

*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 No. SR-BX-2009-082 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 No. SR-BX-2009-082. 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 BX. 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-BX-2009-082 and should be submitted on or before February 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

[FR Doc. 2010-195 Filed 1-8-10; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61274; File No. SR-CBOE-2009-089]

**Self-Regulatory Organizations;  
Chicago Board Options Exchange,  
Incorporated; Order Approving a  
Proposed Rule Change Related to  
Stock-Option Orders**

January 4, 2010.

**I. Introduction**

On November 18, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 CBOE Rule 6.53C, Commentary .06(d) to modify the handling of market stock-option orders that cannot be filled in whole or in a permissible ratio at the conclusion of a complex order RFR auction ("COA"). The proposed rule change was published for comment in the **Federal Register** on December 4, 2009.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Under the CBOE's rules, eligible complex orders, including stock-option orders, may be subject to an automated COA process where the eligible order is exposed for possible price improvement.<sup>4</sup> Currently, if a complex order cannot be filled in whole or in a permissible ratio at the conclusion of COA, the order, or any remaining balance, will route to the CBOE's Complex Order Book or to PAR for manual handling.<sup>5</sup>

The Exchange proposes to revise CBOE Rule 6.53C, Interpretation and Policy .06(d), to modify the operation of the COA with respect to market stock-option orders, including market stock-option orders with more than one option leg, that cannot be executed in whole or in a permissible ratio at the conclusion of a COA. Specifically, the CBOE proposes to allow the Exchange to determine, on a class-by-class basis, to route the remaining balance of the option leg(s) of such an order to CBOE's Hybrid System for processing as a simple market order(s), consistent with

CBOE's order execution rules, and to route the remaining balance of the stock leg of such an order to the CBOE Stock Exchange ("CBSX"), CBOE's stock facility, for processing as a market order, consistent with CBSX's order execution rules.<sup>6</sup> The CBOE will announce to members via Regulatory Circular any determination regarding the routing of market stock-option orders pursuant to the rule.<sup>7</sup>

**III. Discussion and Commission Findings**

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>8</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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. The Commission believes that the proposal could help facilitate the execution of market stock-option orders, including market stock-option orders with more than one option leg, that are not filled in whole or in a permissible ratio at the conclusion of a COA. The Commission notes that the proposed rule applies solely to market stock-option orders. The Commission notes, further, that if the remaining balance of the option leg(s) and the stock leg of the market stock-option order are routed to the CBOE's Hybrid system and to CBSX, respectively, as provided in the proposed rule, the execution of the option leg(s) of the order on the CBOE's Hybrid system and the execution of the stock leg of the order on CBSX will be consistent with the order execution rules of CBOE and CBSX, respectively.

**IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2009-089), be, and it hereby is, approved.

<sup>6</sup> See CBOE Rule 6.53C, Interpretation and Policy .06(d), and Notice, *supra* note 3.

<sup>7</sup> See Notice, *supra* note 3, at note 4.

<sup>8</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>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<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> See Securities Exchange Act Release No. 61068 (November 27, 2009), 74 FR 63807 ("Notice").

<sup>4</sup> See CBOE Rule 6.53C(d).

<sup>5</sup> See CBOE Rule 6.53C(d)(vi).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-190 Filed 1-8-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61275; File No. SR-NYSE-2009-112]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Rescinding Information Memoranda 04-27 and 07-66 and Issuing a New Information Memo Concerning the Exchange's Gap Quote Policy

January 4, 2010.

#### I. Introduction

On November 9, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 rescind NYSE Information Memoranda 04-27 and 07-66 and issue a new Information Memo that provides updated parameters for, and guidance on the application of, the Exchange's Gap Quote Policy (the "Policy"). In order to ensure an orderly transition to usage of the new parameters, the Exchange has proposed that these changes be made operative ten business days after the date of this order. The proposed rule change was published for comment in the **Federal Register** on December 1, 2009.<sup>3</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal<sup>4</sup>

The purpose of the Policy is to provide public notice of order imbalances for securities, facilitate price discovery, and minimize short-term price dislocation, by allowing for the entry of offsetting orders or the cancellation of orders on the side of an imbalance.

An order imbalance may occur when the Exchange receives a sudden influx of orders for a particular security on the same side of the market within a short time interval, or when one or more large-size orders for a security are entered, and there is insufficient offsetting interest. When an imbalance exists that the Designated Market Maker ("DMM") determines would cause a significant price dislocation, the Policy provides that the DMM should widen the spread between the bid and offer—a process known as "gapping the quote." The use of a gap quote signals the existence of the imbalance to the market in order to attract contra-side liquidity and mitigate volatility.

The proposed Information Memo includes a summary of the options available to a DMM when publishing a gap quote. In this situation, a DMM may: (1) Trade out of the gap quote by executing contra side interest against the imbalance (allowing for any cancellations); (2) update the gap quote, in consultation with a senior-level Floor Official; or (3) request an order imbalance trading halt in the security at issue, in consultation with a senior-level Floor Official.

Under the proposal, the volume requirement for implementing a gap quote would be reduced from at least 10,000 shares to at least 5,000 shares, and the value requirement for implementing a gap quote would be reduced from \$200,000 or more to \$100,000 or more. If either requirement is met, the DMM may implement a gap quote if it determines the imbalance would cause a significant price dislocation. In addition, the Exchange has proposed to clarify the factors DMMs consider when setting the price of the gap quote. Finally, the Exchange has proposed to clarify certain aspects of the Policy and make other technical or non-substantive changes.

##### A. Reduced Minimum Size and Value Requirements

The Exchange has proposed to reduce the minimum size and value requirements for the use of a gap quote under the Policy to at least 5,000 shares or a market value of \$100,000 or more. The Exchange believes that these lower thresholds better reflect current market conditions. In addition to reducing the quantitative requirements for implementing a gap quote, the Exchange has proposed to add language clarifying that, notwithstanding meeting the minimum size or value requirement, an imbalance must also be anticipated to cause a significant price dislocation in the stock at issue in order to justify a gap quote. The Exchange believes it is

important to emphasize that whether a gap quote is appropriate depends on the characteristics of a security as much as on the Policy's minimum requirements.

##### B. Setting the Price of the Gap Quote

The current Information Memo instructs DMMs to set the price of a gap quote "at the price at which the DMM believes the stock would trade if no contra side interest developed or no cancellations occurred[.]" The Exchange has instead proposed that the DMM should publish the gap quote at the price where the DMM "reasonably anticipates" the stock would trade if no contra side interest developed or no cancellations occurred, which the Exchange believes helps clarify the guidance.

The Exchange has also proposed to clarify that the Policy still requires a DMM to take into account, "to the extent known," executable orders, e-Quotes and verbal interest in the Crowd (on the side of the market opposite the imbalance) at prices better than the price set by the DMM as the side of the gap quote opposite the imbalance when making his or her pricing determination. If the imbalance is known to be limited as to price, the DMM should not set the gap quote higher than that limit price.

The Exchange also has proposed to add a provision reminding the DMMs that, at the time they publish a gap quote, they should set the price of the gap quote such that it is likely to result in a trade of at least the minimum size of 5,000 shares or \$100,000 in value, thus clearing all, or a substantial portion of, the imbalance.

##### C. Other Clarifications and Technical or Non-Substantive Changes

The Exchange has also proposed several additional changes. A complete list of these changes is set forth in the Notice.<sup>5</sup> Among these changes are the following:

- The Exchange has proposed to add language to the Information Memo clarifying the DMM's responsibilities when implementing a gap quote. DMMs must balance the need for accurate price discovery with the need to attract contra side interest and trade out of the gap quote as soon as possible. In doing so, the DMM should, in consultation with a senior-level Floor Official, consider updating the gap quote after initial publication if doing so is necessary to attract sufficient contra side interest.

- The Exchange has proposed to add language reminding members and member organizations that the gap quote procedures may not be initiated after

<sup>5</sup> See *id.* at 62865-66.

<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. 61048 (November 23, 2009), 74 FR 62863 ("Notice").

<sup>4</sup> For a full description of the proposal, including an overview of the history of the Policy and a detailed description of the current terms of the Policy, see *id.*