

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 offices 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-NASDAQ-2009-039, and should be submitted on or before June 2, 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. 34-59864; File No. SR-NYSE-2009-44]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending a Temporary Equity Transaction Fee for Shares Executed on the NYSE MatchPoint<sup>SM</sup> System, Effective May 1, 2009 Until June 30, 2009

May 5, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 29, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 self-regulatory organization. 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 extend a temporary equity transaction fee for shares executed on the NYSE MatchPoint<sup>SM</sup> ("NYSE MatchPoint" or "MatchPoint") system, effective May 1, 2009 until June 30, 2009. The Exchange will charge each member organization using the MatchPoint system a per share fee scaled to the average daily volume of shares it executes on the MatchPoint system. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission (the "Commission") a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint<sup>SM</sup> system, effective until February 28, 2009 (the "January filing").<sup>4</sup> On February 26, 2009, the Exchange filed with the Commission a proposed rule change to extend this temporary equity transaction fee until

April 30, 2009 (the "March filing").<sup>5</sup> Through this filing, the Exchange proposes to extend this equity transaction fee to be effective May 1, 2009 until June 30, 2009.

Prior to the January filing, the equity transaction fee was \$.0015 per share executed on the MatchPoint system. In the January filing, the Exchange proposed to adopt a scaled fee for MatchPoint users based on the average daily volume of shares executed during a calendar month through the MatchPoint system as follows:

Average daily volume of shares executed	Rate (per share)
50,000 shares or less .....	\$.0015
Over 50,000 to 499,999 .....	\$.0010
500,000 and greater .....	\$.0005

The March filing proposed to continue this fee schedule.

The Exchange believes that the extension of the fee schedule until June 30, 2009 will continue to reward those who have been using the MatchPoint system for share execution, and will provide a continued incentive for new participants in MatchPoint.

It is intended that the MatchPoint fee will revert to the equity transaction fee of \$.0015 per share beginning July 1, 2009.

###### 2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the "Act")<sup>6</sup> for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that 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 fees are reasonable in that they carry forward a reduction in fees that the January filing established and that the March filing extended, and are equitable in that they are available to all members who access the MatchPoint system.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

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

<sup>4</sup> See Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009), approving [sic] SR-NYSE-2009-01.

<sup>5</sup> See Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR-NYSE-2009-20).

<sup>6</sup> 15 U.S.C. 78a.

*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 is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-44 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-2009-44. 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 the 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-2009-44 and should be submitted on or before June 2, 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. 34-59866; File No. SR-CBOE-2009-026]

**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**

May 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on April 30, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 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 \$8,817 per month. Both access fees are currently set at the indicative lease rate (as defined below) for April 2009. The Exchange proposes to adjust both access fees effective at the beginning of May 2009 to be equal to the indicative lease rate for May 2009 (which is \$9,014). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$9,014 per month commencing on May 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

<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.

<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

Continued

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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

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