

lottery process when it allocates the additional space in the next several days. CBOE notes that its proposed rule change is a copy of its current lottery process applicable to the allocation of ITPs, which the Commission previously approved, and would apply that methodology in the context of expanding its SPX trading crowd.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> In particular, the Commission believes that waiver of the operative delay will promote competition and efficiency by providing CBOE with the option to utilize its new lottery process to manage the expansion of the SPX trading crowd, which it anticipates allocating in the next several days. Waiving the operative delay will enable CBOE to use either this new process or the historically-utilized first in time process as it deems appropriate, and will enable CBOE to allocate the new space promptly through a fair and objective methodology. For these reasons, the Commission designates the proposed rule change as operative upon filing.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-116 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-1090. All submissions should refer to File Number SR-CBOE-2008-116. 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 am and 3 pm. 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 No. SR-CBOE-2008-116 and should be submitted on or before December 17, 2008.

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

**Florence E. Harmon,**

*Acting Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58980; File No. SR-CBOE-2008-61]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Exchange Rule 9.11 Relating to Confirmations to Customers

November 19, 2008.

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 November 10, 2008, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), proposes to amend CBOE Rule 9.11—Confirmation to Customers to clarify that written confirmations relating to options transactions do not need to specify the exchange or exchanges on which an option contract is executed. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/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 and is set forth in sections (A), (B), and (C) below.

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

##### 1. Purpose

The proposed amendment to Exchange Rule 9.11 clarifies that a member organization is not required to disclose the market on which an options transaction is executed on a written confirmation furnished to a customer of a member organization. The member organization will continue to furnish a written confirmation that contains a description of each transaction in the option contracts, the underlying security type, option expiration month, exercise price, number of option

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's effect on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

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

contracts, premium, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction. The confirmation shall also by appropriate symbols distinguish between Exchange transactions and other transactions in options contracts.

Prior to August 1999, an options class was typically listed on only one options exchange. In August 1999, the options exchanges began to multiply-list options classes that were previously listed on only one exchange. In October 1999, the Commission stated that it believed a linkage among options markets would benefit investors by increasing competition among markets (and market participants) to provide the best execution of customer orders.<sup>5</sup> Subsequently, the Commission directed the options exchanges to act jointly in discussing, developing, and submitting for Commission approval an intermarket linkage plan for multiply-traded options. On July 28, 2000, the Commission approved the Plan for the Purpose of Creating and Operating an Intermarket Options Market Linkage (the "Options Linkage Plan" or "Linkage Plan") submitted by the CBOE, the American Stock Exchange LLC ("Amex") and the International Securities Exchange, Inc.<sup>6</sup> The Philadelphia Stock Exchange, Inc., and the Pacific Stock Exchange agreed to participate in the Options Linkage Plan in November 2000.<sup>7</sup> As a result of the introduction of multiply listed options and the implementation of the Linkage Plan, the contracts in a customer options order could be executed on more than one options exchange and the significance of the options exchange or exchanges that execute a particular options transaction has diminished significantly.

Under the duty of best execution, CBOE members are required to exercise diligence to obtain the best price when routing customer options orders for execution. The Exchange, as well as the other members of the Options Self Regulatory Council (the "OSRC"),<sup>8</sup> believes that in light of the existing best execution and disclosure requirements, the usefulness of including on an

options confirmation the name of the options exchange or exchanges on which an options transaction was effected does not outweigh the operational difficulties of capturing the information given the multiple trading of options and the application of the Options Linkage Plan industry-wide. Consequently, the proposal would amend Exchange Rule 9.11 to make clear that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts were executed.

The Exchange has worked with the other members of the OSRC in developing these proposed rule changes. Also, the Commission has approved an Amex proposal to clarify that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options contracts are executed.<sup>9</sup> Each additional member of the OSRC is expected to similarly file rule proposals to either delete the requirement that the written options confirmation disclose the name of the options exchange or exchanges on which the options transaction was executed, or clarify that no such requirement exists.

The Exchange believes that with the expansion of multi-listing of options and the introduction of new options exchanges, it has become operationally inefficient to require the disclosure of the market center on which an order was executed on the confirmation. As an example, a customer may have a single option order containing numerous option contracts executed on multiple exchanges. Under these conditions, it would be inefficient for the member organization to be required to identify the exchange symbol for each contract executed on that customer's order.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>11</sup> of the Act in particular in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, 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 by clarifying the Exchange's options confirmation procedure rules to better reflect the realities of the modern options market.

### 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

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 forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.<sup>14</sup> However, Rule 19b-4(f)(6)(iii)<sup>15</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 requested that the Commission waive the 30-day operative delay.

The proposed rule change is substantially similar to an Amex rule that provides that written confirmations relating to options transactions are not required to specify the options exchange or exchanges on which such options were executed.<sup>16</sup> The Exchange believes that this proposed rule change does not raise any new, unique or substantive issues from those raised in the approved Amex filing. The Exchange also believes that acceleration of the operative date is consistent with the protection of investors and the public interest.<sup>17</sup>

<sup>5</sup> See Exchange Act Release No. 42029 (Oct. 19, 1999), 64 FR 57674 (Oct. 26, 1999).

<sup>6</sup> See Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (Aug. 4, 2000).

<sup>7</sup> See Exchange Act Release Nos. 43573 (Nov. 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (Nov. 16, 2000), 65 FR 70851 (Nov. 28, 2000) (approval order).

<sup>8</sup> The OSRC consists of the options exchanges and the Financial Industry Regulatory Authority, Inc. ("FINRA").

<sup>9</sup> See Exchange Act Release No. 58814 (Oct. 20, 2008), 73 FR 63527 (Oct. 24, 2008) (SR-Amex-2008-53).

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 9, and related text.

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Lastly, the Exchange provided 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 days prior to the date of the filing of the proposed rule change as required by Rule 19b-4(f)(6).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2008-61 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CBOE-2008-61. 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-2008-61 and should be submitted on or before December 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**  
*Acting Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58974; File No. SR-NASDAQ-2008-087]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The NASDAQ Stock Market LLC Regarding a Clerical Change to Nasdaq Rules

November 18, 2008.

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 November 12, 2008, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq proposes to make a clerical correction to the Nasdaq rulebook under Rule 19b-4(f)(3) 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 the Substance of the Proposed Rule Change

Nasdaq proposes to make clerical corrections to the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site (<http://www.complinet.com/nasdaq>), at Nasdaq's principal office, and at the Commission's Public Reference Room.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 17 C.F.R. 240.19b-4(f)(3).

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq proposes to make a clerical correction to the Nasdaq rulebook. Specifically, Nasdaq proposes to renumber Nasdaq Rule 7039 to Nasdaq Rule 7046, and also to renumber Nasdaq Rule 7050 to Nasdaq Rule 7045. Nasdaq is renumbering these rules because Nasdaq has filed other proposed rule changes that necessitate a renumbering. Nasdaq is making no changes to Rules 7039 and 7050, other than to change their numbers to 7046 and 7045.

###### 2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>4</sup> in general, and with Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that the proposal 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 regulating, clearing, settling, processing information with respect to, and 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. The proposed rule change makes a minor clerical change to renumber an existing Nasdaq rule.

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

Nasdaq 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, as amended.

<sup>4</sup> 15 U.S.C. 78f.

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