaware corporation, is an externally managed, non-diversified, closed-end management investment company that has elected to be regulated as a business development company ("BDC") under the Act.<sup>1</sup> The Company's investment objective is to generate current income from the loans it makes and capital appreciation from the warrants it receives when making such loans. The Investment Adviser, a Delaware limited liability company, is the external investment adviser to the Company. The Investment Adviser is registered under the Investment Advisers Act of 1940.

2. Horizon SBIC, a Delaware limited liability company, submitted an application to the Small Business Administration ("SBA") for a license to operate as a small business investment company ("SBIC") under the Small Investment Act of 1958 ("SBIA"). The application is currently pending, and Applicants represent that they will not rely on the order until the SBIC application has been approved. Horizon SBIC is excluded from the definition of investment company by section 3(c)(7) of the Act. The Company directly owns 99% of Horizon SBIC in the form of limited partnership interests. The General Partner, which is a wholly-owned subsidiary of the Company, is the general partner of Horizon SBIC and owns 1% of Horizon SBIC in the form of a general partnership interest. The Company is the sole manager of the General Partner and owns 100% of the General Partner's equity interests.

*Applicants' Legal Analysis:*

1. The Company requests an exemption pursuant to section 6(c) of the Act from the provisions of sections 18(a) and 61(a) of the Act to permit it to adhere to a modified asset coverage requirement with respect to any direct or indirect wholly owned subsidiary of the Company (each, a "Subsidiary") that is licensed by the SBA to operate under the SBIA as a SBIC and relies on section 3(c)(7) for an exclusion from the definition of "investment company" under the Act (each, a "SBIC Subsidiary").<sup>2</sup> Applicants state that

companies operating under the SBIA, such as the SBIC Subsidiary, will be subject to the SBA's substantial regulation of permissible leverage in its capital structure.

2. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class of senior security or selling any such security of which it is the issuer unless the company complies with the asset coverage requirements set forth in that section. Section 61(a) of the Act makes section 18 applicable to BDCs, with certain modifications. Section 18(k) exempts an investment company operating as an SBIC from the asset coverage requirements for senior securities representing indebtedness that are contained in section 18(a)(1)(A) and (B).

3. Applicants state that the Company may be required to comply with the asset coverage requirements of section 18(a) (as modified by section 61(a)) on a consolidated basis because the Company may be deemed to be an indirect issuer of any class of senior security issued by Horizon SBIC or another SBIC Subsidiary. Applicants state that applying section 18(a) (as modified by section 61(a)) on a consolidated basis generally would require that the Company treat as its own all assets and any liabilities held directly either by itself, by Horizon SBIC, or by another SBIC Subsidiary. Accordingly, the Company requests an order under section 6(c) of the Act exempting the Company from the provisions of section 18(a) (as modified by section 61(a)), such that senior securities issued by each SBIC Subsidiary that would be excluded from the SBIC Subsidiary's asset coverage ratio by section 18(k) if it were itself a BDC would also be excluded from the Company's consolidated asset coverage ratio.

4. Section 6(c) of the Act, in relevant part, permits the Commission to exempt any transaction or class of transactions from any provision of the Act 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. Applicants state that the requested relief satisfies the section 6(c) standard. Applicants contend that, because the SBIC Subsidiary would be entitled to rely on section 18(k) if it was a BDC itself, there is no policy reason to deny the benefit of that exemption to the Company.

*Applicants' Condition:*

Applicants agree that the order granting the requested relief will be subject to the following condition:

The Company shall not issue or sell any senior security, and the Company shall not cause or permit Horizon SBIC or any other SBIC Subsidiary to issue or sell any senior security of which the Company, Horizon SBIC or any other SBIC Subsidiary is the issuer except to the extent permitted by section 18 (as modified for BDCs by section 61) of the Act; provided that, immediately after the issuance or sale by any of the Company, Horizon SBIC or any other SBIC Subsidiary of any such senior security, the Company, individually and on a consolidated basis, shall have the asset coverage required by section 18(a) of the Act (as modified by section 61(a)). In determining whether the Company has the asset coverage on a consolidated basis required by section 18(a) of the Act (as modified by section 61(a)), any senior securities representing indebtedness of Horizon SBIC or another SBIC Subsidiary shall not be considered senior securities and, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

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

**Elizabeth M. Murphy,**

*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, September 8, 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.

<sup>1</sup> Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) of the Act and makes available managerial assistance with respect to the issuers of such securities.

<sup>2</sup> All existing entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and condition of the order.

Commissioner Aguilar, 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, September 9, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; 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: September 1, 2011.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-22901 Filed 9-2-11; 11:15 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65241; File No. SR-CBOE-2011-080]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposal To Retire a Pilot Program and To Harmonize CBOE's Rules Regarding Listing Expirations With the Existing Rules of Other Exchanges

August 31, 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> notice is hereby given that, on August 22, 2011, the Chicago Board Options Exchange, Incorporated (the "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 Exchange has designated the proposed rule change as constituting a non-controversial 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

CBOE proposes to amend its rules to retire a pilot program and to harmonize CBOE's rules regarding listing expirations with the existing rules of other exchanges. The text of the rule proposal 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'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 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 the proposed rule change is to retire the Additional Expiration Months Pilot Program ("Pilot Program") and to amend CBOE's rules regarding listing expirations. This filing is based on the existing rules of other options exchanges.<sup>4</sup>

###### CBOE Rules Governing Listing of Expirations

Pursuant to Interpretation and Policy .03 to Rule 5.5, CBOE typically opens four expiration months for each class of options open for trading on the Exchange: The first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange

for that specific class. CBOE does not believe that Rule 5.5.03 limits the maximum number of expirations that may be listed. Rules 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expirations, which the Exchange has previously done.

Notwithstanding this position and for competitive reasons, in 2010 the Exchange established the Pilot Program pursuant to which CBOE could list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on the Exchange.<sup>5</sup> The filing to establish the Pilot Program was substantially similar in all material respects to a proposal of the International Securities Exchange, LLC ("ISE").<sup>6</sup>

After CBOE and ISE established their respective Pilot Programs, ISE submitted a filing in response to a PHLX filing regarding the listing of expirations.<sup>7</sup> In the PHLX filing, PHLX amended its rules so that it could open "at least one expiration month" for each class of standard options open for trading on PHLX.<sup>8</sup> PHLX stated in its filing that this amendment was "based directly on the recently approved rules of another options exchange, namely Chapter IV, Sections 6 and 8" of NOM. Since PHLX's rules did not hard code an upper limit on the maximum number of expirations that may be listed per class, ISE believed that PHLX (and NOM) had the ability to list expirations that ISE would not be able to currently list under its rules. As a result, ISE amended its rules by adding new Supplementary Material .10 to ISE Rule 504 and Supplementary Material to .04 to ISE Rule 2009 to permit ISE to list additional expiration months on options classes opened for trading on ISE if such expiration months are opened for trading on at least one other national securities exchange.<sup>9</sup>

Because CBOE had adopted a Pilot Program similar to ISE's, CBOE adopted

<sup>5</sup> See Securities Exchange Act Release No. 63185 (October 27, 2010), 75 FR 67419 (November 2, 2010) (SR-CBOE-2010-97). As stated in footnote 5 at page 67419, CBOE does not believe that Rule 5.5.03 limits the maximum number of expiration months that may be listed. Rule 5.5(a) and 5.5(c) provide CBOE with the flexibility to add additional expiration months, which the Exchange has previously done. By establishing the Additional Series Pilot Program, CBOE did not limit its existing ability.

<sup>6</sup> See Securities Exchange Act Release No. 63104 (October 14, 2010), 75 FR 64773 (October 20, 2010) (SR-ISE-2010-91). Unlike CBOE's Rule 5.5, ISE believed that ISE Rule 504(e) hard coded an upper limit on the maximum number of expirations that may be listed per class.

<sup>7</sup> See Securities Exchange Act Release No. 64343 (April 26, 2011), 76 FR 24546 (May 2, 2011) (SR-ISE-2011-26).

<sup>8</sup> See *id.* at 24546-24547.

<sup>9</sup> See *id.* at 24547.

<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> See NASDAQ Options Market ("NOM") Chapter IV, Section 6 (Series of Options Contracts Option for Trading) and NASDAQ OMX PHLX, LLC ("PHLX") Rule 1012 (Series of Options Listed for Trading). See also Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and NASDAQ-2007-080) and 63700 (January 11, 2011) 76 FR 2931 (January 18, 2011) (SR-PHLX-2011-04). The PHLX filing was based on NOM's existing rules.