

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 the self-regulatory organization 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:

##### *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-FINRA-2009-068 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-FINRA-2009-068. 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 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-FINRA-2009-068 and should be submitted on or before November 18, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-25873 Filed 10-27-09; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60859; File No. SR-ISE-2009-64]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving a Proposed Rule Change Relating to Historical ISE Open/Close Trade Profile Fees

October 21, 2009.

On August 25, 2009, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend its Schedule of Fees to adopt reduced subscription fees for academic institutions for the sale of historical open and close volume data on ISE listed options. Notice of the proposed rule change was published for comment in the **Federal Register** on September 17, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

ISE currently sells a market data offering comprised of the entire opening and closing trade data of ISE listed options of both customers and firms ("ISE Open/Close Trade Profile").<sup>4</sup> The ISE Open/Close Trade Profile enables subscribers to create their own proprietary put/call calculations. The data is compiled and formatted by ISE as an end of day file. This market data offering is currently available to both members and non-members on annual subscription basis.<sup>5</sup>

ISE also sells to both members and non-members historical ISE Open/Close Trade Profile, a market data offering

comprised of the entire opening and closing trade data of both customers and firms that dates back to May 2005 (on an ad-hoc basis or as a complete set that dates back to May 2005). Ad-hoc subscribers can purchase this data for any number of months, beginning from May 2005 through the current month. Alternatively, subscribers can purchase the entire set of this data, beginning from May 2005 through the current month. The historical ISE Open/Close Trade Profile is compiled and formatted by ISE and sold as a zipped file. ISE charges ad-hoc subscribers \$600 per request for each month of data and a discounted fee of \$500 per request per month for subscribers that want the complete set, *i.e.*, from May 2005 to the present month.

The Exchange now proposes to adopt reduced fees for subscriptions to historical ISE Open/Close Trade Profile by academic institutions for their research purposes.<sup>6</sup> In order to encourage and promote academic studies of its market data, ISE proposes to charge a flat rate of \$500 for up to 12 months of data or \$1,000 for the complete data set. Academic institutions may not use the data in support of actual securities trading. The proposed discount applies only to the market data fees and does not cover any access or telecommunication charges that may be incurred by an academic institution. In addition, with the adoption of reduced fees for academic institutions, ISE is not waiving any of its contractual rights and all academic institutions that subscribe to this data will be required to execute the appropriate subscriber agreement.

After careful review, 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 exchange.<sup>7</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities, and Section 6(b)(5) of

<sup>15</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 Release No. 60654 (September 17, 2009), 74 FR 47848 ("Notice").

<sup>4</sup> See Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (approving SR-ISE-2007-70).

<sup>5</sup> The current subscription rate for both members and non-members is \$600 per month.

<sup>6</sup> The Exchange stated that occasionally, academic institutions inquire with the Exchange about subscribing to the historical ISE Open/Close Trade Profile for research purposes but are not inclined to pay the full price.

<sup>7</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

the Act,<sup>9</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange proposes to reduce fees for subscriptions to its historical ISE Open/Close Trade Profile by academic institutions only if they use the data for their research purposes. The proposed fees will apply equally to all academic institutions. The proposed rule change should promote academic research, which can benefit all market participants. Further, the Commission notes that Options Price Reporting Authority ("OPRA") has in place a similar Academic Waiver Policy, pursuant to which OPRA waives its fees for universities that wish to use its data for research and educational instruction purposes.<sup>10</sup>

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2009-64), be and hereby is approved.

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

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. E9-25832 Filed 10-27-09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60857; File No. SR-CBOE-2009-074]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Interpretation and Policy .13 to Rule 5.3

October 21, 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 October 20, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("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 a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</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

CBOE proposes to revise CBOE Rule 5.3.13(1)(E) to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities. The text of the rule proposal 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.

#### 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

Interpretation and Policy .13 to Rule 5.3 designates the listing and trading of options on "Equity Index-Linked Securities," "Commodity-Linked Securities," "Currency-Linked Securities," "Fixed Income Index-Linked Securities," "Futures-Linked Securities" and "Multifactor Index-Linked Securities," collectively known as "Index-Linked Securities" that are principally traded on a national securities exchange and an "NMS Stock" (as defined in Rule 600 of Regulation NMS under the Securities and Exchange Act of 1934). The Exchange proposes to amend the definition of Futures-Linked Securities for the trading of options on Index-Linked Securities to include products linked to CBOE Volatility Index ("VIX") futures. Specifically, the Exchange proposes to add VIX futures to the definition of a Futures Reference Asset in Rule 5.3.13(1)(E).

Index-Linked Securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes of the foregoing ("Underlying Index" or "Underlying Indexes"). Index-Linked Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than thirty (30) years. Despite the fact that Index-Linked Securities are linked to an underlying index, each trade as a single, exchange-listed security. Accordingly, rules pertaining to the listing and trading of standard equity options apply to Index-Linked Securities.

Currently, the Exchange will consider listing and trading options on Index-Linked Securities provided the Index-Linked Securities meet the criteria for underlying securities set forth in Interpretation and Policy .01 to Rule 5.3 or the criteria set forth in Interpretation and Policy .13(3)(B) to Rule 5.3.

Index-Linked Securities must meet the criteria and guidelines for underlying securities set forth in Interpretation and Policy .01 Rule 5.3; or the Index-Linked Securities must be redeemable at the option of the holder at least on a weekly basis through the issuer at a price related to the applicable

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

<sup>10</sup> See Securities Exchange Act Release 58424 (August 26, 2008), 73 FR 51545 (September 3, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Amendment to the Options Price Reporting Authority's Academic Waiver Policy).

<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.

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

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