

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 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-NYSE-2009-35 and should be submitted on or before April 28, 2009.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59675; File No. SR-OCC-2009-05]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Flexibly Structured Options

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on March 19, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to

Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4) thereunder<sup>3</sup> so that the proposal was 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

The proposed rule change will amend OCC's By-Laws in order to clear and settle flexibly structured options traded on the Chicago Board Options Exchange ("CBOE").

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

In its filing with the Commission, OCC 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. OCC 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

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, options exchanges generally do not permit flexibly structured options to be customized to expire on the same expiration date as any series of non-flexibly structured options that are listed for trading.<sup>4</sup> However, pursuant to a recent CBOE rule change, CBOE eliminated this restriction so that the parties to a flexibly structured option transaction can choose an expiration date that coincides with that of a series of non-flexibly structured options.<sup>5</sup> As a result of eliminating the expiration date restriction, it is now possible for new

flexibly structured options to become fungible with a series of non-flexibly structured options that are subsequently listed for trading. Thus, CBOE now permits flexibly structured options to be traded before identical non-flexibly structured options are listed for trading. Once an option series is listed on CBOE for trading as a non-flexibly structured option series, (i) all existing flexibly structured options having identical terms as the non-flexibly structured option series will be fully fungible with options in such series and (ii) any further trading in such series would be as non-flexibly structured options. As an exception to the foregoing, flexibly structured options will not become fungible with subsequently-introduced non-flexibly structured quarterly options or short term options.

In order to clear and settle flexibly structured options traded on CBOE in a manner that is consistent with CBOE's rules, OCC will change the definition of "flexibly structured option" in Article I of its By-Laws to clarify that an option will be classified as a flexibly structured option only if its variable terms do not correspond to the variable terms of any series of non-flexibly structured options listed for trading other than a series of quarterly options or short term options. Furthermore, existing flexibly structured options will be fungible with options in a subsequently listed non-flexibly structured option series other than quarterly options or short term options that have identical variable terms and will not be classified as flexibly structured options. The definition of "flexibly structured option" in Article XVII, Section 1 of OCC's By-Laws will be deleted because such definition is redundant. OCC will also amend the definition of "variable terms" in Article I of the By-Laws to clarify that the expiration date is a variable term for all types of options. Finally, other parts of the definition will also be revised to group together variable terms of option contracts and variable terms of futures contracts.

Prior to this rule change, OCC's rules provided that an expiring flexibly structured index option with an exercise settlement amount of \$1.00 or more was automatically exercised on its expiration date. In comparison, an expiring non-flexibly structured index option with an exercise settlement amount of \$1.00 or more except quarterly options or short term options was subject to the "exercise by exception" procedures under which the option will be exercised on its expiration date if the option holder does not give contrary exercise instructions. However, as described above, flexibly

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>3</sup> 17 CFR 240.19b-4(f)(4).

<sup>4</sup> There are exceptions to this general prohibition. Subject to certain aggregation requirements for cash-settled options, CBOE permits flexibly structured options to expire on the same day as non-flexibly structured quarterly options and non-flexibly structured weekly options. Non-flexibly structured weekly options are called "short term options" in OCC's By-Laws and Rules. CBOE Rules 24A.7(d) and 24B.7(d).

<sup>5</sup> Securities Exchange Act Release No. 59417 (Feb. 18, 2009), 74 FR 8591 (Feb. 25, 2009) [SR-CBOE-2008-115].

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

structured options that become fungible with non-flexibly structured options will cease to be classified as flexibly structured options. Therefore, such flexibly structured options will cease to be subject to automatic exercise at expiration and will instead be subject to exercise by exception like the non-flexibly structured options with which they have become fungible.

OCC believes that the proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Act<sup>6</sup> because they are designed to promote the prompt and accurate clearance and settlement of transactions in, including exercises of, flexibly structured options and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes these purposes by maintaining consistency between OCC's By-Laws and Rules and CBOE's rules as applied to the clearance and settlement of flexibly structured options. The proposed rule change is not inconsistent with the existing By-Laws and Rules of OCC, including any rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

OCC has not solicited or received written comments with respect to the proposed rule change. OCC will notify the Commission of any written comments it receives.

### **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>7</sup> and Rule 19b-4(f) thereunder because the proposed rule effects a change in an existing OCC service that (i) does not adversely affect the safeguarding of securities or funds in OCC's custody or control or for which OCC is responsible and (ii) does not significantly affect OCC's respective

rights or obligations or persons using the service. 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-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-OCC-2009-05 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-OCC-2009-05. 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. to 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp). 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-OCC-2009-05 and should be submitted on or before April 28, 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. 34-59679; File No. SR-ISE-2007-97]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Market Data Fees**

April 1, 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 October 5, 2007, International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 Exchange. On March 9, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, 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 its Schedule of Fees to establish fees for a real-time depth of market data offering. 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.

<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.

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78a(b)(3)(A).