

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 clerical corrections to the rule text of Chapter V, Section 18 of the BOX Rules and the supplementary material thereto. These changes had been previously approved by the Commission.<sup>5</sup>

Subsequent to the Commission's approval of the amendments to Chapter V, Section 18 of the BOX Rules and the supplementary material thereto, the Commission approved, further amendments to Chapter V, Section 18 of the BOX Rules and the supplementary material thereto.<sup>6</sup> The later amendments are currently reflected in the BOX Rules. The Exchange proposes to make clerical corrections to Supplementary Material .03, as originally proposed, and renumber current Supplementary Material .03 as Supplementary Material .04.<sup>7</sup>

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>8</sup> in general, and Section 6(b)(5) of the Act,<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to prevent fraudulent and manipulative acts, 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 proposed rule change will allow the

Exchange to properly reflect the appropriate approved text in the BOX Rules.

*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 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 has neither solicited nor received comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(3) thereunder,<sup>11</sup> the Exchange has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, the Exchange believes that its proposal should become immediately effective. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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-BX-2009-024 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-BX-2009-024. 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 self-regulatory organization. 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-BX-2009-024 and should be submitted on or before June 11, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59920; File No. SR-CBOE-2009-029]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Permanently Establish the Quarterly Option Series Pilot Program**

May 14, 2009.

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 May 7, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange")

<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.

<sup>5</sup> See Securities Exchange Act Release No. 55415 (March 7, 2007), 72 FR 11411 (March 13, 2007) (SR-BSE-2006-03).

<sup>6</sup> In SR-BSE-2006-56, the Commission, among other things, approved the current Supplementary Material .03 to Chapter V, Section 18 of the BOX Rules. If Supplementary Material .03, previously approved in SR-BSE-2006-03, was reflected in the BOX Rules at the time when SR-BSE-2006-56 was ultimately approved, then current Supplementary Material .03 should have been included within Section 18 as Supplementary Material .04. See Securities Exchange Act Release No. 56186 (August 2, 2007), 72 FR 44593 (August 8, 2007) (SR-BSE-2006-56).

<sup>7</sup> The insertion of the clerical corrections to the Supplementary Material as .03 and renumbering of current Supplementary Material .03 as Supplementary Material .04 will not affect the meaning, interpretation or function of Chapter V, Section 18 of the BOX Rules or any other sections of the BOX Rules.

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

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

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

<sup>11</sup> 17 C.F.R. 210.19b-4(f)(3) [sic].

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 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 make permanent its Quarterly Option Series pilot program ("QOS Program"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Office of the Secretary, CBOE 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 Exchange is proposing to make the QOS Program permanent. On July 7, 2006, the Exchange filed with the Commission SR-CBOE-2006-65, which was effective on filing and established the QOS Program.<sup>3</sup> The QOS Program allows CBOE to list and trade Quarterly Option Series, which expire at the close of business on the last business day or a calendar quarter. Under the QOS Program, CBOE may select up to five (5) currently listed exchange traded fund ("ETF") or index option classes on which Quarterly Option Series may be

opened. In addition, CBOE may also list Quarterly Option Series on any options classes that are selected by other securities exchanges that employ a similar pilot program under their respective rules.

The Exchange may list series that expire at the end of the next consecutive four (4) calendar quarters, as well as the fourth quarter of the next calendar year. For example, if the Exchange is trading Quarterly Options Series in the month of May 2009, it may list series that expire at the end of the second, third, and fourth quarters of 2009, as well as the first and fourth quarters of 2010. Following the second quarter 2009 expiration, the Exchange could add series that expire at the end of the second quarter of 2010.

Quarterly Option Series are P.M. settled.

##### **Quarterly Option Series in ETF Options**

If an ETF option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series is fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security at about the time the Quarterly Options Series is opened for trading on the Exchange. CBOE shall list strikes prices for a Quarterly Option series that are within \$5 from the closing price of the underlying on the preceding day.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. To the extent that any additional strike prices are listed by the Exchange, such additional strike prices shall be within thirty percent (30%) above or below the closing price of the underlying ETF (or "Units" as defined in Rule 5.3.06) on the preceding day.<sup>4</sup> The Exchange may also open additional strike prices of Quarterly Option Series in ETF options that are more than 30% above or below the current price of the underlying ETF provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The opening of the new

Quarterly Options Series shall not affect the series of options of the same class previously opened. In addition to the initial listed series, the Exchange may list up to sixty (60) additional series per expiration month for each Quarterly Options Series in ETF options.

The interval between strike prices on Quarterly Options Series shall be the same as the interval for strike prices for series in that same options class that expire in accordance with the normal monthly expiration cycle.

The Exchange has adopted a delisting policy with respect to QOS in ETF options.<sup>5</sup> On a monthly basis, the Exchange reviews series that are outside a range of five (5) strikes above and five (5) strikes below the current price of the underlying ETF, and delists series with no open interest in both the put and the call series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration month; and (ii) strike lower than the lowest strike price with open interest in the put and/or call series for a given expiration month.

Notwithstanding the delisting policy, customer requests to add strikes and/or maintain strikes in QOS in ETF options in series eligible for delisting shall be granted.

Further, in connection with the delisting policy, if the Exchange identifies series for delisting, the Exchange shall notify other options exchanges with similar delisting policies regarding eligible series for listing, and shall work with such other exchanges to develop a uniform list of series to be delisted, so as to ensure uniform series delisting of multiply listed options classes.

During the last quarter of 2008 (and for the new expiration month added after December Quarterly Option Series expiration), the Exchange was permitted to list up to one hundred (100) additional series per expiration month for each Quarterly Options Series in ETF options.<sup>6</sup>

##### **Quarterly Option Series in Index Options**

If an index option is selected for participation in the QOS Program, the strike price of each Quarterly Option Series will be fixed at a price per share, with at least two, but no more than five, strike prices above and at least two, but no more than five, strike prices below the value of the underlying index at

<sup>5</sup> See *id.*

<sup>6</sup> See Securities Exchange Act Release No. 58887 (October 30, 2008), 73 FR 66083 (November 6, 2008) (SR-CBOE-2008-111) (temporary increase to the number of additional Quarterly Option Series in ETF options).

<sup>3</sup> See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558, (July 17, 2006) (SR-CBOE-2006-65). The QOS Program has since been extended and is currently scheduled to expire on July 10, 2009. See Securities Exchange Act Release Nos. 56035 (July 10, 2007), 72 FR 38851, (July 16, 2007) (SR-CBOE-2007-70) (immediately effective rule change extending the QOS Program through July 10, 2008) and 58018 (June 25, 2008), 73 FR 38010 (July 2, 2008) (SR-CBOE-2008-62) (immediately effective rule change extending the QOS Program through July 10, 2009).

<sup>4</sup> See Securities Exchange Act Release No. 57410 (March 3, 2008), 73 FR 12483 (March 7, 2008) (SR-CBOE-2007-96) (amended QOS Program to permit the listing of additional Quarterly Option Series in ETF options).

about the time that a Quarterly Options Series is opened for trading on the Exchange. The Exchange shall list strike prices for Quarterly Options Series that are reasonably related to the current index value of the underlying index to which such series relates at about the time such series of options is first opened for trading on the Exchange. The term "reasonably related to the current index value of the underlying index" means that the exercise price is within thirty percent (30%) of the current index value.

The Exchange may open for trading additional Quarterly Options Series of the same class when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the initial exercise price or prices. The Exchange may also open for trading additional Quarterly Options Series that are more than thirty percent (30%) of the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision.

The Exchange may open additional strike prices of a Quarterly Option Series that are above the value of the underlying index provided that the total number of strike prices above the value of the underlying index is no greater than five. The Exchange may open additional strike prices of a Quarterly Option Series that are below the value of the underlying index provided that the total number of strike prices below the value of the underlying index is no greater than five. The opening of any new Quarterly Option Series shall not affect the series of options of the same class previously opened.

By definition, Quarterly Option Series on an option class can never expire in the same week in which monthly option series on the same class expires. The same, however, is not the case with regards to Short Term Option Series. Quarterly Option Series and Short Term Option Series on the same options class may expire concurrently. However, to avoid any confusion in the market place, the Exchange will not list a Short Term Option Series on an options class whose expiration coincides with that of a Quarterly Option Series on the same options class. In other words, the Exchange will not list a Short Term Options Series on an ETF or an index if a Quarterly Option Series on that ETF or index were to expire on a Friday, the

only day of the week during which both Quarterly Option Series and a P.M.-settled Short Term Option Series can potentially expire concurrently.

There being one exception to this rule. The Exchange may list a P.M.-settled Quarterly Option Series on an options class concurrent with an A.M.-settled Short Term Options Series on that same options class, both of which may expire on a Friday. In other words, the Exchange may list a P.M.-settled Quarterly Option Series on an ETF on an index concurrent with an A.M.-settled Short Term Option Series on that ETF or index and both of which expire on a Friday. The Exchange believes that the concurrent listing of an A.M.-settled Short Term Option Series and a P.M.-settled Quarterly Option Series on the same underlying ETF or index will provide investors with yet another hedging mechanism. Finally, the interval between strike prices on Quarterly Option Series shall be the same as the interval for strike prices for series in the same options class that expires in accordance with the normal monthly expiration cycles.

The Exchange has selected the following five ETF option classes to participate in the QOS Program: DIAMONDS Trust (DIA) options, Standard and Poor's Depository Receipts/SPDRs (SPY) options, iShares Russell 2000 Index Fund (IWM) options, PowerShares QQQ Trust (QQQQ) options and Energy Select SPDR (XLE) options. CBOE believes the QOS Program has been successful and well received by its members and the investing public for the nearly three years that it has been in operation as a pilot.

CBOE is now proposing to make the QOS Program permanent. In support of approving the QOS Program on a permanent basis, the Exchange has submitted to the Commission a Pilot Program Report ("Report") detailing the Exchange's experience with the QOS Program. Specifically, the Report contains data and written analysis regarding the five ETF option classes included in the QOS Program. The Report was submitted under separate cover and seeks confidential treatment under the Freedom of Information Act.

The Exchange believes there is sufficient investor interest and demand in the QOS Program to warrant its permanent approval. The Exchange believes that, for the nearly three years that it has been in operation, the QOS Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any

capacity-related problems with respect to Quarterly Option Series. The Exchange also represents that it has the necessary system capacity to continue to support the option series listed under the QOS Program.

In seeking permanent approval, the Exchange is taking this opportunity to update the expiration examples provided in Rules 5.5, and 24.9. The revisions do not change the substance of the QOS Program.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act<sup>7</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that permanent approval of the QOS Program will result in an ongoing benefit to investors, and will continue to allow them additional means to manage their risk exposures and carry out their investment objectives.

### *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 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

<sup>7</sup> 15 U.S.C. 78s(b)(1).

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

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

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-CBOE-2009-029 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-2009-029. 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 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-2009-029 and

should be submitted on or before June 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59921; File No. SR-FINRA-2009-028]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

May 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 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 adopt NASD Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the new consolidated FINRA rulebook ("Consolidated FINRA Rulebook").<sup>3</sup> The proposed rule change would also delete

<sup>10</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> The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

NYSE Rule 409<sup>4</sup> (Statements of Accounts of Customers), except for paragraph (f), and certain of its related interpretations.

The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and <http://www.finra.org>.

#### 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

As part of the process of developing a new consolidated rulebook, FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) with certain changes as FINRA Rule 2231 in the Consolidated FINRA Rulebook. The proposed rule change would also delete: (1) NYSE Rule 409 (Statements of Accounts to Customers), except for paragraph (f) and its related supplementary material; and (2) NYSE Rule Interpretations 409(a) and 409(b), except for paragraphs 409(a)/01 and 409(a)/03, as the rule and its related interpretations are, in main part, duplicative of NASD Rule 2340. However, as further described herein, the proposed rule change would incorporate certain provisions of NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

#### PROPOSED FINRA RULE 2231 (CUSTOMER ACCOUNT STATEMENTS)

##### Frequency of Delivery of Account Statements and Disclosures

NASD Rule 2340 generally requires each general securities member to send customers at least once each calendar quarter account statements containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent. NYSE Rule 409(a)

<sup>4</sup> For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.