

assigned one burden hour for administrative convenience. Regulation S-B will expire on March 15, 2009.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: February 4, 2009.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2851 Filed 2-10-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59361, File No. 4-518]

### Joint Industry Plan; Order Approving Amendment To Add the BATS Exchange, Inc. as Participant to National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS

February 5, 2009.

#### I. Introduction

On September 19, 2008, the BATS Exchange, Inc. ("BATS" or "BATS Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") in accordance with Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 of Regulation NMS,<sup>2</sup> a proposed amendment to the national market system plan establishing procedures under Rule 605 of Regulation NMS ("Joint-SRO Plan" or "Plan").<sup>3</sup> Under

the proposed amendment, BATS would be added as a participant to the Joint-SRO Plan. Notice of filing and an order granting temporary effectiveness of the proposal through February 5, 2009 were published in the **Federal Register** on October 8, 2008.<sup>4</sup> The Commission did not receive any comments on the proposed amendment. This order approves the amendment on a permanent basis.

#### II. Discussion

The Joint-SRO Plan establishes procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS, available to the public in a uniform, readily accessible, and usable electronic format. The current participants to the Joint-SRO Plan are the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc. (n/k/a National Stock Exchange<sup>SM</sup>), International Securities Exchange LLC, The NASDAQ Stock Market LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC), Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.), and Philadelphia Stock Exchange, Inc. The proposed amendment would add BATS as a participant to the Joint-SRO Plan.

Section III(b) of the Joint-SRO Plan provides that a national securities exchange or national securities association may become a party to the Plan by: (i) Executing a copy of the Plan, as then in effect (with the only changes being the addition of the new participant's name in Section II(a) of the Plan and the new participant's single-digit code in Section VI(a)(1) of the Plan) and (ii) submitting such executed plan to the Commission for approval. BATS submitted a signed copy of the Joint-SRO Plan to the Commission in accordance with the procedures set forth in the Plan regarding new participants.

The Commission finds that the amendment to the Joint-SRO Plan is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment is consistent with the requirements of Section 11A of the Act,<sup>5</sup> and Rule 608 of Regulation NMS.<sup>6</sup> The

Plan established appropriate procedures for market centers to follow in making their monthly reports required pursuant to Rule 605 of Regulation NMS available to the public in a uniform, readily accessible, and usable electronic format. The amendment to include BATS as a participant in the Joint-SRO Plan should contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system by facilitating the uniform public disclosure of order execution information by all market centers. The Commission believes that it is necessary and appropriate in the public interest, for the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system to allow BATS to become a participant in the Joint-SRO Plan. The Commission finds, therefore, that approving the amendment to the Joint-SRO Plan is appropriate and consistent with Section 11A of the Act.<sup>7</sup>

#### III. Conclusion

*It is therefore ordered*, pursuant to Section 11A(a)(3)(B) of the Act<sup>8</sup> and Rule 608 of Regulation NMS,<sup>9</sup> that the amendment to the Joint-SRO Plan to add BATS as a participant is approved and BATS is authorized to act jointly with the other participants to the Joint-SRO Plan in planning, developing, operating, or regulating the Plan as a means of facilitating a national market system.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-2857 Filed 2-10-09; 8:45 am]

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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, February 12, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain

<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> 17 CFR 242.605. On April 12, 2001, the Commission approved a national market system plan for the purpose of establishing procedures for market centers to follow in making their monthly reports available to the public under Rule 11Ac1-5 under the Act (n/k/a Rule 605 of Regulation NMS). See Securities Exchange Act Release No.

44177 (April 12, 2001), 66 FR 19814 (April 17, 2001).

<sup>4</sup> See Securities Exchange Act Release No. 58695 (September 30, 2008), 73 FR 58993.

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> 15 U.S.C. 78k-1.

<sup>8</sup> 15 U.S.C. 78k-1(a)(3)(B).

<sup>9</sup> 17 CFR 242.608.

<sup>10</sup> 17 CFR 200.30-3(a)(29).

staff members who have an interest in the matters also may be present.

The Acting 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. 552(b)(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.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Thursday, February 12, 2009 will be:

Formal orders of investigation; Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

An adjudicatory matter; 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: February 5, 2009.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-2848 Filed 2-10-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59357; File No. SR-CBOE-2009-005]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

February 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 30, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") 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 the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02") and (ii) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. 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'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, 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. The 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, the Proposed Rule Change

###### 1. Purpose

The current access fee for Temporary Members under Rule 3.19.02<sup>2</sup> and the current access fee for ITP holders under Rule 3.27<sup>3</sup> are both \$10,175 per month. Both access fees are currently set at the indicative lease rate (as defined below) for January 2009. The Exchange proposes to adjust both access fees effective at the beginning of February 2009 to be equal to the indicative lease rate for February 2009 (which is \$10,471). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access

<sup>2</sup> See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

<sup>3</sup> See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR-CBOE-2008-40) for a description of the Interim Trading Permits under Rule 3.27.

fee to be \$10,471 per month commencing on February 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate<sup>4</sup> of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.<sup>5</sup> The Exchange determined the indicative lease rate for February 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of February 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of January 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of February 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-12 with respect to the original Temporary Member access fee.<sup>6</sup> Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-77 with respect to the original ITP access fee.<sup>7</sup>

<sup>4</sup> Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

<sup>5</sup> The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

<sup>6</sup> See Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE-2008-12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

<sup>7</sup> See Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR-CBOE-2008-77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

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