

cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change will allow the Exchange to continue receiving inbound routes of equities orders from Arca Securities acting in its capacity as a facility of the NYSE and NYSE Amex, in a manner consistent with prior approvals and established protections. The Exchange believes that extending the previously approved pilot period for six months will permit both the Exchange and the Commission to further assess the impact of the Exchange's authority to receive direct inbound routes of equities orders via Arca Securities (including the attendant obligations and conditions).<sup>9</sup>

#### *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**

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

At any time within 60 days of the filing of such proposed rule change the Commission summarily may

<sup>9</sup> The Exchange is currently analyzing the condition regarding non-public information and system changes in order to better reflect the operation of Arca Securities.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission 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.

temporarily suspend 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-NYSEArca-2010-82 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-NYSEArca-2010-82. 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 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-NYSEArca-2010-82 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-22562 Filed 9-9-10; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-62847; File No. SR-CBOE-2010-077]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change, as Modified by Amendment No. 1, To List Series With Up to 12 Expiration Months for Broad-Based Security Index Options Upon Which the Exchange Calculates a Volatility Index**

September 3, 2010.

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 24, 2010, the Chicago Board Options Exchange, Incorporated (the "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. On September 2, 2010, the Exchange filed Amendment No. 1, which replaced the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend Rule 24.9(a)(2), *Terms of Index Option Contracts*, to allow the Exchange to list up to twelve expiration months for options that overlie broad-based security indexes for which options are used by the Exchange to calculate a volatility index. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's principal office, and at the Commission's Public Reference Room.

<sup>12</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.

## 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

Amendment 1 replaces the original filing in its entirety. The purpose of Amendment 1 is to provide additional reasoning for the proposed rule text change and to make a technical change to Rule 24.9(a)(2) by deleting an unnecessary word from the text of the rule.

The purpose of this rule filing is to amend Rule 24.9(a)(2), *Terms of Index Options*, to allow the Exchange to list up to twelve expiration months for broad-based security index options upon which the Exchange calculates a volatility index. Currently, Rule 24.9(a)(2) permits the Exchange to list only seven expiration months in any index options upon which the Exchange calculates a constant three-month volatility index.

Since 2009, volatility trading has experienced significant growth in terms of both trading volume and in the variety of products offered. For example, through the first six months in 2010, CBOE Volatility Index ("VIX") options averaged close to 250,000 contracts traded per day, a 150% increase compared to the same period in 2009. VIX futures volume increased 440%, averaging 13,500 contracts per day compared to 2,500 contracts per day during the same period in 2009.

Similarly, since 2009, three exchange-traded notes ("ETNs") linked to the performance of VIX futures have been issued, two of which overlie listed options.<sup>3</sup> In addition, Jefferies & Co.

<sup>3</sup> ETNs are referred to "Index-Linked Securities" in CBOE's Rules. See Interpretation and Policy .13 to Rule 5.3. The ETNs linked to the performance of VIX futures are the (1) iPath S&P 500 VIX Short-Term Futures ETN ("VXX"), (2) iPath S&P 500 VIX Mid-Term Futures ETN ("VXZ"), and (3) Barclays ETN+ Inverse S&P 500 VIX Short-Term Futures ETN ("XXV").

recently announced plans to issue an exchange-traded fund ("ETF")<sup>4</sup> that holds VIX futures or an economically equivalent position and Bank of America Merrill Lynch recently announced plans to issue an ETN based on forward implied volatility of S&P 500 Index options. Additionally, the Exchange is aware of other issuers that are engaged in similar volatility product initiatives.

The Exchange was previously granted approval to list a seventh expiration in broad-based index classes on which the Exchange calculates a 3-month volatility index.<sup>5</sup> In order to satisfy growing demand for a wider variety of volatility investment strategies, the Exchange is seeking to increase, from seven to twelve, the number of expiration months for broad-based security index options upon which the Exchange calculates a volatility index.

Rule 24.9(a)(2) currently permits the Exchange to list up to seven expiration months at any one time for any broad-based security index option contracts, including reduced-value and jumbo option contracts, (e.g., DJX, NDX, RUT and SPX) upon which the Exchange calculates a constant three-month volatility index. When the Exchange proposed the allowance of a seventh expiration month for broad-based security index option contracts on which CBOE calculates a constant three-month volatility index, the Commission noted that the change "will result in a more consistent and predictable calculation in which the option series that bracket three months to expiration will always expire one month apart \* \* \*"<sup>6</sup> In this current proposal, the Exchange is seeking to create flexibility that would enable it to create volatility indexes of varying lengths in response to demand for a wider variety of volatility investment strategies. As a result, the Exchange is not proposing to tie the number of expiration months permitted to a specific volatility calculation period and is proposing to delete the phrase "constant three-month" from the existing text of Rule 24.9(a)(2).

The Exchange believes that the additional expirations, which will be listed in monthly intervals over a one-year time frame, will provide the Exchange with the flexibility to create indexes that represent unique volatility exposures, and enable the Exchange to

<sup>4</sup> ETFs are referred to as "Units" in CBOE's Rules. See Interpretation and Policy .06 to Rule 5.3.

<sup>5</sup> See Securities Exchange Act Release No. 56821 (November 20, 2007), 72 FR 66210 (November 27, 2007) (SR-CBOE-2007-082).

<sup>6</sup> See *id.*

respond quickly to investor demand for new volatility-based products.

#### Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the ability to list up to twelve expiration months for broad-based security index options upon which the Exchange calculates a volatility index.

#### 2. Statutory Basis

Because the increase in the number of expiration months is limited to options overlying broad based security indexes upon which the Exchange calculates a volatility index and because the series could be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>8</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

### 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.

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

Within 45 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:

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

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

- (A) By order approve or disapprove 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-CBOE-2010-077 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-2010-077. 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 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-2010-077 and should be submitted on or before October 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

[FR Doc. 2010-22599 Filed 9-9-10; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62846; File No. SR-EDGX-2010-12]

### Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

September 3, 2010.

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 31, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members<sup>3</sup> of the Exchange pursuant to EDGX Rule 15.1(a) and (c) to (i) add a price guarantee to footnote 1 of its fee schedule; and (ii) make other technical amendments to its fee schedule.

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.directedge.com>, on the Commission's Web site at <http://www.sec.gov>, 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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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

The Exchange proposes to make several amendments to its fee schedule. First, it proposes to add a price guarantee to footnote 1 of the schedule. This guarantee would state that "Any Member meeting the following criteria: (i) Adding 10,000,000 shares or more of liquidity to EDGX, (ii) where such added liquidity on EDGX is at least 5,000,000 shares greater than the previous calendar month; and (iii) but for the liquidity added on EDGX, such Member would have qualified for a better rebate with respect to liquidity added on another exchange or ECN that the Member previously qualified for in the three calendar months prior to meeting the above-described criteria in (i) and (ii), shall be reimbursed the difference between the rebate received and the rebate potentially received, so long as source documentation evidencing the above is provided to the Exchange within fifteen (15) calendar days from the end of the relevant month. A Member can only receive reimbursement with respect to two consecutive calendar months. With respect to the second calendar month's reimbursement, the relevant period in determining whether criteria (iii) is satisfied is the period three calendar months prior to the first of the two consecutive calendar months the Member meets the above-described criteria in (i) and (ii)."

The Exchange believes that the price guarantee, as described above, is equitable in that it is available to all Members migrating volumes to the Exchange. Furthermore, the price guarantee limits the increase in a Members' execution costs associating with failing to meet the volume thresholds of other exchanges and ECNs while a Member is in the process of migrating volumes from one exchange to another. The Exchange believes that the difficulty in transitioning volume has incentivized Members to leave volume on certain exchanges and ECNs rather than incurring the costs of migrating volumes to the Exchange. By facilitating

<sup>9</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> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.