

consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to promptly conform its rule with the approved FINRA Rule, and will ensure the elimination of any potential regulatory gap and that the NYSE Rules maintain their status as Common Rules under the Agreement. Therefore, the Commission designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2009-75 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-NYSE-2009-75. 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 Exchange and on its 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-NYSE-2009-75 and should be submitted on or before September 14, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60513; File No. SR-CBOE-2009-059]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

August 17, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 12, 2009, Chicago Board

Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 CBOE. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,<sup>1</sup> and Rule 19b-4(f)(2) thereunder,<sup>2</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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is below. Additions are in *italics*. Deletions are in [brackets].

\* \* \* \* \*

Chicago Board Options Exchange, Incorporated Fees Schedule

[August] *September* 1, 2009

1.-4. Unchanged.

Footnotes:

(1)-(17) Unchanged.

5.-11. Unchanged.

12. Regulatory Fees:

A) Options Regulatory Fee: \$.004 per contract\*

\*The Options Regulatory Fee is assessed by CBOE to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (OCC) in the customer range, excluding Linkage orders, regardless of the exchange on which the transaction occurs. The fee is collected indirectly from members through their clearing firms by OCC on behalf of CBOE. There is a minimum one-cent charge per trade.

Remainder of Fees Schedule—Unchanged.

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give 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 Exchange has satisfied this requirement.

<sup>18</sup> For 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).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>2</sup> 17 CFR 240.19b-4(f)(2).

rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE 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, Proposed Rule Change*

(a) Purpose

The Exchange charges an Options Regulatory Fee ("ORF") of \$.004 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing Corporation ("OCC") in the customer range, excluding Options Intermarket Linkage Plan ("Linkage") orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.<sup>3</sup>

The Exchange proposes to amend the ORF to also include options transactions that are not executed by a CBOE member but are ultimately cleared by a CBOE member. Thus the Exchange would charge a member \$.004 per contract for all options transactions executed or cleared by the member that are cleared by OCC in the customer range, excluding Linkage orders, regardless of the marketplace of execution. In the case where one member both executes a transaction and clears the transaction, the ORF would be assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF would be assessed only to the member who executes the transaction

and would not be assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF would be assessed to the member who clears the transaction.<sup>4</sup>

The Exchange believes that its broad regulatory responsibilities with respect to its members' activities, as described in the Original Filing, supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activity, including performing surveillance for position limit violations, manipulation, insider trading, frontrunning and contrary exercise advice violations.

The Exchange expects that the proposed rule change would increase ORF revenue by less than two percent. As stated in the Original Filing, the ORF is designed to generate revenue that, when combined with all of the Exchange's other regulatory fees, will be less than or equal to the Exchange's regulatory costs. If the Exchange determines regulatory revenues would exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies members of adjustments to the ORF via regulatory circular.

The proposed fee change would become operative on September 1, 2009, in order to give members time to implement the revised fee.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>6</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the proposed rule change is reasonable because it relates to the recovery of the costs of supervising and regulating CBOE members. The Exchange believes the proposed rule change is equitable because the ORF would be charged to all members on all

of their business that clears as customer at the OCC.

*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 that is not necessary or appropriate in furtherance of 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 has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder. At any time within 60 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2009-059 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-2009-059. 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

<sup>3</sup> The ORF was established in October 2008 as a replacement of Registered Representative ("RR") fees. See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) ("Original Filing"). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. See Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from \$.0045 per contract to \$.006 per contract. See Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009). The Exchange reduced the ORF from \$.006 per contract to \$.004 per contract, effective August 1, 2009. See Securities Exchange Act Release No. 60093 (June 10, 2009), 74 FR 28749 (June 17, 2009).

<sup>4</sup> See e-mail to Richard Holley III, Senior Special Counsel, from Jaime Galvan, Senior Attorney, CBOE, dated August 17, 2009 (clarifying the operation of the proposed change to extend the ORF to clearing activity).

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

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 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-2009-059 and should be submitted on or before September 14, 2009.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60494; File No. SR-SCCP-2009-03]

### Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to an Amendment to the By-Laws of The NASDAQ OMX Group, Inc.

August 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 22, 2009, Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change described in Items I and II below, which items have been prepared primarily by SCCP. SCCP

filed the proposed rule change under Rule 19b-4(f)(6) under the Act<sup>2</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

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

SCCP is filing this proposed rule change with regard to proposed changes to the by-laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The proposed rule change will be implemented as soon as practicable following submission of this filing. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com>, at SCCP'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, SCCP 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. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>3</sup>

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

###### 1. Purpose

NASDAQ OMX made certain amendments to its by-laws to update its by-laws and to make improvements in its governance. In SR-NASDAQ-2009-039, The NASDAQ Stock Market LLC ("NASDAQ Exchange") sought and received Commission approval to adopt these by-law changes as part of the rules of the NASDAQ Exchange.<sup>4</sup> SCCP is submitting this filing to adopt the same by-law changes as rules of SCCP.

The proposed changes to the by-laws are as follows:

- Article I is being amended to reflect the recent name changes of the Philadelphia Stock Exchange and the

Boston Stock Exchange to NASDAQ OMX PHLX, Inc. and NASDAQ OMX BX, Inc., respectively.

- Article III is being amended to modify the procedures governing proposals by stockholders, including proposals by stockholders to nominate directors. Specifically, the amendment will require a stockholder making a proposal to supply more complete information about the stockholder's background, including a description of any agreement, arrangement, or understanding between the stockholder, the beneficial owner of the stock, and any other persons acting in concert with them; a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares), the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of, such stockholder or such beneficial owner, with respect to shares of stock of NASDAQ OMX; and any other information regarding the stockholder and beneficial owner that would be required to be disclosed in a proxy statement under Section 14(a) of the Act. These changes are designed to provide the NASDAQ OMX Board of Directors and its stockholders with greater insight into the identity and intentions of persons presenting stockholder proposals to allow more thorough consideration of the merits of such proposals. These requirements are deemed satisfied, however, in the case of a proposal that is validly submitted under the rules and regulations promulgated under the Act (*i.e.*, SEC Rule 14a-8) and included in NASDAQ OMX's proxy. However, compliance with the By-Laws or with SEC Rule 14a-8 provides the exclusive means for stockholders to make proposals. The amendments also provide that a representative of a stockholder qualified to appear at an annual meeting must be an officer, manager, or partner of the stockholder or must have written authorization from the stockholder. The amendments also make several minor clarifying changes to the text of Article III.

- Article IV is being amended to state explicitly that the Management Compensation Committee and the Audit Committee must be composed exclusively of independent directors within the meaning of the rules of the NASDAQ Stock Market that govern NASDAQ OMX's listing (and in the case of the Audit Committee, Section 10A of

<sup>2</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> The Commission has modified the text of the summaries prepared by DTC.

<sup>4</sup> Securities Exchange Act Release No. 59858 (May 4, 2009), 74 FR 22191 (May 12, 2009) (SR-NASDAQ-2009-039); Securities Exchange Act Release No. 60183 (June 26, 2009), 74 FR 32207 (July 7, 2009) (SR-NASDAQ-2009-039).

<sup>9</sup> CFR 200.30-3(a)(12).

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