

19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

Normally, a proposed rule change filed under 19b-4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. In its filing, Nasdaq noted that the proposal would provide a means for firms to comply with regulatory requirements more easily and quickly, and that keeping such information in a centralized, electronic location would enhance Nasdaq's and FINRA's oversight of these members.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow contact information, utilized for regulatory communications and compliance purposes, among other things, to be more efficiently collected in a centralized location. In addition, the modification of the rule to reflect the new name of the System will add clarity to Nasdaq's rules. Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.<sup>11</sup>

#### 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-NASDAQ-2009-109 on the subject line.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</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 Commission notes that Nasdaq has satisfied the five-day pre-filing notice requirement.

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>11</sup> 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).

##### *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-NASDAQ-2009-109. 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 the filing also will be available for inspection and copying at the principal office of Nasdaq. 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-NASDAQ-2009-109 and should be submitted on or before January 8, 2010.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61140; File No. SR-CBOE-2009-048]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding Authority Over C2 Options Exchange, Incorporated

December 10, 2009.

#### I. Introduction

On July 2, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to CBOE's authority over C2 Options Exchange, Incorporated ("C2"), a wholly-owned subsidiary of CBOE that has filed with the Commission to register as a self-regulatory organization ("SRO") under Section 6 of the Exchange Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 22, 2009.<sup>4</sup> The Commission received no comment letters on the proposal. This order approves the proposed rule change.

#### II. Description

On January 21, 2009, CBOE filed an application with the Commission seeking registration of a second national securities exchange, referred to as C2.<sup>5</sup> In connection with that application, CBOE proposed to adopt a policy to codify the fact that CBOE, upon any Commission approval of the Form 1 application seeking to establish C2 as a registered options exchange, will be responsible for ensuring that C2 fulfills its self-regulatory obligations and will have the resources necessary for it to do so.<sup>6</sup> The proposed policy sets forth

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

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

<sup>3</sup> See Securities and Exchange Act Release No. 59441 (February 24, 2009), 74 FR 9322 (March 3, 2009) (File No. 10-191) ("C2 Notice").

<sup>4</sup> See Securities Exchange Act Release No. 60307 (July 15, 2009), 74 FR 36289 ("Notice").

<sup>5</sup> See C2 Notice, *supra* note 3.

<sup>6</sup> The first paragraph of proposed Rule 2.50 reads, in relevant part:

C2 Options Exchange, Incorporated ("C2") will be and remain a self-regulatory organization registered under Section 6 of the Exchange Act and as such will have statutory authority and responsibility concerning, among other things, the operation of its market and regulation of its members. As the parent company with 100% controlling interest in C2, the Exchange will be responsible for ensuring that C2 meets its obligations as a self-regulatory organization.

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

certain principles that will guide CBOE in fulfilling its responsibilities as the parent company of C2 should the Commission grant C2's application for registration.<sup>7</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>9</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal addresses the role of CBOE in the operation of C2 and sets forth certain important governing principles relating to this responsibility.<sup>10</sup> The proposed policy reflects CBOE's commitment and responsibility to ensure that C2 meets its obligations as an SRO. Specifically, CBOE's proposed policy represents that it will bear ultimate responsibility for ensuring that C2 meets its statutory obligations. Further, CBOE will ensure that C2 has and appropriately allocates the necessary resources so that C2 can meet those obligations. The Commission believes it is consistent with the Act for CBOE, as parent company and

controlling owner of C2, to make these commitments. Further, the Commission notes that the proposed policy is similar to a policy that was formerly adopted by the National Association of Securities Dealers, Inc. in connection with its combination with the American Stock Exchange, Inc.<sup>11</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CBOE-2009-048) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61138; File No. SR-NYSEArca-2009-112]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Add Commentary .01 to Rule 6.47

December 10, 2009.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 7, 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 and II 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 Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 6.47 to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd ("tied hedge" orders) based on a

recently approved rule change of the Chicago Board Options Exchange ("CBOE").<sup>4</sup> The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, on the Commission's Web site at <http://www.sec.gov>, 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 Exchange is proposing to add Commentary .01 to Rule 6.47 to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd ("tied hedge" orders), based on a recently approved rule change of the CBOE. Rule 6.47 generally sets forth the procedures by which a floor broker may cross an order with a contra-side order. Currently, transactions executed pursuant to Rule 6.47 are subject to the restrictions of paragraph (b) of Rule 6.49, Solicited Transactions, which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as "anticipatory hedging").

##### Existing Anticipatory Hedge Rule

By way of background, when Rule 6.49 was adopted in 2001, the Exchange noted its belief that it is appropriate to permit solicitation between potential buyers and sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange also noted that, if the orders that comprise a solicited transaction are not suitably exposed to the order

<sup>7</sup> The proposed principles set forth in proposed Rule 2.50 are as follows:

1. The Exchange will exercise its powers and its managerial influence to ensure that C2 fulfills its self-regulatory obligations by:

Directing C2 to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Exchange Act; and ensuring that C2 has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Exchange Act.

2. The Exchange will refrain from taking any action with respect to C2 that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by C2 to carry out its self-regulatory obligations under the Exchange Act and the rules and regulations thereunder.

<sup>8</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> See note 7, *supra* (setting forth the proposed principles).

<sup>11</sup> See Securities and Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 at 59827 (November 5, 1998) (SR-Amex-98-32; SR-NASD-98-56; SR-NASD-98-67).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 60499 (August 13, 2009), 74 FR 42350 (August 21, 2009) (order approving SR-CBOE-2009-007).