

matched automatically with quotes on the other side of the market according to time priority, and executed immediately.⁴ Because there is no trading floor and all orders are received and managed electronically, all orders on BOX are executed with matching contra orders within a fraction of a second after the matching quote is received.⁵ Any backlog in processing orders would be a result of a systems malfunction rather than from fast market conditions. Should any such backlog occur, the Exchange would halt trading on BOX until the issue could be resolved.⁶ Accordingly, the Exchange believes Chapter V, Section 13 is unnecessary in the BOX Rules and should be removed.

In addition to removing Chapter V, Section 13, the proposed rule change would also remove certain rules related to fast markets. The Exchange proposes to modify Chapter VI, Section 6(a) to remove a fast market rule exception to the general rule that all Market Maker bids or offers must be of a size of at least ten (10) contracts. The Exchange also proposes to amend Section 6(c). First, Section 6(c)(ii)(2) will be removed to reflect the previously described removal of Chapter V, Section 13. Second, references to Rule 11Ac1-1 will be replaced with Rule 602 of Regulation NMS under the Exchange Act ("Rule 602"). With the implementation of Regulation NMS, Rule 11Ac1-1, in pertinent part, has been incorporated into Rule 602. The proposed rule change would also modify Chapter XIV (Index Rules), Section 9(b) (Trading Sessions) by eliminating the declaration of a fast market as a factor in determining whether to delay the opening of the index options market.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ 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, to remove impediments to and perfect the

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposal will align the BOX Rules to more accurately reflect the circumstances surrounding trading on an electronic exchange and promote transparency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in 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 comments on the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 Exchange 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. Please include File Number SR-BX-2009-041 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-BX-2009-041. 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 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-BX-2009-041 and should be submitted on or before September 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-19732 Filed 8-17-09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60476; File No. SR-CBOE-2009-056]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Hybrid Matching Algorithms

August 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31,

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ See BOX Trading Rules, Chapter V, Section 16.

⁵ Subject to certain exceptions written into the BOX Trading Rules, such as Directed Orders (Chapter VI, Section 5(b)-(c)), and other exposure periods (See generally Chapter V, Section 16 (Execution and Price/Time Priority)).

⁶ See BOX Trading Rules, Chapter V, Section 10(a).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

2009, 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, II and III below, which Items have been substantially 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

The Exchange is proposing to amend Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, and 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, to include an additional priority overlay. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of each rule currently provides a "menu" of

matching algorithms to choose from when executing incoming electronic orders. The menu format allows the Exchange to utilize different matching algorithms on a class-by-class basis. The menu includes, among other choices, the ultimate matching algorithm ("UMA"), as well as price-time and pro-rata priority matching algorithms with additional priority overlays. The priority overlays for price-time and pro-rata currently include: public customer priority for public customer orders resting on the Hybrid System, participation entitlements for certain qualifying market-makers, and a market turner priority for participants that are first to improve CBOE's disseminated quote. These overlays are optional.

The purpose of this rule filing is to adopt an additional priority overlay for small orders that can be applied to each of the three matching algorithms. In particular, if the small order priority overlay is in effect for an option class, then the following would apply:

- Orders for five (5) contracts or fewer will be executed first by the Designated Primary Market-Maker ("DPM") or Lead Market-Maker ("LMM"), as applicable, that is appointed to the option class; provided however, that on a quarterly basis the Exchange will evaluate what percentage of the volume executed on the Exchange (excluding volume resulting from the execution of orders in AIM (see CBOE Rule 6.74A, *Automated Improvement Mechanism* ("AIM"))) is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

- This procedure only applies to the allocation of executions among non-customer orders and market maker quotes existing in the EBook at the time the order is received by the Exchange. No market participant is allocated any portion of an execution unless it has an existing interest at the execution price. Moreover, no market participant can execute a greater number of contracts than is associated with the price of its existing interest. Accordingly, the small order preference contained in this allocation procedure is not a guarantee; the DPM or LMM, as applicable, (i) must be quoting at the execution price to receive an allocation of any size, and (ii) cannot execute a greater number of contracts than the size that is associated with its quote.

- If a Preferred Market-Maker (see CBOE Rule 8.13, *Preferred Market-Maker Program*) is not quoting at a price equal to the national best bid or offer ("NBBO") at the time a preferred order is received, the allocation procedure for

small orders described above shall be applied to the execution of the preferred order. If a Preferred Market Maker is quoting at the NBBO at the time the preferred order is received, the allocation procedure for all other sized orders, shall be applied to the execution of the preferred order (e.g., if the default matching algorithm is pro-rata with a public customer and participation entitlement overlay, the order will execute first against any public customer orders, then the Preferred Market-Maker would receive its participation entitlement, then the remaining balance would be allocated on a pro-rata basis).

- The small order priority overlay will only be applicable to automatic executions and will not be applicable to any electronic auctions.⁵

Lastly, it should be noted that, like the existing priority overlays, the small order priority overlay is optional. All determinations would be set forth in a regulatory circular.

According to the Exchange, because DPMs and LMMs have unique obligations to the CBOE market,⁶ they are provided with certain participation rights. Under the current rule, if the DPM or LMM, as applicable, is one of the participants with a quote at the best price, the participation entitlement is generally equal to 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange, 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange, and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.⁷ The Exchange is now seeking to expand these programs to make available an allocation procedure

⁵ In addition to AIM, CBOE has various electronic auctions that are described under Rules 6.13A, *Simple Auction Liaison* ("SAL"), 6.14, *Hybrid Agency Liaison* (HAL), and 6.74B, *Solicitation Auction Mechanism* ("AIM SAM"). Each of these auctions generally allocates executions pursuant to the matching algorithm in effect for the options class with certain exceptions noted in the respective rules.

⁶ For example DPMs must, among other things, (i) provide continuous electronic quotes in at least 90% of the series of each multiply-listed option class allocated to it and in 100% of the series of each singly-listed option class allocated to it, and assure that its disseminated market quotes are accurate; (ii) comply with bid/ask differential requirements; (iii) ensure that a trading rotation is initiated promptly following the opening of the underlying security (or promptly after 8:30 am Central Time in an index class) in 100% of the series of each allocated class by entering opening quotes as necessary. See CBOE Rule 8.85, *DPM Obligations*; see also CBOE Rule 8.15A, *Lead Market-Makers in Hybrid Classes*.

⁷ See CBOE Rules 6.45A(a)(i)(C) and (ii)(2), 6.45B(a)(i)(2) and (ii)(C), 8.15B, *Participation Entitlement for LMMs*, and 8.87, *Participation Entitlement of DPMs and e-DPMs*.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

that provides that the DPM or LMM, as applicable, has precedence to execute orders of five (5) contracts or fewer. The Exchange believes that this small order priority overlay will not necessarily result in a significant portion of the Exchange's volume being executed by the DPM or LMM, as applicable. As stated above, the DPM or LMM would execute against such orders only if it is quoting at the best price, and only for the number of contracts associated with its quotation. Nevertheless, the Exchange will evaluate what percentage of the volume executed on the Exchange is comprised of orders for five (5) contracts or fewer executed by DPMs and LMMs, and will reduce the size of the orders included in this provision if such percentage is over forty percent (40%).

The small order priority overlay described above is part of CBOE's careful balancing of the rewards and obligations that pertain to each of the Exchange's classes of memberships. This balancing is part of the overall market structure that is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth. The Exchange believes the proposed small order priority overlay, which includes participation rights for DPMs and LMMs only when they are quoting at the best price, strikes the appropriate balance within its market and maximizes the benefits of an electronic market for all participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act⁸ and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, as described further above, the Exchange believes the proposed rule change is part of the balancing of CBOE's overall

market structure, which is designed to encourage vigorous price competition between Market-Makers on the Exchange, as well as maximize the benefits of price competition resulting from the entry of customer and non-customer orders, while encouraging participants to provide market depth.

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.

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 foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of such 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. Please include File Number SR-CBOE-2009-056 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-2009-056. 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 also will be available for inspection and copying at the principal office of the 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-2009-056 and should be submitted on or before September 8, 2009.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 Commission deems this requirement to have been met.

⁸ 15 U.S.C. 78s(b)(1).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60478; File No. SR-NYSE-2009-81]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until August 21, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions If They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

August 11, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on August 10, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. 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 proposes to extend until August 21, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. The text of the proposed rule change is available at the Exchange,

the Commission's Public Reference Room, and <http://www.nyse.com>.

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 Exchange proposes to extend until August 21, 2009, the operation of interim NYSE Rule 128 ("Clearly Erroneous Executions for NYSE Equities") which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,⁴ the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.⁵ On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008⁶ in order to review the

provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. On October 1, 2008,⁷ the Exchange filed with the SEC a further request to extend the operation of interim Rule 128 until January 9, 2009 in order to consider integrating similar standards into the amendment to Rule 128. On January 9, 2009,⁸ the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until March 9, 2009, indicating that the Exchange was still in the process of reviewing the Nasdaq rule with a view towards incorporating certain provisions into the amendment of interim Rule 128.

On February 10, 2009, NYSE Arca submitted a proposal to the SEC to amend its clearly erroneous rule. The NYSE Arca proposed rule differed in certain respects from the Nasdaq clearly erroneous rule. On March 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until June 9, 2009⁹ to finalize review of NYSE Arca's proposed amended CEE rule, which included market wide CEE initiatives, to determine if it was appropriate to incorporate such provisions into the Rule 128 amendment.

Thereafter, on April 24, 2009, NYSE Arca filed a revised rule change with the Commission to amend its clearly erroneous rule (NYSE Arca Rule 7.10).¹⁰ The Exchange was in the process of finalizing its review of NYSE Arca's revised CEE rule change, which also included market wide CEE initiatives, to determine if it was appropriate to incorporate all such provisions into NYSE's interim Rule 128 amendment. On June 9, 2009, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until July 15, 2009¹¹ to finalize review of NYSE Arca's proposed amended CEE rule. On July 15, 2009¹² the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until August 1, 2009 to finalize review of

⁷ See Securities Exchange Act Release No. 58732 (October 3, 2008), 73 FR 61183 (October 15, 2008) (SR-NYSE-2008-99).

⁸ See Securities Exchange Act Release No. 59255 (January 15, 2009) 74 FR 4496 (January 26, 2009) (SR-NYSE-2009-02).

⁹ See Securities Exchange Act Release No. 59581 (March 9, 2009) 74 FR 12431 (March 24, 2009) (SR-NYSE-2009-26).

¹⁰ See Securities Exchange Act Release No. 59838 (April 28, 2009) 74 FR 20767 (May 5, 2009) (SR-NYSEArca-2009-36) (See NYSE Arca Rule 7.10).

¹¹ See Securities Exchange Act Release No. 60131 (June 17, 2009) 74 FR 30196 (June 24, 2009) (SR-NYSEArca-2009-57). [sic]

¹² See Securities Exchange Act Release No. 60312 (July 15, 2009) 74 FR 36298 (July 22, 2009) (SR-NYSE-2009-70).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR-NYSE-2008-09).

⁵ See Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR-NASDAQ-2007-001).

⁶ See Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR-NYSE-2008-63).