

5. Such other terms and conditions prescribed by the Exchange in accordance with such form, formats and procedures as may be established by the Exchange from time to time would also apply. In this regard, upon approval of the proposed rule change and for a period of one year, the Exchange will require that, prior to the Commencement Date, a legal opinion with respect to the account holder's and Issuer's legal right to enter into the Transactions under the terms of the Issuer's employee stock option plan and related documents (the "Legal Opinion") be obtained in a form acceptable to the Exchange. During the one-year time period, the Exchange may determine that such Legal Opinion is no longer necessary and will revise its established forms, formats and procedures accordingly.

III. Discussion and Commission's Findings

After careful review of the proposed rule change and ISE's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷

In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),⁸ in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will offer market participants new trading opportunities and will enhance the Exchange's competitive position.

The Commission believes that the proposed rule change to amend the Exchange's margin rule should be allowed. However, the Commission does have significant concerns with the amount of control each broker-dealer has over the Vested Employee Options. One purpose of the margin rules is to protect broker-dealers in the event of market turmoil. The broker-dealer must have enough control over the cash or securities it is holding as margin on behalf of investors to be able to act unilaterally to protect itself. With Vested Employee Options, the broker-dealer cannot act unilaterally to use the

margin deposited by the customer (*i.e.*, the Vested Employee Options); instead, the broker-dealer must rely on another person (*i.e.*, the issuer) to promptly deliver the required shares. For example, if an issuer notifies the broker-dealer that there is an ineffective registration statement, it could prevent the broker-dealer from exercising the options and receiving publicly tradable shares, a prospect that could cause financial harm to the broker-dealer.

The Commission raised these concerns in the Notice by noting in a footnote that absent relief from the Commission, broker-dealers would need to take a capital charge for any unsecured margin debt and by asking questions about how the broker-dealer's legal authority to exercise the Vested Employee Options could be enhanced and how to limit the liquidity and operational risks arising from the Transactions. The Commission received no comments on this footnote or these questions. Thus, for purposes of determining whether an account is unsecured or partly secured pursuant to the net capital rule,⁹ including an account containing a Transaction, a broker-dealer may not include the value of a Vested Employee Option.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-ISE-2007-121), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60129; File No. SR-CBOE-2009-030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Regarding Appointments of CBSX DPMs

June 17, 2009.

On May 7, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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 regarding appointments of Designated Primary Market-Makers ("DPMs") on the CBOE Stock Exchange ("CBSX"). The proposed rule change was published for comment in the **Federal Register** on May 15, 2009.³ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

CBOE proposed to amend its rules regarding appointments of CBSX DPMs. Currently, every security traded on CBSX must be assigned to a DPM.⁴ The Exchange's proposal will modify its rules to provide the Exchange with the flexibility to commence trading in a security on the CBSX without an assigned DPM. The Exchange represented that some securities are not traded on CBSX because DPMs have opted to not seek assignments in such securities. The Exchange's proposal will allow CBSX users the ability to trade these securities on CBSX without them being quoted by a DPM. The Exchange has also represented that this proposed modification to CBSX Rule 53.54 is not intended to in any way affect existing DPM appointments. The Exchange will notify its market participants of those securities that will trade without a DPM via a circular.

CBOE's proposal will also modify CBSX Rule 53.56 to change the time DPMs are required to begin providing quotes from 8:15 a.m. to 8:30 a.m. (Chicago time). Lastly, CBOE's proposal will eliminate CBSX Rule 53.54 which governed the allocation process used by CBSX prior to its initial launch.

The Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁵ which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.⁶ The Act does not mandate a particular market structure or, specifically, that an exchange have

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 59896 (May 11, 2009), 74 FR 22991 ("Notice").

⁴ See CBSX Rule 53.54. A CBSX DPM is a market-maker that must, among other things, provide opening and continuous quotes in its assigned securities. See CBSX Rule 53.56.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 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).

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 240.15c3-1.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

specialists or the equivalent (which are known as DPMs on CBSX). Therefore, the Commission believes that it is reasonable and consistent with the Act to make additional securities available for trading on CBSX without the participation of a DPM. In taking this action, the Commission has relied on CBOE's representation that this proposal is not intended to affect existing DPM appointments. The Commission further believes that it is within the discretion of the Exchange to require DPMs to begin quoting in their required securities at 8:30 a.m. rather than, as under the Exchange's current rule, at 8:15 a.m. (Chicago time).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2009-030) is approved.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60117; File No. SR-NYSEAmex-2009-25]

Self-Regulatory Organizations; NYSE Amex, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services by Adding a Ratio Threshold Fee

June 16, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on June 10, 2009, NYSE Amex LLC. ("NYSE Amex" 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 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 its Schedule of Fees and Charges for Exchange Services ("Fee Schedule") by adding a Ratio Threshold Fee. While changes to the Schedule pursuant to this proposal will be effective upon filing, the proposed fee will become operative on June 10, 2009. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange'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, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes adding a Ratio Threshold Fee to its Fee Schedule. The proposed Ratio Threshold Fee will be charged to ATP Holders based on the number of orders entered compared to the number of executions received in a calendar month. The fee will be assessed as follows:

Monthly order to execution ratio	Monthly charge
Between 10,000 and 14,999 to 1 ...	\$5,000
Between 15,000 and 19,999 to 1 ...	10,000
Between 20,000 and 24,999 to 1 ...	20,000
25,000 to 1 and greater	35,000

This fee shall not apply to orders that improve the Exchange's prevailing best bid-offer (BBO) market at the time the orders are received.

ATP Holders with order to execution ratios of 10,000 to 1 or greater have the potential residual effect of exhausting system resources, bandwidth, and capacity. Such order to execution ratios may, in turn, create latency and impact other ATP Holder's ability to receive timely executions. Recognizing that

orders and executions often occur in large numbers, the purpose of this fee is to focus on activity that is truly disproportionate while fairly allocating costs among members. The proposed fee has multiple thresholds and is greater at higher order to execution ratios because the potential impact on exchange systems, bandwidth and capacity becomes greater with increased order to execution ratios.

Additionally, the Exchange proposes an exception whereby ATP Holders will not be charged the Ratio Threshold Fee if they incur charges on a monthly basis pursuant to the Cancellation Fee. The Cancellation Fee is charged only for cancelled public customer orders in excess of the established thresholds and is designed to protect customer priority. By virtue of this exception, the Ratio Threshold Fee will, in effect, only be assessed on non-customer orders. Due to the necessity of the Cancellation Fee to protect customer priority and the Exchange's need to allocate costs for the use of bandwidth and capacity among all members, the Exchange believes the structure of the Ratio Threshold Fee compared to the Cancellation Fee is appropriate because firms paying the Cancellation Fee will not also be charged the Ratio Threshold Fee.

The new Ratio Threshold Fee will become effective on June 10, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Amex Options. Under this proposal, all similarly situated members of NYSE Amex Options will be charged the same reasonable dues, fees and other charges.

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.

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.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.