

vendors under Section 603(a)(2) of Regulation NMS.

NYSE OpenBook is subject to significant competitive forces and the establishment of the Monthly Maximum represents a response to that competition. As the Exchange stated in the Unit of Count Filing, the Exchange competes intensely for order flow, competing with the other 10 national securities exchanges, with ECNs, with quotes posted in FINRA's ADF and TRFs, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow. The competition is free produce [sic] depth-of-book products, and Nasdaq, NYSE Arca, and BATS are among those who currently do.

In addition, the Exchange believes that no substantial countervailing bases exists to support a finding that the Monthly Maximum for NYSE OpenBook fails to meet the requirement of the Act.

In sum, the Exchange believes that the proposed Monthly Maximum is fair and reasonable.

2. Statutory Basis

The bases under the Act for this proposed rule change are the requirement under Section 6(b)(4)⁴ that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)⁵ that the rules of an exchange be designed to promote just and equitable principles of trade and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system.

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 Exchange 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. Please include File No. SR-NYSE-2009-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-37. 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 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-NYSE-2009-37 and should be submitted on or before April 29, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-7868 Filed 4-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59676; File No. SR-CBOE-2009-020]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Change the Close of Trading Hours on the Last Day of Trading in Expiring Quarterly Index Expirations

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 18, 2009, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 amend Rule 24.6 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring Quarterly Index Expirations ("QIXs"). The filing also proposes to amend Rule 24.9(c) by adding the Mini-SPX Index to the list of broad-based indices on which the Exchange may list QIXs. In addition, the filing proposes to amend Rule 24.9 by making technical

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78f(b)(5).

changes that add the Mini-SPX Index to the lists of European-style exercise and A.M. settled options approved for trading on the Exchange. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 24.6 to change the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) on the last day of trading in expiring Quarterly Index Expirations ("QIXs"). The Exchange proposes that the change to the close of trading hours on the last trading day applies to all outstanding expiring QIXs that expire at the end of the second calendar quarter in 2009 and thereafter.

QIXs were introduced in 1993 and are separate from the Quarterly Option Series Pilot Program provided for in Rule 5.5 and 24.9.⁵ QIXs are cash-settled options on certain specified broad-based indices that expire on the first business day of the month following the end of a calendar quarter.⁶ QIXs trade simultaneously with, not independent of, traditional options on the same underlying index. QIXs are subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading proceedings. Contract terms for QIXs are similar to traditional index options, with one general exception: the exercise settlement value is based on the index value derived from the closing prices of

component stocks. In addition, the contract multiplier for QIXs may be set at 500 rather than the customary 100. Positions in QIXs are aggregated with option contracts on the same broad-based index and are subject to the applicable overall position limit.⁷

Generally, QIXs are priced in the market based on corresponding futures values. On the last day of trading, the closing prices of the component stocks (which are used to derive the exercise settlement value) are known at 3 p.m. (Chicago time) (or soon after) when the equity markets close. Despite the fact that the exercise settlement value is fixed after 3 p.m. (Chicago time), trading in expiring QIXs continues, however, for an additional fifteen minutes until 3:15 p.m. (Chicago time) and are not priced on corresponding futures values, but rather the known cash value. At the same time, the prices of non-expiring QIX series continue to move and be priced in response to changes in corresponding futures prices.

Because of the pricing divergence that occurs between 3 and 3:15 p.m. on the final trading day in expiring QIXs (e.g., switch from pricing off of futures to cash), the Exchange believes that there is a risk to allow investors to continue trading expiring QIX contracts after 3 p.m. (Chicago time) on the last day of trading. As a result, the Exchange seeks to remedy any confusion by changing the close of trading hours from 3:15 p.m. (Chicago time) to 3 p.m. (Chicago time) for expiring QIXs on the last day of trading.

It is expected that other options exchanges that have adopted QIX rules will submit similar proposals.

The Exchange is also proposing to amend Rule 24.9(c) by adding the Mini-SPX Index to the list of broad-based indices on which the Exchange may list QIXs, which offers an additional method of tailoring portfolio hedges that expires on the last day of the calendar quarter. Finally, the Exchange is proposing to amend Rule 24.9 by making technical changes that add the Mini-SPX Index to the lists of European-style exercise and A.M. settled options approved for trading on the Exchange.⁸

⁷ See Rule 24.4(b).

⁸ In the original filing to list and trade Mini-SPX Index options, the Exchange inadvertently omitted to add the Mini-SPX Index to the lists of European-style exercise and A.M. settled options approved for trading on the Exchange. See Securities Exchange Act Release No. 32893 (September 14, 1993) 58 FR 49070 (September 21, 1993) (SR-CBOE-93-12) (Mini-SPX Index option approval order). Options on the reduced-value version of the Standard & Poor's S&P 500 Stock Index are known as "Mini-SPX Index options."

2. Statutory Basis

Because the Exchange believes that the current rule proposal will lessen investor confusion, 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.⁹ Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act¹⁰ 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

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 proposed 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,¹¹ the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ The Exchange has fulfilled this requirement.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

⁵ See Securities and Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13) (QIX approval order).

⁶ See *id.* and Rule 24.9(c).

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. Please include File Number SR-CBOE-2009-020 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-2009-020. 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 the CBOE. 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-2009-020 and should be submitted on or before April 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9-7974 Filed 4-7-09; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59696; File No. SR-FINRA-2009-020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the FINRA Regulation Board Composition and Conforming Changes to the FINRA Regulation By-Laws

April 2, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 27, 2009, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend the By-Laws of FINRA's regulatory subsidiary ("FINRA Regulation") to modify the FINRA Regulation Board ("FINRA Regulation Board") composition, to adopt changes to conform the FINRA Regulation By-Laws to the FINRA By-Laws, and to reflect the corporate name change and similar matters.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

Background on FINRA and Its Regulatory Subsidiary

On July 30, 2007, NASD and the New York Stock Exchange consolidated their member firm regulation operations into a combined organization, FINRA. As part of the consolidation, the SEC approved amendments to the NASD By-Laws to implement governance and related changes.³ The approved changes included a FINRA Board governance structure that balanced public and industry representation and designated seven governor seats to represent member firms of various sizes based on the criteria of firm size.

FINRA Regulation (formerly known as NASD Regulation) is a subsidiary of FINRA that operates according to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, as amended, which NASD adopted first in 1996 when it formed NASD Regulation. FINRA Regulation's By-Laws were not amended at the time of the consolidation, other than in a few sections where those By-Laws conflicted with the new FINRA By-Laws. On November 6, 2008, the Commission approved a proposed rule change to amend Articles I, II, III, V, VI, VII, IX, X and XIII, Section 4.16 of Article IV, and all of Article VIII except Section 8.7 and all of Article XII except Section 12.3, to realign the representation of industry members on the National Adjudicatory Council to follow more closely the categories of industry representation on the FINRA Board. See SR-FINRA 2008-046, Securities Exchange Act Release No. 58909 (November 6, 2008), 73 FR 68467 (November 18, 2008).

Changes to the FINRA Regulation Board Composition To Parallel the FINRA Board

The proposed rule change would make limited modifications to Article IV

³ See Securities Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007), as amended by Securities Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008) (File No. SR-NASD-2007-023).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.