

customers, issuers, brokers, or dealers because the proposed port fees do not distinguish among the type of participant but rather are the same for all members and non-members. The Commission also believes that BATS was subject to significant competitive pressure to act equitably, fairly, and reasonably in setting the port fees, in light of the highly competitive nature of the market for execution and routing services.<sup>15</sup> The Commission further notes that the Exchange's proposed port fees are consistent with similar port fees charged by other exchanges.<sup>16</sup>

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-BATS-2009-026), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60585; File No. SR-CBOE-2009-053]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit FLEX Options on Securities Eligible for Non-FLEX Options Trading and on Corporate Debt Securities

August 28, 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 August

<sup>15</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR-NYSEArca-2006-21).

<sup>16</sup> See, e.g., Rule 7015 of The NASDAQ Stock Market LLC ("NASDAQ") (setting forth, among other fees for access services, port fees charged to members and non-members used to enter orders into NASDAQ trading systems). See also Securities Exchange Act Release Nos. 60546 (August 20, 2009), 74 FR 43184 (August 26, 2009) (SR-NASDAQ-2009-058) (increasing the monthly fee for each port used to enter orders in NASDAQ trading systems from \$400 per month to \$500 per month); 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009) (SR-BX-2009-004) (establishing fees for ports used by members to enter orders); 59615 (March 20, 2009), 74 FR 14604 (March 31, 2009) (SR-BX-2009-005) (establishing, among other fees, port fees for accessing market data).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</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.

19, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing.<sup>4</sup> 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

CBOE is proposing to amend certain CBOE rules to (1) permit the Exchange to list Flexible Exchange Options ("FLEX Options") on securities that are eligible for Non-FLEX options trading, even if the Exchange does not list Non-FLEX options on such securities, and (2) designate Corporate Debt Security Options as eligible for FLEX Options trading. The text of the rule proposal is available on the Exchange's website (<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

The first change being proposed by this filing is to permit CBOE to list FLEX Options on securities that are eligible for Non-FLEX options trading, even if the Exchange does not list Non-FLEX options on such securities. Currently, CBOE's rules only permit FLEX Options on those securities on

which the Exchange lists and trades Non-FLEX options. For various reasons, exchange traded options are not listed on every NMS stock, index or other products approved for options trading. The Exchange recognizes that market participants may want access to options on such securities, in addition to the certainty and safeguards of a regulated and standardized marketplace. As an alternative to the over-the-counter marketplace, CBOE proposes to increase the spectrum of products that are eligible for FLEX Options trading, even if the Exchange does not list Non-FLEX options on such securities. In order to effect this change, the Exchange is proposing to amend its Flexible Exchange Options rules and other product rules (e.g., Range Options, binary options, Credit Options) that currently designate such products as eligible for FLEX Options trading to permit FLEX Options trading even if Non-FLEX options on such securities are not traded.

The second change being proposed by this filing is to designate Corporate Debt Security Options as eligible for FLEX Option trading. To effect this change, the Exchange is proposing to adopt new rule 28.17, which is similar to other FLEX Option designation rules for other products that have stand alone chapters (e.g., Range Options, binary options, Credit Options). The Exchange would like to offer FLEX Option trading on Corporate Debt Security Options as an alternative to similar products trading in the over-the-counter marketplace.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</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. The Exchange believes that the FLEX Option changes proposed in this rule filing will provide market investors with additional means to manage their risk exposures and carry

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

out their investment objectives with exchange-traded products.

#### *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**

Because the foregoing proposed rule change 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 after the date of this filing, 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>

As for permitting FLEX Options on Corporate Debt Security Options, the Exchange notes that new products brought up and approved by the SEC during the past couple of years (*e.g.*, Range Options, binary options, Credit Options) have contained rules designating them as FLEX eligible. As a result, the Exchange believes the proposed change is consistent with existing rules for products and conforms the rules for Corporate Debt Security Options to other existing product rules. For the foregoing reasons, the Exchange believes the rule filing qualifies for expedited effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 of the Act.

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-2009-053 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-2009-053. 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 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 No. SR-CBOE-2009-053 and should be submitted on or before September 29, 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. 34-60590; File No. SR-NASDAQ-2009-078]

### **Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Nasdaq Listing Rules To Make Certain Conforming and Technical Changes**

August 31, 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 August 18, 2009, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal 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**

Nasdaq proposes to revert to the previously approved requirements of certain listing standards that were inadvertently changed when adopting the new Listing Rules, and to complete certain conforming changes to the Listing Rules that were not fully implemented with their adoption. The text of the proposed rule change is below. Proposed new language is italicized and proposed deletions are in brackets.<sup>4</sup>

5415. Initial Listing Requirements for Preferred Stock and Secondary Classes of Common Stock

(a) No change.

<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>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> Changes are marked to the rules of The NASDAQ Stock Market LLC found at <http://nasdaqomx.cchwallstreet.com>.

<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)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.