

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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 written comments on 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹³ However, Rule 19b-4(f)(6)(iii)¹⁴ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. BATS believes that waiver of the 30-day operative delay will allow the Exchange to more promptly implement the changes to its system to reject market orders outside of Regular Trading Hours even if such orders would otherwise execute. BATS expects to have technological changes in place to support the proposed rule change on July 24, 2009, and believes that benefits to Exchange Users expected from the proposed rule change should not be delayed.¹⁵ In addition, the Commission notes that the proposed rule change is consistent with the rules of other exchanges that prohibit the execution of market orders outside of regular trading

hours.¹⁶ Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and hereby designates the proposal operative upon filing.¹⁷

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. Please include File No. SR-BATS-2009-025 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-BATS-2009-025. 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 BATS. 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-BATS-2009-025 and should be submitted on or before August 21, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60380; File No. SR-OCC-2009-12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Clearing Cash-Settled Foreign Currency Index Options

July 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 12, 2009, The Options Clearing Corporation ("OCC") 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act² and Rule 19b-4(f)(1)³ thereunder so that the proposal was 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 proposed rule change would clarify that index options cleared by OCC may include options on foreign currency indexes, including options on the International Securities Exchange ("ISE") Leveraged USD Basket Index.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii). 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.

¹⁴ *Id.*

¹⁵ See SR-BATS-2009-025, Item 7.

¹⁶ See *supra* note 10.

¹⁷ For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78s(b)(3)(A)(i).

³ 17 CFR 240.19b-4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.⁴

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ISE has proposed for trading cash-settled foreign currency index options ("Currency Index Options") on the ISE USD Leveraged Basket Index ("ISE FX Index"). In its rule filing, ISE states that the ISE FX Index, which is a foreign currency index, tracks two times the performance, relative to the U.S. Dollar, of a basket of the official currencies associated with the other "Group of 10" countries ("G-10").⁵ The ISE FX Index was created by ISE and will be maintained and calculated by an index calculation agent based on a methodology developed by ISE. The ISE FX Index is intended as a benchmark for investors interested in the performance of the US Dollar versus the currencies of other G-10 countries. OCC may clear options on other foreign currency indexes in the future.

Currency Index Options are similar to other index options cleared by OCC. Therefore, OCC believes that the provisions of its By-Laws and Rules governing index options, as they are currently in effect, are sufficient to support the clearance and settlement of Currency Index Options. The purpose of this rule change is to make a purely technical amendment to the definition of "index component" in Article XVII of the By-Laws to make it more transparent that index options cleared by OCC may include options on foreign currency indexes.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it is designed to promote the

prompt and accurate clearance and settlement of transactions in, including exercises of, foreign currency index options, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change accomplishes this purpose by applying the same rules and procedures to these transactions as OCC applies to transactions in other index options. The proposed rule change is not inconsistent with the existing rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁶ and Rule 19b-4(f)(1)⁷ promulgated thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. However, OCC will not begin to clear and settle foreign currency index options until distribution of a supplement to the options disclosure document, Characteristics and Risks of Standardized Options, addressing such options. At any time within sixty days of the filing of the 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. Please include File Number SR-OCC-2009-12 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-OCC-2009-12. 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 OCC. 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-OCC-2009-12 and should be submitted on or before August 21, 2009.

⁴ The Commission has modified parts of these statements.

⁵ Although there are eleven countries in the G-10, because several of these countries are members of the European Union and use the Euro as their currency. As a result, there are only seven currencies associated with the G-10: US Dollar, Euro, Japanese Yen, British Pound, Canadian Dollar, Swiss Franc and Swedish Krona.

⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

⁷ 17 CFR 240.19b-4(f)(2).

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60379; File No. SR-NYSEArca-2009-62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending the Schedule of Fees and Charges for Exchange Services

July 23, 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 July 1, 2009, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") 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 proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ 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 proposes to the section of its Schedule of Fees and Charges for Exchange Services (the "Schedule"). Changes to the Schedule pursuant to this proposal will be effective and operative upon filing. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office 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 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 purpose of this proposed rule filing is to amend the Schedule to reflect new transaction pricing. The Exchange proposes to eliminate the facilitation fee charged to firms who facilitate their customer order flow. Currently, the Firm Facilitation Fee is \$0.15. The Firm Facilitation Fee applies to any transaction involving a firm's proprietary trading account, which has a customer of that same firm on the contra side of the transaction. The Exchange also proposes to reduce the Broker Dealer and Firm Manual fee from \$0.26 to \$0.25.

The proposed fees are part of the Exchange's ongoing effort to offer attractive transaction rates, and will become operative on July 1, 2009.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Arca.

The Exchange believes the reduced Firm Facilitation Fee is equitable because it applies uniformly to all similarly situated users, specifically firms facilitating customer order flow. Reduction of the fee to zero also follows precedent currently in place on other exchanges that have established fee caps.⁵ The Exchange believes this proposal is in fact more equitable than fee caps attainable only by large broker dealer firms. For example, certain large broker dealers are capable of reaching the fee cap at certain options exchanges on the first day of trading in a given month, making their transaction fees equal to zero for the remainder of the month. This treatment favors larger

firms capable of reaching the established fee cap. In comparison to fee caps, this proposed change creates a level playing field for all similarly situated participants, by charging a Firm Facilitation Fee of \$0.00 to all firms executing facilitation trades regardless of the firm's volume.

The fee reduction is also consistent with the current fee schedule and industry precedent that allows for different rates to be charged for different order types originated by dissimilarly classified market participants. The Exchange, along with other options exchanges, currently applies different rates to firms facilitating their own customer order flow as opposed to solicited orders. The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants. For example, under the Exchange's current fee schedule, the customer side of a firm facilitation trade is \$0.00, while the facilitation side is currently \$0.15. The current \$0.15 Facilitation Fee is \$0.11 less than the \$0.26 charged for manual broker dealer executions and \$0.02 less than the market maker non-directed fee of \$0.17. These differences exist, in part, because customers have historically been at a competitive disadvantage in the options markets as compared to firms actively engaged in the market, thus firms are appropriately incentivized to facilitate customer order flow. The Exchange believes that reducing the Firm Facilitation Fee to zero follows existing precedent for rate differentials and further encourages firms to facilitate customer order flow, thereby assisting customers in their attempt to transact in the options markets.

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

The foregoing rule change is effective upon filing pursuant to Section

⁸ 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).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See Securities Exchange Act Release No. 59393 (February 11, 2009), 74 FR 7721 (February 19, 2009) (SR-Phlx-2009-12) (increasing the Firm-Related Equity Option and Index Option Cap to \$75,000 and exclude JBO participants).