

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-56 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-NYSE-2009-56. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also 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-NYSE-2009-56 and should be submitted on or before July 8, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60093; File No. SR-CBOE-2009-036]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on June 4, 2009, Chicago Board Options Exchange, Incorporated 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 CBOE. 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to the Options Regulatory Fee. 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, CBOE 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. CBOE 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, Proposed Rule Change

###### 1. Purpose

The Exchange charges an Options Regulatory Fee ("ORF") of \$.006 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing

Corporation ("OCC") in the customer range, excluding Options Intermarket Linkage Plan ("Linkage") orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.<sup>2</sup>

The Exchange has reevaluated the current amount of the ORF in light of better than expected trading volume so far in 2009. The Exchange stated in the Original Filing that the ORF is set at a rate that the Exchange anticipates will approximately replace the amount of revenue that would be lost from the elimination of RR Fees.<sup>3</sup> The Exchange has determined that the ORF would generate revenue in excess of the amount of annual revenue the Exchange used to receive from RR fees if the ORF remained at \$.006 per contract for all of 2009. Accordingly, the Exchange proposes to reduce the ORF from \$.006 per contract to \$.004 per contract. The fee change would become operative on August 1, 2009, in order to give members time to implement the revised fee.

The Exchange will continue to monitor the amount of revenue raised by the ORF to ensure that it is meeting its revenue benchmarks and may make other adjustments to the fee in the future as necessary. The Exchange anticipates providing notice of any ORF changes as far in advance of the effective date of the new rate as possible.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> in general, and furthers

<sup>2</sup> The ORF was established in October 2008 as a replacement of Registered Representative ("RR") fees. See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) ("Original Filing"). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. See Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from \$.0045 per contract to \$.006 per contract. See Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009).

<sup>3</sup> Original Filing at 63745.

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

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

the objectives of Section 6(b)(4)<sup>5</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the revised ORF is reasonable because it is expected to approximately equal the annual revenue the Exchange used to receive from RR Fees.

#### *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 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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder. 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 proposal 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 No. SR-CBOE-2009-036 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 No. SR-CBOE-2009-036. 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 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 No. SR-CBOE-2009-036 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-60094; File No. SR-NASDAQ-2009-049]**

#### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the NASDAQ Listing Rules To Reflect Changes to the Rules of the Commission**

June 10, 2009.

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 May 20, 2009, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. 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**

Nasdaq proposes a rule change to modify Nasdaq's Listing Rules to reflect recent changes to Commission rules. The text of the proposed rule change is available from Nasdaq's Web site at <http://nasdaq.cchwallstreet.com>, at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these 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 Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

Nasdaq proposes to conform its rules to reflect two recent changes to the rules of the Commission. On September 23, 2008, the Commission adopted changes to Form 20-F<sup>3</sup> that, beginning with the report filed for the first fiscal year ended on or after December 15, 2008, requires companies that file an annual report on Form 20-F to discuss significant differences in their corporate governance practices compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards.<sup>4</sup> In contrast, Nasdaq Rule 5615(a)(3) allows foreign private issuers to disclose their non-conforming corporate governance practices in their annual reports or registration statements filed with the Commission or on their Web sites. As a consequence, Nasdaq's requirements regarding annual report

<sup>3</sup> 17 CFR 249.220f.

<sup>4</sup> Securities Exchange Act Release No. 58620 (September 23, 2008), 73 FR 58300 (October 6, 2008). This disclosure is required in Item 16G of the Form 20-F.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<sup>8</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.