

*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**

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

CBOE has requested that the Commission waive the 30-day operative delay period. The Commission has determined that waiving the 30-day operative delay of the CBOE's proposal is consistent with the protection of investors and in the public interest in that it will allow CBOE to immediately add options series that another options exchange currently lists and trades, which should promote competition.<sup>10</sup> Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of such 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-CBOE-2009-050 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-CBOE-2009-050. 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 such filing also will be available for inspection and copying at the principal office of the 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 Number SR-CBOE-2009-050 and should be submitted on or before August 14, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60334; File No. SR-ISE-2009-47]

**Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes**

July 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 1, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") 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 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 ISE is proposing to amend its Schedule of Fees. 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.

**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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 purpose of the rule change is to charge the same execution fees for all customer orders, i.e., for all orders that are not for the account of a broker-dealer. Currently, there are two sub-

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

<sup>10</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>11</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.

categories of customer orders for which the Exchange charges broker-dealer execution fees: Voluntary Professional orders;<sup>3</sup> and Professional Orders.<sup>4</sup> Each of these order categories is also treated the same as broker-dealer orders for the purposes of specified Exchange execution priority rules. The ISE currently is the only market center that has these order categories for non-broker-dealer orders, and charging broker-dealer execution fees makes it more costly to execute these orders on the ISE as compared to the other options exchanges. Therefore, in order to remain competitive, the Exchange proposes to amend its fee schedule<sup>5</sup> and rules<sup>6</sup> so that all non-broker-dealer orders are subject to the same execution fee. This fee change will effectively result in a fee decrease for the execution of these orders.<sup>7</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposed rule change would lower fees

<sup>3</sup> Voluntary Professional orders are orders for a customer that has elected to be treated in the same manner as a broker-dealer in securities for purposes of specified execution priority rules and with respect to the ISE fee schedule. ISE Rule 100(a)(37A).

<sup>4</sup> Earlier this year the SEC approved an ISE rule change to distinguish between priority customers and professional customers for purposes of specified execution priority rules and with respect to the ISE fee schedule. Securities Exchange Act Release No. 59287 (Jan. 23, 2009), 74 FR 5694 (Jan. 30, 2009) (“Professional Order Filing”). Professional Orders are orders for the account of a non-broker-dealer that enters more than 390 orders per day on average during a month during a calendar quarter. To assure member firms are given sufficient time to implement any necessary systems changes, this rule change is being implemented in two stages: (1) Members are required to start measuring the number of orders their customers enter on average per day during the third quarter 2009; and (2) members are required to start identifying professional customer orders entered on the ISE at the beginning of the fourth quarter 2009.

<sup>5</sup> The Exchange adopted definitional changes to its fee schedule that resulted in Professional Orders being charged the same fees as broker-dealer orders. However, because the rule change is being phased-in, and to avoid confusion in the interim, the ISE fee schedule posted on the Exchange’s Web site does not yet reflect these definitional changes.

<sup>6</sup> The imposition of broker-dealer fees is imbedded in the definition of a Voluntary Professional rather than being separately identified on the ISE fee schedule. Therefore, the Exchange proposes to modify the definition of Voluntary Professional in order to accomplish the fee change.

<sup>7</sup> The Exchange notes that Voluntary Professional orders and Professional Orders currently are not subject to the Exchange’s cancellation fee. The Exchange is not proposing to change this aspect of the fee schedule. Such orders will not be subject to the cancellation fee.

for the execution of Voluntary Professional orders and Professional Orders.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### 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) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such 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-ISE-2009-47 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-ISE-2009-47. 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 ISE. 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-ISE-2009-47 and should be submitted on or before August 14, 2009.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60338; File No. SR-CBOE-2009-051]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Two Pilot Programs Related to the Exchange’s Automated Improvement Mechanism

July 17, 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 July 16, 2009, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”)

<sup>10</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>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).