

between the hours of 10 a.m. and 3 p.m. Copies of the filing will also 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-BATS-2009-031 and should be submitted on or before December 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61091; File No. SR-NYSE-2009-117]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Its Listing Fees for Structured Products

December 1, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 19, 2009, New York Stock Exchange LLC ("NYSE" 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 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 Exchange proposes to apply a maximum fee in any calendar year (including initial and annual listing fees) of \$500,000 in connection with the listing under Section 902.05 of the Listed Company Manual (the "Manual") of any individual issuance of securities.

The text of the proposed rule change is available on the Exchange's Web site

at <http://www.nyse.com>, 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to apply a maximum listing fee in any calendar year (including initial and annual listing fees) of \$500,000 in connection with the listing under Section 902.05 of the Manual of any individual issuance of securities.

Section 902.05 sets forth listing fees applicable to securities traded on the equity floor of the Exchange and listed under Section 703.18, the equity criteria set out in Section 703.19, and Section 703.21. Section 902.05 currently provides that issuers of "retail debt securities" (i.e., debt securities that are listed under the equity criteria set out in Section 703.19 and traded on the equity floor of the Exchange) are subject to an annual maximum aggregate listing fee of \$500,000 for all retail debt securities issued in a calendar year. Companies are also subject under Section 902.02 to the maximum of \$500,000 per issuer for initial and annual fees payable on listed equity securities. In addition, as stated in Sections 902.02 and 902.05, the total maximum fee of \$500,000 billable to an issuer in a calendar year under the fee cap in Section 902.02 includes all annual fees billed to an issuer for listed retail debt securities. By contrast, securities listed under Section 902.05 other than retail debt securities are not subject to the maximum fees set forth in Section 902.02 or any maximum fee established in Section 902.05 itself. Consequently, the Exchange believes that it is appropriate to establish a maximum fee in any calendar year (including both initial and annual listing fees) per issuance listed under

Section 902.05 of \$500,000. Doing so addresses an anomaly under the Exchange's fee structure, whereby issuers of securities listed under Section 902.05 (other than retail debt securities) could pay fees in excess of \$500,000, while their fees for all other categories of securities would be capped. The Exchange notes that—based on historical experience—it is quite rare for a transaction to be subject to initial or annual listing fees under Section 902.05 that exceed \$500,000, [sic] As such, the Exchange does not believe that the revenue it would forego as a result of the proposed fee cap would negatively affect its ability to fund its regulatory program. The Exchange believes it is appropriate to have a separate fee cap for each individual issuance of structured products, as many companies (especially in the financial sector) list multiple new classes of structured products within a calendar year, requiring the repeated utilization of the Exchange's operational and regulatory resources to a degree that is not normally the case with respect to equity securities subject to the cap under Section 902.02.

The Exchange proposes to apply Section 902.05 as amended by this filing retroactively to any securities listed on or after the date of original submission of this filing. The Exchange believes this approach is appropriate, as it will enable companies to benefit from the proposed fee cap without having to delay their listing until after Commission approval of the filing solely for the purpose of benefitting from that fee reduction. The Exchange notes that no company will pay higher initial or annual listing fees in connection with the listing of structured products as a result of the proposed amendment and some companies will pay less if their fees in relation to an individual structured product would exceed \$500,000 in the absence of the proposed cap.

###### 2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)<sup>4</sup> that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members, listed companies and other persons using its facilities and the requirement under Section 6(b)(5)<sup>5</sup> that an exchange have rules that are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

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

Exchange believes that the proposed new cap on initial and annual listing fees for structured products represents an equitable allocation of fees among its listed companies, as all companies listing structured products will be subject to the same fee schedule.

#### *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.

### **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 the self-regulatory organization consents, the Commission will:

- (A) By order approve the 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-NYSE-2009-117 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-NYSE-2009-117. 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 will also 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-NYSE-2009-117 and should be submitted on or before December 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61084; File No. SR-CBOE-2009-088]**

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule in Connection With the New Linkage Plan**

December 1, 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 November 23, 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. 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 Fees Schedule. 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.

#### **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 Exchange 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 Exchange 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**

All current U.S. options exchanges recently adopted a plan to provide a framework for order protection and locked and crossed market handling called the Options Order Protection and Locked/Crossed Market Plan (the "New Plan"). The Plan replaces the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Old Plan"). The Old Plan also provided a framework for addressing order protection and locked/crossed markets, but unlike the New Plan, the Old Plan utilized the Options Clearing Corporation as a "hub" for the transmission of "linkage orders" between exchanges. There are three types of linkage orders under the Old Plan, P/A Orders (orders sent on behalf of a non-broker dealer customer), P Orders (orders sent for the principal account of an exchange market-maker), and Satisfaction Orders (orders reflecting the terms of an order resting

<sup>6</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.