

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. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay as well as the five business-day pre-filing requirement so that the benefits of this functionality to NASDAQ OMX BX market participants expected from the rule change can be implemented on August 3, 2009, when the Exchange expects to have the technological changes in place to support the proposed rule change. The Commission believes that waiving the 30-day operative delay<sup>10</sup> to make this functionality available without delay is consistent with the protection of investors and the public interest.<sup>11</sup> The Commission notes that the proposal is similar to rules of other exchanges and thus does not raise any novel regulatory issues.<sup>12</sup> The Commission designates the proposal operative upon filing to allow the Exchange to implement the functionality without delay.

At any time within 60 days of the filing of the 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](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2009-042 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-2009-042. 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 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-2009-042 and should be submitted on or before August 20, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60381; File No. SR-CBOE-2009-038]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to the Complex Order Book

July 24, 2009.

#### I. Introduction

On June 16, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposal to amend CBOE Rule 6.53C(c) to modify the order and quote types that market participants may enter to trade against orders resting in the complex order book ("COB"). The proposed rule change was published for comment in the *Federal Register* on June 24, 2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

A market participant, as defined in CBOE Rule 6.45A or CBOE Rule 6.45B, may submit orders or quotes to trade against orders in the COB.<sup>4</sup> However, under CBOE Rule 6.53C(c)(i), the CBOE may determine the options classes and the complex order origin types (*i.e.*, non-broker-dealer public customer, broker-dealers that are not Market Makers or specialists on an options exchange, and/or Market Makers or specialists on an options exchange) that are eligible to be entered into (*i.e.*, rest in) the COB, and whether such orders may route directly to the COB and/or from PAR to the COB.

Currently, a market participant whose quotes or orders are not eligible to rest in the COB, but that wishes to trade against orders resting in the COB, may enter limit orders using an immediate-or-cancel ("IOC") contingency to avoid resting its orders in the COB. If such a market participant does not use an IOC contingency, it must cancel the unexecuted balance of its limit order or quote if the limit order or quote is partially filled by trading against an order resting in the COB.

<sup>10</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).

<sup>11</sup> The Commission is also waiving the five business-day pre-filing requirement.

<sup>12</sup> See BATS Exchange Rule 11.9(f) and NYSE Arca Equities Rule 7.31(qq).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 60130 (June 17, 2009), 74 FR 30194.

<sup>4</sup> See CBOE Rule 6.53C(c)(ii)(3).

The CBOE proposes to amend CBOE Rule 6.53C(c)(ii)(3) to require market participants whose quotes or orders are not eligible to rest in the COB to enter only IOC orders and such other order or quote types as the CBOE may determine on a class-by-class basis. Quote types that are not eligible to rest in or trade against the COB will be cancelled automatically.<sup>5</sup> According to the CBOE, Market Makers whose quotes are not eligible to rest in or trade against the COB would be able, at a minimum, to submit IOC orders to trade against the COB.<sup>6</sup>

Finally, the CBOE proposes to amend CBOE Rule 6.53C(c)(i) to clarify that an order entry firm whose complex orders are not eligible to route to the COB could route its orders to the firm's booth, as well as to PAR.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> which requires, in part, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. CBOE Rule 6.53C(c)(i) currently allows the Exchange to determine the class of entities that may enter orders to rest in the COB. By requiring market participants who are not eligible to rest orders or quotes in the COB to enter only IOC orders and such other order or quote types as the CBOE determines, and by providing for the automatic cancellation of quote types that are not eligible to rest in or trade against the COB, the proposal could help to prevent the entry of ineligible orders and quote types in the COB. The Commission notes that Market Makers that are not eligible to enter quotes to rest in or trade against the COB would be permitted, at a minimum, to enter IOC orders to trade against orders in the COB. Finally, the Commission believes that the

amendment to CBOE Rule 6.53C(c)(i) to indicate that an order entry firm may route its orders to the firm's booth, as well as to PAR, should clarify the operation of CBOE Rule 6.53C.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-CBOE-2009-038) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60382; File No. SR-ISE-2009-45]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to Rule 312 in Connection With the Purchase of Equity Interests by International Securities Exchange Holdings, Inc. in Optifreeze, LLC

July 24, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 23, 2009, the International Securities Exchange, LLC (the "Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 submitting this proposed rule change (the "Proposed Rule Change") to the Commission to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) in connection with the capital contribution by its parent company, International Securities Exchange Holdings, Inc. ("ISE Holdings"), in Optifreeze LLC, a Delaware Limited

Liability Company ("Optifreeze"). The text of the proposed rule change is available on the Exchange's Web site <http://www.ise.com>, at the principal office of the Exchange, 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 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

On June 5, 2009, ISE Holdings entered into a Membership Purchase Agreement ("Purchase Agreement") with Optifreeze. Pursuant to the Purchase Agreement, ISE Holdings contributed cash to the capital of Optifreeze in exchange for membership interests representing on the date of such issuance 8.57% of the aggregate membership interests in Optifreeze ("Purchased Interests"). ISE Holdings and its subsidiaries and affiliates do not have any voting or other "control" arrangements with any of the other members of Optifreeze relating to its investment in Optifreeze. The purchase by ISE Holdings of the Purchased Interests (the "Transaction") was consummated on June 5, 2009. As a result of such purchase, ISE Holdings became a member of Optifreeze pursuant to the Third Amended and Restated Operating Agreement of Optifreeze dated June 5, 2009, and is entitled to appoint one representative to the Optifreeze Board of Directors. Ballista Securities LLC ("Ballista Securities"), a wholly-owned subsidiary of Optifreeze, is an electronic access member ("EAM") of the Exchange.

In connection with the capital contribution by ISE Holdings in Optifreeze, the Exchange proposes to amend ISE Rule 312 (Limitation on Affiliation between the Exchange and Members) to reflect ISE Holdings' ownership interest in Ballista Securities, and to set forth certain limitations and obligations relating to such relationship.

<sup>5</sup> See CBOE Rule 6.53C(c)(ii)(3).

<sup>6</sup> Only Market Makers may enter quotes.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

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