

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A)(ii)<sup>6</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder.

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-CBOE-2009-044 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-2009-044. 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 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-CBOE-2009-044 and should be submitted on or before August 20, 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. 34-60375; File No. SR-CBOE-2009-047]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Regarding the CBSX Floor Post

July 23, 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 2, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or "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. On July 23, 2009, the Exchange filed Amendment No. 1, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to modify the CBOE Stock Exchange ("CBSX") Rules to allow all CBSX Market-Maker types to operate from the Floor Post. 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, 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

CBSX is an all electronic stock marketplace. One of the reasons CBOE created CBSX was to try to capture some of the sizable stock trading done by CBOE options traders. CBOE members trade stock both as a hedging vehicle for option trades done on CBOE and in connection with trading complex orders that contain stock and option components (e.g. a buy-write). Thus, it was always envisioned that traders on CBOE's trading floor would trade stock on CBSX. All CBOE members are eligible to trade on CBSX without incurring any extra costs or completing lengthy "membership" applications. CBOE also created a limited number of CBSX Trading Permits to allow potential non-CBOE member users that do not want to incur the significant costs associated with buying or leasing a CBOE membership to trade on CBSX.<sup>3</sup> These Permit Holders are not allowed to trade options on CBOE.

To help generate interest in CBSX with the CBOE trading floor community, the Exchange established the CBSX Floor Post. The Floor Post is a location on the CBOE trading floor where CBSX Designated Primary Market-Maker ("DPM") personnel can be stationed to respond to stock price discovery requests from CBOE's trading floor community. As part of CBSX's approval, the Exchange was asked to physically separate the CBSX Floor Post from the options trading posts (i.e. eliminate sightlines between the Floor Post and

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

<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> See Securities Exchange Act Rel. No. 34-54987 (December 20, 2006), 71 FR 78481 (December 29, 2006) (SR-CBOE-2006-107).

any equity option trading posts). This request was made to avoid any potential issues related to “side-by-side trading” which involves a stock trading location situated in close and open physical proximity to a location where a derivative on that stock (e.g., an option) is traded.<sup>4</sup> The Rule governing the CBSX Floor Post is Rule 51.12.

The Exchange now proposes to modify Rule 51.12 to permit *all* CBSX Market-Makers types to utilize the Floor Post. Currently, the Rule provides that only CBSX DPMs may operate from the Floor Post (brokers are also permitted to enter the Floor Post area).<sup>5</sup> Recently, however, CBSX has received requests from CBSX Market-Makers seeking to operate from the Floor Post. This filing would allow them to do so. The Floor Post continues to restrict any sightlines to the equity option trading posts. Also, the CBSX Fees Schedule has been amended to include a fee for CBSX Market-Makers using the CBSX Floor Post.

The Exchange has also received inquiries from CBSX Trading Permit Holders that act in the capacity of CBSX Brokers to operate from CBOE’s trading floor. Many current CBOE members (including Floor Brokers) execute stock orders on CBSX from the trading floor. Trading Permit Holders on the CBOE trading floor would enter orders on CBSX just like any other user on the CBOE trading floor. The only difference is that CBSX Trading Permit holders are not allowed to trade options (and have not incurred the costs associated with CBOE membership). The Exchange has established a fee for Trading Permit Holders that operate on CBOE’s trading floor from a perimeter booth (these booths, which are typically occupied by CBOE Floor Brokers, are located around the perimeter of the trading floor).<sup>6</sup>

It is possible that no CBSX Trading Permit Holders (whether they are CBSX Market-Maker or CBSX Brokers) ultimately decide to establish a physical operation on the CBOE trading floor. However, to the extent that they do, any CBSX Market-Making would be limited to operating from the CBSX Floor Post, while CBSX Brokers would be allowed to establish operations at perimeter booths.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the

<sup>4</sup> Side-by-side trading concerns originated in connection with open outcry trading on exchange trading floors (i.e., they pre-date the advent of all-electronic exchanges).

<sup>5</sup> No CBSX DPMs are situating personnel at the Floor Post at this time. It is empty.

<sup>6</sup> See SR-CBOE-2009-044.

Securities Exchange Act of 1934 (the “Act”)<sup>7</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> 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. Permitting CBSX Market Makers to use the CBSX Floor Post along with Floor Brokers and CBSX DPM personnel promotes just and equitable principles of trade and removes impediments to and perfects the mechanism for a free and open market.

### 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 NYSE 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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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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<sup>10</sup> 17 CFR 200.30-3(a)(12).