

holders that are competing with Broker/Dealers in the NYSE Amex marketplace. In addition, basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that Professional Customer account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>21</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. In particular, the proposal will assure that retail investors continue to receive the appropriate marketplace advantages in NYSE Amex marketplace, while furthering fair competition among marketplace professionals by treating them equally within the NYSE Amex marketplace.

### *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 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-NYSEAmex-2010-18 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-NYSEAmex-2010-18. 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 Web site viewing and printing 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 NYSE's principal office and on its Internet Web site at <http://www.nyse.com>. 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-

NYSEAmex-2010-18 and should be submitted on or before March 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-4909 Filed 3-8-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61628; File No. SR-CBOE-2010-019]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Multi-Class Broad Based Index Option Spread Orders**

March 2, 2010.

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 February 18, 2010, 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, II, and III 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)(iii) 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**

The Exchange is proposing to amend its rule related to multi-class broad-based index option spreads to include options on index-linked securities (also known as exchange-traded notes ("ETNs")) within the definition of an eligible "broad-based index option." 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.

<sup>22</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)(iii).

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

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

## 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 Commission has approved CBOE's and other option exchanges' proposals to enable the listing and trading of options on ETNs.<sup>5</sup> Options trading has not commenced to date and is contingent upon the Commission's approval of The Options Clearing Corporation's ("OCC") proposed supplement to the Options Disclosure Document ("ODD") that will provide disclosure regarding options on index-linked securities.<sup>6</sup>

Prior to the commencement of trading options on ETNs, the Exchange is proposing to amend CBOE Rule 24.19, *Multi-Class Broad-Based Index Option Spread Orders*, to include options on ETNs within the definition of an eligible "broad-based index option" that may be subject to the multi-class spread trading procedures outlined in Rule 24.19.<sup>7</sup> Specifically, the definition of an eligible broad-based index option for purposes of Rule 24.19 will be amended to

<sup>5</sup> See e.g., Securities Exchange Act Release Nos. 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR-CBOE-2008-64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR-NYSEArca-2008-57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR-ISE-2008-86).

<sup>6</sup> OCC previously received Commission approval to clear options based on Index-Linked Securities. See Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR-OCC-2009-14).

<sup>7</sup> Rule 24.19 sets for a procedure for trading multi-class spread orders for eligible broad-based index option classes. For purposes of Rule 24.19 only, the term "broad-based index option" means "(i) options on the Mini-NDX Index (MNX), Nasdaq-100 Index (NDX), S&P 100 Index (OEX and XEO), iShares S&P 100 Index Fund (OEF), Nasdaq-100 Tracking Stock (QQQ), and S&P 500 Index (SPX); and (ii) any other broad-based index option or option on exchange-traded fund shares derived from a broad-based index that is determined by the Exchange to create an appropriate hedge with any other Broad-Based Index Option under this Rule 24.19." See Rule 24.19(a)(1).

include an option on an ETN derived from a broad-based index that is determined by the Exchange to create an appropriate hedge with any other broad-based index option under Rule 24.19. This change to include ETNs is the same as an existing provision in the rule that provides that options on Units (also known as exchange-traded funds ("ETFs")) that are derived from broad-based indices that are determined by the Exchange to create an appropriate hedge with any other broad-based index option may be subject to the multi-class spread trading procedures.<sup>8</sup>

Without discounting the differences between ETFs and ETNs, the Exchange seeks to extend the trading conventions applicable to options on ETFs to options on ETNs. CBOE contends that the inclusion of options on ETNs within the broad-based index option definition for purposes of the multi-class broad-based index option spread trading procedures is consistent with what is currently permitted for options on ETFs.<sup>9</sup>

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</sup> that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to extend the application of the multi-class broad-based index option spread trading procedures under CBOE Rule 24.19 to ETNs in a manner that is consistent with what is currently permitted for ETFs.

### 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

The Exchange neither solicited nor received comments on the proposal.

<sup>8</sup> The Exchange is also proposing a non-substantive change to the text of Rule 24.19(a)(1) to include a cross-reference to Units (another term for ETFs), which is defined under Interpretation and Policy .06 to CBOE Rule 5.3.

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

Because the foregoing rule 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 from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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-2010-019 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-2010-019. 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/>

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

*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 Web site viewing and printing 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 Number SR-CBOE-2010-019 and should be submitted on or before March 30, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

[FR Doc. 2010-4910 Filed 3-8-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61626; File No. SR-NYSE-2010-07]

### Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 476 To Add a Provision for Violations Relating to Failing To Observe High Standards of Commercial Honor and Just and Equitable Principles of Trade

March 2, 2010.

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 February 5, 2010, 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 and II 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 amend NYSE Rule 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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

In this filing, the New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend Rule 476 to add a provision for violations relating to failing to observe high standards of commercial honor and just and equitable principles of trade. The Commission previously approved an amendment to NYSE Rule 476 to delete subsection (a)(6), which concerned just and equitable principles of trade.<sup>4</sup> The rationale for that deletion was because NYSE adopted Rule 2010, which provided for the same content as the prior version of Rule 476(a)(6) and which harmonized the Exchange rule with the NYSE Amex LLC ("NYSE Amex") and Financial Industry Regulatory Authority, Inc. ("FINRA") standards for just and equitable principles of trade.

However, in deleting Rule 476(a)(6) and replacing it with Rule 2010, the

Exchange inadvertently deleted the ability for the Exchange to bring charges relating to failing to observe high standards of commercial honor and just and equitable principles of trade against approved persons, principal executives, and employees of member organizations. As approved, NYSE Rule 2010 is applicable only to members and member organizations. Accordingly, the Exchange proposes to amend Rule 476, which has an enabling provision to bring charges against approved persons and employees of member organizations, to add subsection (a)(6) to cover the same content that was previously deleted. To ensure that the standards for just and equitable principles of trade are consistent across Exchange rules, NYSE Amex, and FINRA, the Exchange proposes to adopt rule text that mirrors the standard set forth in Rule 2010, which is virtually identical to NYSE Amex Equities Rule 2010 and FINRA Rule 2010. As proposed, NYSE Rule 476(a)(6) would read as follows: "failing to observe high standards of commercial honor and just and equitable principles of trade."

In adopting this revised rule text for Rule 476(a)(6), the Exchange would be able to bring a charge relating to failing to observe high standards of commercial honor and just and equitable principles of trade against not only members and member organizations, but also against principal executives, approved persons, and employees of member organizations. This proposal is consistent with FINRA Rule 2010 because under FINRA Rule 0140, persons associated with a FINRA member have the same duties and obligations as a member under FINRA rules. Accordingly, FINRA has the authority to charge an associated person with a violation of Rule 2010. By adding this standard to Rule 476(a)(6), the Exchange will similarly have the authority to charge an employee of a member organization with a violation relating to failing to observe high standards of commercial honor and just and equitable principles of trade.

To ensure full harmonization, the Exchange also proposes amending Rule 476(a)(5) and deleting the phrase "fraud or fraudulent acts" and replacing it with the rule text from Rule 2020 to provide that the Exchange can bring charges against an employee of a member organization for effecting any transaction in, or inducing the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Finally, the Exchange proposes deleting the reference to "allied member," which no longer is a category

<sup>13</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> See Securities Exchange [sic] Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).