vote for a Designated Governor position, Member Organization Representatives would have the opportunity to vote on the list of candidates, and the Exchange would utilize a balloting process rather than hold a formal meeting of members.

The Exchange also proposed to delete the position of Vice Chair, which is a position that Nasdaq does not maintain.[10] In addition, the Exchange proposed to eliminate the PBOT Governor position and replace it with a new Designated Independent Governor position.[11] The Exchange's current Certificate of Incorporation specifies that the Board shall be composed of ''[a] number of Designated Independent Governors, which, together with the Member Governor and the PBOT Governor, shall equal at least 20% of the total number of Governors* * *''[12] Because the Exchange proposed to replace the PBOT Governor position with a new Designated Independent Governor, which position, like all other ''Designated'' Governor positions, would be selected pursuant to a process that involves member input, the proposal does not change the composition of the Board with respect to the minimum percentage of Governors that would be selected pursuant to member input.[13]

Finally, the Exchange proposed to modify the process for filing vacancies on the Board to reflect the newly proposed structure. Among other things, in the event of a vacancy, the appropriate nominating committee would nominate, and the Board would appoint, a replacement Governor. For example, in the event of a vacancy in the Member Governor position, the new Member Nominating Committee would nominate a replacement.

Accordingly, the proposed changes will more closely align Phlx's governance structure to that of Nasdaq, which, like the Exchange, is a subsidiary of NASDAQ OMX GROUP, Inc. At the same time, the proposed changes will continue to assure the fair representation of the Exchange's members in the selection of the Exchange's directors and administration of its affairs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2009–17) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9389 Filed 4–23–09; 8:45 am]

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[10] The function of the Vice Chair was to preside over meetings of the Board in the absence of the Chair. *See* Phlx By-Law Sec. 28–12.

[11] With the acquisition of the Exchange by The NASDAQ OMX GROUP, Inc., the Philadelphia Board of Trade, Inc (''PBOT'') (n/k/a NASDAQ OMX Futures Exchange, Inc.) became a subsidiary of the parent holding company. Accordingly, the Exchange determined that it was no longer appropriate to provide for this special representation on the Board. *See* Notice, *supra* note 3, at 74 FR 11157.

[12] *See* the Exchange's Certificate of Incorporation, Article Sixth.

[13] The election of the Designated Governors is conducted pursuant to the Exchange's Trust Agreement under which an independent trustee exercises voting authority with respect to the one outstanding share of Series A Preferred Stock, which share has the exclusive right to elect and remove such Governors. The Series A Preferred Stock is voted by the trustee, pursuant to the Trust Agreement, as directed by Phlx members in accordance with the Exchange's governing documents.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59793; File No. SR–CBOE–2009–024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to Its Obvious Error Rules

April 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2009, the Chicago Board Options Exchange, Incorporated (the ''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 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 proposes to amend Rules 6.25, *Nullification and Adjustment of Equity Options Transactions,* and 24.16, *Nullification and Adjustment of Transactions in Index Options, Options on ETFs and Options on HOLDRS.* The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. *Purpose*

CBOE proposes to amend Rules 6.25 and 24.16, pertaining to the nullification and adjustment of options transactions, in several respects.

Merging Rules. The Exchange is proposing to merge Rule 24.16 (which currently relates to only index, ETF and HOLDRS options) into Rule 6.25 (which currently relates to only equity options) to form a single obvious error rule. This merger will simplify the administration of the rules and incorporate a uniform obvious error approach for all equity, index, ETF, and HOLDRS options.

Obvious Pricing Errors. The Exchange is proposing certain changes to the Obvious Pricing Error provision of Rule 6.25. Under the current rule, an Obvious Pricing Error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by a specified amount. For purpose of the rule, the ''Theoretical Price'' of an option series is currently defined, for series traded on at least one other options exchange, as the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months. If there are no quotes for comparison, Trading Officials[3] determine the Theoretical Price.

First, the Exchange is proposing to amend Rule 6.25's definition of ''Theoretical Price'' to base it on the national best bid or offer (''NBBO'') instead of the market with the most

[3] The term ''Trading Officials'' currently means two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. *See* Rules 6.25.02 and 24.16.02.

liquidity. Using the NBBO to define Theoretical Price is similar to how ''fair market value'' is currently defined for obvious pricing errors under Rule 24.16.[4]

Second, the Exchange is proposing to permit Trading Officials to establish the Theoretical Price when the NBBO for the affected series, just prior to the erroneous transaction, is at least two times the permitted bid/ask differential under subparagraph (b)(iv)(A) of Rule 8.7, *Obligations of Market-Makers.* This provision is similar to a provision in the Nasdaq OMX Phlx's (''Phlx'') obvious error rule, Phlx Rule 1092.

Third, the Exchange is proposing to provide for the adjustment of Obvious Pricing Error transactions involving non-CBOE Market-Makers provided the adjusted price does not violate the non-CBOE Market-Maker's limit price. By comparison, under the current provisions of Rule 6.25, such Obvious Pricing Error transactions involving non-CBOE Market-Makers are generally nullified (though certain transactions involving non-broker-dealer Customer orders are subject to adjustment if notification of the error is received more than fifteen minutes after the transaction). Allowing for adjustments to the extent possible within a non-CBOE Market-Maker's limit price is similar to how Rule 24.16 currently operates.

Fourth, the Exchange is proposing to revise the Obvious Pricing Error provision as it pertains to transactions occurring as part of the Rule 6.2A, *Rapid Opening System* (''ROS''), or Rule 6.2B, *Hybrid Opening System (''HOSS''),* rotations. Currently, for transactions occurring as part of ROS or HOSS, Theoretical Price is defined as the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). The Exchange is proposing to revise the Theoretical Price calculation to provide additional conditions that would apply during regular ROS and HOSS rotations and during HOSS rotations in index options series that are being used to calculate the final settlement price of volatility indexes. The additional conditions, which are the same as the conditions that currently apply for HOSS transactions under Rule 24.16, are intended to reasonably factor the amount of available liquidity into the Theoretical Price calculation during these rotations. Specifically, with respect to regular ROS and HOSS rotations, the Exchange is proposing to add a condition that the option contract quantity subject to nullification or adjustment would not exceed the size of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).[5] Any nullifications or adjustments would occur on a pro rata basis considering the overall size of the ROS or HOSS opening trade.[6]

With respect to HOSS rotations in index options series being used to calculate the final settlement price of a volatility index,[7] the Exchange is proposing to carryover a condition from Rule 24.16 that the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) must be for at least the size of the HOSS opening transaction(s). If the size of the quote is less than the size of the opening transaction(s), then the Obvious Pricing Error provision shall not apply.[8]

Fifth, the Exchange is proposing to extend the expanded notification period applicable to transactions during opening rotations involving non-broker-dealer Customers to include certain orders entered before the opening that are executed immediately following the opening rotation. Specifically, Rule 6.25 currently requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. However, an expanded notification period is available for transactions during option rotation where at least one party to the transaction is a non-broker-dealer Customer. The application of this expanded notification period is currently limited to executions during opening rotations occurring as part of ROS or HOSS. The Exchange is proposing to amend the expanded notification period to be applicable to transactions involving non-broker-dealer Customers' marketable orders that are entered before the opening rotation and that are executed as part of the Hybrid Agency Liaison (''HAL'') on the opening process, which is an automated procedure that auctions marketable orders entered prior to the opening rotation but that are not able to be executed as part of the HOSS single clearing price under Rule 6.2B.03. The Exchange is also proposing to make the expanded notification period applicable to transactions involving non-broker-dealer Customers' complex orders that are entered before the opening rotation and that are executed immediately following the opening rotation through the Exchange's electronic Complex Order Book under Rule 6.53C, *Complex Orders on the Hybrid System,* provided such a complex order would have been marketable against the opening rotation price(s) but for the fact that the complex orders do not eligible to participate in the opening rotation process under Rule 6.2B. As with our reasoning for adopting the existing relief for transactions during ROS and HOSS opening

[4] Under Rule 24.16, an Obvious Pricing Error is currently deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed minimum error amount. The ''fair market value'' of an option is currently defined as the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value is determined by Trading Officials. For singly listed issues, fair market value is the midpoint of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[5] For erroneous sell transactions, the size of the bid would be used. For erroneous buy transactions, the size of the offer would be used. For example, assume that the opening transactions in series XYZ totaled 200 contracts at a price $0.75. Also assume that a member representing non-CBOE Market-Maker A sold 200 contracts, trading 100 contracts with CBOE Market-Maker B and 100 contracts with non-CBOE Market-Maker C. Finally, assume that the first quote after the transaction in question that does not reflect the erroneous transaction is bid 100 contracts for $1.10 and offered 150 contracts at $1.25. In this scenario, an erroneous sell transaction would be deemed to have occurred in accordance with the obvious price error provision because the $0.75 price received by non-CBOE Market-Maker A is lower than the fair market value of $1.10 by at least the prescribed minimum error amount of $0.25. In addition, because the size of the bid in the first quote after that does not reflect the erroneous transaction is for 100 contracts, up to 100 contracts executed on the opening on behalf of non-CBOE Market-Maker A would be subject to nullification or adjustment under the Obvious Pricing Error provision.

[6] Thus, 50 contracts executed against CBOE Market-Maker B would have a price adjustment to $1.10 (provided the adjusted price does not violate A's limit price) and 50 contracts executed against non-CBOE Market-Maker C would have a price adjustment to $1.10 (provided the adjusted price does not violate C's limit price).

[7] CBOE's and the CBOE Futures Exchange, LLC's (a designated contract market approved by the Commodity Futures Trading Commission and a wholly-owned subsidiary of CBOE) rules provide for the listing and trading of options and futures, as applicable, on various volatility indexes. The Obvious Pricing Error provision would be utilized only for those index options series used to calculate the final settlement price of a volatility index and only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month. Thus, for example, the proposed obvious price error provision would be used for the relevant Standard & Poor's 500 Stock Index (''SPX'') options series on settlement days for CBOE Volatility Index (''VIX'') options and futures contracts.

[8] For example, if the opening trade in Series XYZ is for a total of 200 contracts and the bid or offer, as applicable, of the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s) is for 500 contracts, then the quote would be used to determine Theoretical Price and whether an Obvious Pricing Error occurred. If the bid or offer, as applicable, of the quote is for only 100 contracts, then the trade would not be subject to nullification or adjustment under the Obvious Pricing Error provision.

rotations, our intention of extending the expanded notification period to cover these two scenarios involving orders entered prior to the opening rotation is to protect the non-broker-dealer Customer who fails to discover an Obvious Pricing Error within 15 minutes of execution from being forced to accept an execution price that results from an Obvious Pricing Error.

Lastly with respect to Obvious Pricing Errors in binary options, the Exchange is proposing to provide that any price adjustment for a binary option series (including any adjustment penalty that may be applicable to transactions between CBOE Market-Makers) [9] shall not exceed the applicable exercise settlement amount for the binary option. As defined in CBOE Rule 22.1(e), the term ''exercise settlement amount'' as when used in reference to a binary option means the amount of cash that a holder will receive upon exercise of the contract.[10]

Catastrophic Pricing Errors

The Exchange is proposing to adopt a Catastrophic Pricing Error provision to address certain extreme circumstances, which provision would be similar to International Securities Exchange's (''ISE'') catastrophic pricing error provision, ISE Rule 720. In particular, the Exchange proposes to add criteria for identifying ''Catastrophic Errors'' and making adjustments when Catastrophic Errors occur, as well as a streamlined procedure for reviewing actions taken in these extreme circumstances. As discussed above, currently under Rule 6.25, trades that result from an Obvious Pricing Error may be adjusted or busted according to objective standards. Under the Rule, whether an Obvious Pricing Error has occurred is determined by comparing the execution price to the Theoretical Price of the option. The rule requires that members notify CBOE Trading Officials or designated personnel in the control room within a short time period following the execution of a trade (generally 15 minutes) if they believe the trade qualifies as an Obvious Pricing Error. Trades that qualify for adjustment or nullified under the Rule to a price that matches the theoretical price plus or minus an adjustment penalty for transactions between CBOE Market-Makers, which is $0.15 if the Theoretical Value is under $3 and $0.30 if the Theoretical Value is at or above $3.

In formulating the Obvious Pricing Error rule, the Exchange has weighed carefully the need to assure that one market participant is not permitted to receive a windfall at the expense of another market participant that made an Obvious Pricing Error, against the need to assure that market participants are not simply being given an opportunity to reconsider poor trading decisions. The Exchange states that, while it believes that the Obvious Pricing Error rule strikes the correct balance in most situations, in some extreme situations, members may not be aware of errors that result in very large losses within the time periods required under the Rule. In this type of extreme situation, CBOE believes members should be given more time to seek relief so that there is a greater opportunity to mitigate very large losses and reduce the corresponding large windfalls. However, to maintain the appropriate balance, the Exchange believes members should only be given more time when the execution price is much further away from the Theoretical Price than is required for Obvious Pricing Errors, and that the adjustment ''penalty'' should be much greater, so that relief is only provided in extreme circumstances.[11]

Accordingly, the Exchange proposes to amend Rule 6.25 to address ''Catastrophic Errors.'' Under the new provision, members will have until 7:30 a.m. Central Time on the day following the trade to notify Trading Officials or designated personnel in the control room of a potential Catastrophic Error. For trades that take place in an expiring series on expiration Friday, notification must be received by 4 p.m. Central Time that same day. Once notification of a Catastrophic Error has been received within the required time period, a panel comprised of at least one (1) member of the Exchange's staff designated to perform Catastrophic Error Panel functions and four (4) Exchange members (the ''Panel'') will review the Catastrophic Error claim. Fifty percent of the number of Exchange members on the Panel must be directly engaged in market making activity and fifty percent of the number of Exchange members on the Panel must act in the capacity of a floor broker.

In the event the Panel determines that a Catastrophic Error did not occur, the member that initiated the review will be charged $5,000 to reimburse the Exchange for the costs associated with reviewing the claim. A Catastrophic Error would be deemed to have occurred when the execution price of a transaction is higher or lower than the Theoretical Price for the option by an amount equal to at least the amount shown in the second column of the chart below (the ''Minimum Amount''), and the adjustment would be made plus or minus the amount shown in column three of the chart below (the ''Adjustment Value'').[12] At all price levels, the Minimum Amount and the Adjustment Value for Catastrophic Errors would be significantly higher than for Obvious Pricing Errors, which the Exchange believes, would limit the application of the proposed rule to situations where the losses are very large.

Theoretical price	Minimum amount	Adjustment value
Below $2	$1	$1
$2 to $5	2	2
Above $5 to $10	3	3
Above $10 to $50	5	5
Above $20 to $50	7	7
Above $50 to $100	10	10
Above $100	15	15

[9] As discussed further below, Rule 6.25 assesses a ''penalty'' in that the adjustment price is not as favorable as what the party making the error would have received had it not made the error.

[10] This proposed limitation on obvious pricing error adjustments for binary options is similar to an existing limitation on obvious pricing error adjustments for Credit Options. *See* Rule 29.15, *Nullification and Adjustments for Credit Option Transactions.*

[11] The Exchange does not believe the type of extreme situation that is covered by the proposed rule would occur in the normal course of trading. Rather, this type of situation could potentially occur as a result of, for example, an error in a member's quotation system that causes a market maker to severely misprice an option.

[12] Under the proposal, the proposed Minimum Amount would be the same as the corresponding Adjustment Values for Catastrophic Errors. By contrast, under ISE's rule for catastrophic errors, the minimum error amount and corresponding adjustment value may vary. *See* proposed CBOE Rule 6.25(a)(1) and (d), and ISE Rule 720(a)(2) and (d)(3).

Erroneous Prints & Quotes in the Underlying. The Exchange is proposing various changes to the provisions of Rule 6.25 relating to erroneous prints and quotes in the underlying. Under the current rule, an option trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market may be nullified, provided the option trade results from a print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security for the same period. For purposes of the erroneous print provision, the ''average trade'' in the underlying security is determined by adding the prices of each trade during the four minute period (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). The ''average quote width'' is determined by adding the quote widths for each separate quote during the four minute period (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question). In addition, electronic trades resulting from an erroneous quote in the underlying security may be adjusted or nullified in accordance with the adjustment calculation for Obvious Pricing Errors. An ''erroneous quote'' occurs when the underlying security has a width of $1 and has a width at least five times greater than the average quote width (as defined above) for such underlying security on the primary market during the period encompassing two minutes before and after the dissemination of the quote.

First, for consistency, the Exchange is proposing to amend the provision to allow for adjustments and nullifications of erroneous prints in the underlying (currently the provision calls for nullifications only). This change to allow for adjustments or nullifications is consistent with Rule 6.25's existing treatment of erroneous quotes in the underlying market and Rule 24.16's existing treatment of erroneous prints and quotes in underlying or related instruments.

Second, to make the administration of the rule less time consuming and less burdensome, the Exchange is also proposing to revise the provisions to determine the ''average quote width'' in the underlying by adding the quote widths of sample quotations at regular 15-second intervals during the two minutes preceding and following an erroneous transaction. This sampling approach is similar to Phlx Rule 1092.

Third, the Exchange is proposing to modify the erroneous trade and quote provisions to allow the Exchange to designate the applicable underlying security(ies) or related instruments for any option, which is how Rule 24.16 currently operates for ETF, HOLDRS, and index options. Under the revised rule, the Exchange would identify particular underlying or, with respect to ETF(s), HOLDRS(s), and index options, related instrument(s) that would be used to determine an erroneous print or quote and would also identify the relevant market(s) trading the underlying or related instrument to which the Exchange would look for purposes of applying the obvious error analysis. The ''related instrument(s)'' may include related ETF(s), HOLDRS(s), and/or index value(s),[13] and/or related futures product(s),[14] and the ''relevant market(s)'' may include one or more markets. The underlying or related instrument(s) and relevant market(s) will be designated by the Exchange and announced to the membership via Regulatory Circular. For a particular ETF, HOLDRS, index value and/or futures product to qualify for consideration as a ''related instrument,'' the revised rule requires that: (i) The option class and related instrument must be derived from or designed to track the same underlying index; or (ii) in the case of S&P 100-related options, the options class and related instrument must be derived from or designed to track the S&P 100 Index or the S&P 500 Index. Again, this is currently how Rule 24.16 operates for ETF, HOLDRS and index options. The only substantive change being made by incorporating this provision into Rule 6.25, is that the Exchange would now have the ability to designate the ''relevant market(s)'' for equity options (whereas currently the Rule 6.25 references only the ''primary market'').

Thus, as an example for illustrative purposes only, for options on the Powershares QQQ Trust (the ''Nasdaq 100 ETF''), the Exchange may determine to designate the underlying ETF (ETF symbol ''QQQQ'') and the primary market where it trades, as well as a related futures product overlying the Nasdaq 100 Index and the primary market where that futures product trades, as the instruments that would be considered by the Exchange in determining whether an erroneous print or an erroneous quote has occurred that would form the basis for an adjustment or nullification to a transaction in the related options.[15] As another example for illustrative purposes only, for the Exchange's class of options on International Business Machines Corporation, the underlying instrument would be IBM. The Exchange may determine to designate one or more underlying stock exchanges as the ''relevant market(s),'' such as the New York Stock Exchange (''NYSE'') and the CBOE Stock Exchange (''CBSX'').[16] The

[13] An ''index value'' is the value of an index as calculated and reported by the index's reporting authority. Use of an index value would only be applicable for purposes of identifying an erroneous print in the underlying (and not an erroneous quote). *See* Rule 24.16(a)(3).

[14] As with Rule 24.16, under Rule 6.25 the Exchange is only proposing that it may designate underlying or related ETF(s), HOLDRS(s), and/or index value(s), and/or related futures product(s). The Exchange is not proposing to designate any of the individual underlying stocks (or related options or futures on any of the individual underlying stocks) that comprise a particular ETF, HOLDR or index. (Any such proposal would be the subject of a separate rule filing.)

[15] Using this example, under the revised rule, the designated instruments and markets would be announced by Regulatory Circular. Thereafter, for a transaction in the QQQ options class to be adjusted or nullified due to an erroneous print in an underlying or related instrument that is later cancelled or corrected, the trade must be the result of: (i) An erroneous print in the underlying Nasdaq 100 ETF that is higher or lower than the average trade in the underlying Nasdaq 100 ETF on the primary market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the ETF during the same period, or (ii) an erroneous print in the designated futures product overlying the Nasdaq 100 Index that is higher or lower than the average trade in the designated futures product on the designated market during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for the futures product during the same period. For an options transaction to be adjusted or nullified due to an erroneous quote in an underlying or related instrument, an erroneous quote would occur when: (i) The underlying Nasdaq 100 ETF has a width of at least $1.00 and has a width at least five times greater than the average quote width for such ETF on the primary market during the time period encompassing two minutes before and after the dissemination of such quote, or (ii) the designated futures product overlying the Nasdaq 100 Index has a width of at least $1.00 and has a width at least five times greater than the average quote width for such futures product on the designated market during the period encompassing two minutes before and after the dissemination of such quote.

[16] Using this example, under the revised rule, the relevant market(s) would be announced by Regulatory Circular. Thereafter, for a transaction in the IBM options class to be adjusted or nullified due to an erroneous print in an underlying security that is later cancelled or corrected, the trade must be the result of an erroneous report of the underlying IBM stock value on NYSE or CBSX that is higher or lower than the average price in the stock on the NYSE or CBSX market, as applicable, during a two-minute period before and after the erroneous report by an amount at least five times higher or lower than the difference between the highest and lowest index values during the same period. To be adjusted or nullified due to an erroneous quote in the underlying security, an erroneous quote would occur when the IBM quote

Continued

proposed change is intended to address member feedback and to provide relief in those scenarios where an erroneous options transaction may occur as the result of an erroneous print or erroneous quote in markets other than the primary market for the underlying security. The Exchange believes the proposed change recognizes that market participants trading in the overlying equity, index, ETF and HOLDRS options may base their options prices on trading in various products and markets, while maintaining reasonable and objective criteria for these types of obvious error reviews.

Trading Officials & Obvious Error Panels. The Exchange is proposing to amend its definition of the term Trading Officials. The term ''Trading Officials'' is currently defined in Rule 6.25 to mean two Exchange members designated as Floor Officials and one member of the Exchange's staff designated to perform Trading Official functions. The Exchange is proposing to change this definition to mean three Exchange officials designated to perform Trading Official functions, at least one of which is an Exchange member designated as a Floor Official and at least one of which is a member of the Exchange's staff designated to perform Trading Official functions. The Exchange is proposing to make the change at this time because it recently determined to change the composition of its Floor Officials committee to include more Exchange staff and the change in composition of the Trading Officials is more in keeping with the increasing role of the Exchange staff.

Finally, the Exchange is proposing to change a reference from ''non-DPM floor brokers'' to simply ''floor brokers'' in the composition requirements for Obvious Error Panels, which review certain determinations rendered by Trading Officials and the senior official in the Exchange's control room under Rule 6.25(b).[17] DPMs (which stands for Designated Primary Market-Makers) no longer function as floor brokers under CBOE Rules, so the Exchange is proposing that the outdated reference be removed.[18]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act[19] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule changes will simplify the administration of the Exchange's obvious error rules and incorporate a uniform obvious error approach for all equity, index, ETF, and HOLDRS options while maintaining reasonable and objective criteria for these types of reviews.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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*. Please include File No. SR–CBOE–2009–024 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–2009–024. 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 changes 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–2009–024 and should be submitted on or before May 15, 2009.

on the NYSE or CBSX market, as applicable, has a width of at least $1.00 and has a width at least five times greater than the average quote width for IBM on the relevant market during the time period encompassing two minutes before and after the dissemination of such quote.

[17] Currently, Rule 6.25(c)(i) provides that an Obvious Error Panel is compromised [sic] of at least one (1) member of the Exchange's staff designated to perform Obvious Error Panel functions and four (4) Exchange members. The rule also provides that fifty percent of the Exchange members on the Obvious Error Panel must be directly engaged in market making activity and fifty percent must act in the capacity of a non-DPM floor broker.

[18] *See* Securities Exchange Act Release No. 52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR–CBOE–2005–46) (order approving a rule change related to the removal of agency responsibilities from DPMs and the establishment of PAR Officials).

[19] 15 U.S.C. 78s(b)(1).

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9388 Filed 4–23–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59789; File No. SR–FINRA–2009–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration) in the Consolidated FINRA Rulebook

April 20, 2009.

On March 3, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD IM–1000–1 as FINRA Rule 1122 in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[3] without material change. The proposed rule change was published for comment in the **Federal Register** on March 19, 2009.[4] The Commission received no comment letters in response to the proposed rule change. This order approves the proposed rule change.

NASD IM–1000–1 provides that the filing of membership or registration information as a Registered Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action. The proposed rule change renumbers NASD IM–1000–1 as FINRA Rule 1122 in the Consolidated FINRA Rulebook and clarifies its applicability to members and persons associated with members by specifying that ''no member or person associated with a member'' shall file incomplete or misleading membership or registration information. FINRA also eliminates the reference to the filing of registration information ''as a Registered Representative'' to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deletes the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the proposed adoption of the NASD IM as a stand-alone FINRA rule.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association,[5] and in particular, with Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA's adoption of NASD IM–1000–1 as FINRA Rule 1122 in the Consolidated FINRA Rulebook clarifies its applicability and provides notice to members of behavior that violates just and equitable principles of trade.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–FINRA–2009–009) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9386 Filed 4–23–09; 8:45 am]

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[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (''Rulebook Consolidation Process'').

[4] *See* Securities Exchange Act Release No. 59563 (March 12, 2009), 74 FR 11792.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59782; File No. SR–BATS–2009–009]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

April 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2009, BATS Exchange, Inc. (''BATS'' or the ''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 Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change 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 Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange. While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 15, 2009.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.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 Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).