

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the benefits of this functionality to NASDAQ market participants expected from the rule change will not be delayed. The Commission believes that waiving the 30-day operative delay to make this functionality available without delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposal operative upon filing.<sup>10</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.

<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 a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

<sup>10</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).

**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-2009-057 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-NASDAQ-2009-057. 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 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-2009-057 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-15740 Filed 7-2-09; 8:45 am]

BILLING CODE 8010-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60177; File No. SR-CBOE-2009-037]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, To Amend Its Minor Rule Violation Plan**

June 25, 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 June 4, 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 Amendment No. 1 to the proposed rule change on June 17, 2009.<sup>3</sup> Subsequently, on June 23, 2009, the Exchange filed Amendment No. 2.<sup>4</sup> 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 Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend CBOE Rule 17.50—Imposition of Fines for Minor Rule Violations to (i) increase and strengthen the sanctions imposed under CBOE's Minor Rule Violation Plan; (ii) incorporate additional violations into CBOE's Minor Rule Violation Plan; (iii) delete obsolete or duplicative sections of the rule; and (iv) make various non-substantive technical changes to the rule. The text of the proposed rule change is available on the Exchange's

<sup>11</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> Amendment No. 1 is a partial amendment that makes four non-substantive, technical changes to the rule text submitted as Exhibit 5 to SR-CBOE-2009-037.

<sup>4</sup> Amendment No. 2 is a partial amendment that makes corrections to the description of the changes submitted in Amendment No. 1.

Web site (<http://www.cboe.com/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 and is set forth in sections (A), (B), and (C) below.

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

#### 1. Purpose

CBOE has recently conducted a comprehensive review of its Minor Rule Violation Plan. As a result of this review, CBOE is proposing to (i) increase and strengthen the sanctions imposed for various violations; (ii) incorporate additional violations into the Exchange's Minor Rule Violation Plan; (iii) delete obsolete or duplicative sections of the rule; and (iv) make various non-substantive changes to the rule.

The Exchange believes that increasing the fine levels specified and lengthening the surveillance period from a twelve month period to a rolling twenty-four month period will serve as an effective deterrent to future violative conduct. Where the Exchange is proposing to increase the look-back period to twenty-four months, the Exchange will consider any violations that resulted in formal disciplinary action within the previous twenty-four months for purposes of calculating the summary fine. Similarly, where the Exchange is proposing to incorporate new violations into its Minor Rule Violation Plan, the Exchange will consider violations resulting in formal disciplinary action within the previous twenty-four month period when determining whether previous violations have occurred for purposes of calculating a summary fine. CBOE believes that the proposed changes will allow for consistency throughout Rule 17.50. CBOE is also proposing to delete obsolete or duplicative provisions from its Minor Rule Violation Program to diminish any confusion in the application of the Rule.

CBOE is proposing to incorporate additional violations into its Minor Rule Violation Plan. These violations include

(i) exercise limits; (ii) trading in restricted classes; (iii) Linkage violations (including order protection violations and locked or crossed violations); (iv) Market-Maker quoting obligations; (v) failure to report position and account information; and failure to designate and identify to the Exchange a person or persons responsible for implementing and monitoring the Anti-Money Laundering ("AML") compliance program. CBOE believes that these violations are suitable for incorporation into the Minor Rule Violation Plan because these violations are generally technical in nature. Further, CBOE will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its Minor Rule Violation Plan. As with all of the violations incorporated into CBOE's Minor Rule Violation Plan, CBOE retains the ability to refer any violation to its Business Conduct Committee under Rule 17.50 should the circumstances warrant such referral.

CBOE is specifically proposing the following modifications to Rule 17.50:

#### *Exercise Limit Violations*

CBOE is proposing to modify its Minor Rule Violation Plan to incorporate exercise limit violations. Specifically, CBOE is proposing to modify Rule 17(g)(1) to add exercise limits to the section that currently addresses position limits. The fine levels for exercise limit violations will match the fine levels for position limits. In particular, a first offense will be subject to a \$500 fine. A second offense will be subject to a \$1,000 fine and a third offense will be subject to a \$2,500 fine. A fourth offense and any subsequent offenses will be subject to a \$5,000 fine. The number of offenses will be calculated on a rolling twenty-four month period.

CBOE believes these changes will serve as an effective deterrent to future violative conduct. CBOE notes that this proposal is consistent with the minor rule violation plans in place at the NYSE AMEX LLC ("AMEX") and NYSE Arca, Inc. ("ARCA").<sup>5</sup> As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

#### *Failure To File FOCUS Reports in a Timely Manner*

CBOE is proposing to make a technical change to clarify that FOCUS

Reports that are received by the Exchange more than ninety days late will be referred to the Exchange's Business Conduct Committee. The existing schedule does not clearly reflect how a FOCUS Report that is received on the ninetieth day would be handled for purposes of assessing a summary fine. Therefore, CBOE is proposing to change the reference to "90+" days in the sanction schedule to "91+" days.

#### *Late Submission of Trading Data*

CBOE is proposing to modify its Minor Rule Violation Plan as it applies to the failure to respond in a timely manner to a request for automated submission of trading data ("Blue Sheets") as set forth in Rule 17(g)(3). First, CBOE is proposing to increase the look-back period from twelve months to twenty-four months. CBOE is also proposing to delete the provision that enabled the Exchange to issue a summary fine based on the number of days Blue Sheets were submitted late. With the increased ease of automation for the purpose of submitting trading information in the securities industry, CBOE believes that this breakdown is no longer necessary. Therefore, CBOE is proposing to modify Rule 17.50(g)(3) to enable the Exchange to issue a summary fine when the Exchange does not receive a response to a Blue Sheet request within ten (10) days. In conjunction with these changes, CBOE is proposing to assess a \$2,500 fine for a first offense. Any subsequent offenses within a rolling twenty-four (24) month period would be subject to a \$5,000 fine or referral to the Exchange's Business Conduct Committee. CBOE believes these changes will serve as an effective deterrent to future violative conduct.

#### *Failure To Book and Display Limit Orders That Would Improve the Disseminated Quote*

The Securities and Exchange Commission approved a CBOE filing in November 2005<sup>6</sup> removing the agency function from Designated Primary Market-Makers ("DPM"). Upon removal of this function, CBOE established PAR Officials who have since been required to comply with the limit order display obligations as set forth in Rule 7.12. CBOE Rule 7.12 defines a PAR Official as "an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a DPM trading crowd

<sup>5</sup> See AMEX Rule 590 Section (g) of Part 1 and ARCA Rule 10.12(k)(i)(21).

<sup>6</sup> See Securities Exchange Act Release No. 34-52798 (November 18, 2005), 70 FR 71344 (November 28, 2005) (SR-CBOE-2005-46).

with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her.” Pursuant to Rule 7.12, PAR Officials may not maintain any affiliation with a member that is authorized to act as a Market-Maker. As the obligation to display limit orders is now a function of CBOE Staff (or a designated independent contractor), CBOE is proposing to delete this violation type from Rule 17.50(g)(5).

CBOE is also proposing several technical changes to this provision. First, the Exchange is proposing to modify the rule references in the bullets relating to book priority and due diligence. These provisions inappropriately reference “Rules 6.45” and “Rules 6.73.” CBOE is proposing to modify these references to reflect “Rule 6.45” and “Rule 6.73.” In addition, CBOE is proposing to modify the fine schedule in a manner that is consistent with the form of other fine schedules under the Exchange’s Minor Rule Violation Plan. In particular, CBOE is proposing to replace the existing reference to “Subsequent Offenses” with a reference to “4th and 5th Offenses.” The fine allocated to fourth and fifth offenses for violations of this provision would range from \$3,500 to \$5,000. CBOE is also proposing to replace the note referencing the disposition of 6th and subsequent offenses with a separate entry for “Subsequent Offenses.” Any violations falling under the “Subsequent Offenses” category would be referred to the Exchange’s Business Conduct Committee. As with other violations covered under the Exchange’s Minor Rule Violation Plan, any egregious activity may be referred to the Exchange’s Business Conduct Committee.

#### *Failure To Submit Trade Data on Trade Date*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(7) from twelve months to twenty-four months. CBOE believes that the increased look-back period will serve as a deterrent to repetitive conduct.

#### *Violations of Exercise and Exercise Advice Rules for American-Style, Cash-Settled Index Options*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(9) from twelve months to twenty-four months. CBOE is also proposing to establish a fixed sanction

level for each offense. Under this proposal, the sanction levels for first and second offenses will increase from a Letter of Caution to \$500 and \$1,000 respectively. The Exchange is proposing to implement a \$2,500 fine for a third offense. Any subsequent violations would either incur a \$5,000 fine or be referred to the Business Conduct Committee for review. In addition, CBOE is proposing to eliminate the reference to fifth and sixth offenses. CBOE believes that the increased look-back period as well as the modified sanction levels will serve as an effective deterrent to future violative conduct. CBOE is also proposing a technical change to update the references to the numbered offenses to conform to other references within Exchange Rule 17.50.

#### *Communications to the Exchange or the Clearing Corporation*

CBOE is proposing to increase the look-back period in Exchange Rule 17.50(g)(10) from twelve months to twenty-four months. CBOE believes that the increased look-back period will serve as a deterrent to repetitive conduct.

CBOE is also proposing a technical change to Exchange Rule 17.50(g)(10) to correct the language in the reference to the third offense. This section currently references the “3rd Offense.” CBOE is proposing to correct this language to provide “3rd Offense.”

#### *Trading in Restricted Classes*

Exchange Rule 5.4 provides, with limited exceptions, that CBOE “\* \* \* may prohibit any opening purchase or sale transactions in series of options \* \* \* previously opened...to the extent it deems such action necessary or appropriate.” CBOE is proposing to incorporate violations related to trading in restricted classes into the Minor Rule Violation Plan under Exchange Rule 17.50(g)(11). CBOE believes that these violations may be handled more efficiently through the summary fine process, particularly where the activity is the result of a technical or inadvertent error.

CBOE is proposing to implement a fine of \$500 for the first violation in a rolling twenty-four month period. A second violation within the same period would be allocated a \$2,500 fine and a third violation would be allocated a \$5,000 fine. Any subsequent violations within a rolling twenty-four month period would be referred to the Exchange’s Business Conduct Committee. The Exchange believes that these violations should be subject to the escalating fine schedule as proposed because this fine schedule will serve as

a deterrent to future violative conduct. Firms are strongly encouraged to implement systems that will automatically prohibit opening transactions in restricted classes. As with other violations, any egregious activity or activity that is believed to be manipulative may be referred to CBOE’s Business Conduct Committee.

#### *Violations of the Order Protection Rule*

Exchange Rule 6.83(d) provides, with limited exceptions, that “members may not engage in a pattern or practice of trading through better prices available on other exchanges.” CBOE is proposing to incorporate violations of the trade through provision into CBOE Rule 17.50(g)(12). CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, the fine for a first offense would range between \$500 to \$1,000. A second offense would be assessed a fine between \$1,000 to \$2,000 and a third offense would include a fine ranging between \$2,500 to \$5,000. In addition to the fine for a third offense, CBOE is proposing to also conduct a Staff Interview, a non-disciplinary regulatory action, to discuss the violations with the member and the member’s plan for complying with the requirement in the future. Any subsequent violations will be assessed a \$5,000 fine or will be referred to the Exchange’s Business Conduct Committee. CBOE will maintain internal guidelines that will dictate the degree of conduct for which a specific sanction will be imposed. CBOE believes that these violations may be handled more efficiently under its Minor Rule Violation Plan, particularly where the violation is the result of a technical problem or inadvertent error. As with other violations, any egregious activity may be referred to CBOE’s Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the AMEX, ARCA and the Boston Options Exchange Group LLC (“BOX”).<sup>7</sup>

#### *Locked or Crossed Market Violations*

Exchange Rule 6.84 requires Market-Makers to unlock or uncross a locked or crossed market. A Market-Maker that fails to unlock or uncross a locked or crossed market within a reasonable amount of time is deemed to be in violation of Exchange Rule 6.84. CBOE is proposing to incorporate violations of Exchange Rule 6.84 into CBOE’s Minor

<sup>7</sup> See AMEX Rule 590 Section (g) of Part 1, BOX Rule Chapter X Section 2(j) and ARCA Rule 10.12(k)(i)(29).

Rule Violation Plan under Exchange Rule 17.50(g)(13). CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, the fine for a first offense would range between \$500 and \$1,000. A second offense would be assessed a fine between \$1,000 to \$2,000 and a third offense would include a fine ranging between \$2,500 and \$5,000. In addition to the fine for a third offense, CBOE is proposing to also conduct a Staff Interview, a non-disciplinary regulatory action, to discuss the violations with the member and the member's plan for complying with the requirement in the future. Any subsequent violations will be assessed a \$5,000 fine or will be referred to the Exchange's Business Conduct Committee. CBOE will maintain internal guidelines that will dictate what specific sanction will be imposed for a particular violation. CBOE believes that these violations may be handled more efficiently under its Minor Rule Violation Plan, particularly where the violation is the result of a systematic or inadvertent error. As with other violations, any egregious activity may be referred to CBOE's Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the AMEX, BOX and ARCA.<sup>8</sup>

#### *Failure To Meet Market-Maker Obligations*

CBOE Market-Makers are required to meet certain obligations, including, but not limited to, the following: (i) Maintaining continuous electronic quotes<sup>9</sup> in an applicable percentage of the series in each of a Market-Maker's<sup>10</sup>

appointed classes; (ii) quote within the maximum bid/ask differential in each of a Market-Maker's appointed classes as set forth in Exchange Rule 8.7(b)(iv); (iii) comply with the initial quote volume requirements set forth in Exchange Rule 8.7; and (iv) ensure that a trading rotation is initiated promptly following the opening of the underlying security (as applicable).<sup>11</sup>

CBOE is proposing to incorporate violations relating to Market-Maker Obligations into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(14). CBOE believes that these violations may be handled more efficiently under the Minor Rule Violation Plan. CBOE is proposing to adopt ranges for the sanction levels to be imposed according to the degree of the violation(s). Specifically, CBOE is proposing to assess fines ranging from \$2,000–\$4,000 for a first offense and \$4,000–\$5,000 for a second offense. Any subsequent violations will be referred to the Exchange's Business Conduct Committee. CBOE will maintain internal guidelines that will dictate the sanction that will be imposed for a particular violation (based on the degree of the violation). As with other violations, any egregious activity may be referred to CBOE's Business Conduct Committee.

Several other self-regulatory organizations have incorporated fines related to quoting obligation violations into a minor rule violation plan. For example, Chapter X, Sections 2(c) and 2(d) of the BOX rules set forth the fine schedule for violations of required quotation parameters and continuous quoting requirements. In addition, the International Securities Exchange, LLC ("ISE") Rule 1614(d)(6) sets forth the fine schedule for violations of required quoting parameters. AMEX Rule 590 Section (g) of Part 1, ARCA Rule

10.12(k)(i)(39) and ARCA Rule 10.12(k)(i)(41) provide fine schedules for various types of quoting obligation violations.

#### *Failure to Accurately Report Position and Account Information*

CBOE is proposing to incorporate violations for failing to accurately report position and account information in accordance with CBOE Rule 4.13 into the Minor Rule Violation Plan. The Exchange believes most of these violations are inadvertent and technical in nature. Processing routine violations under the Minor Rule Violation Plan would decrease the administrative burden of regulatory and enforcement staff as well as that of the Business Conduct Committee. In addition, staff would be able to more expeditiously process routine violations under the Minor Rule Violation Plan.

CBOE is proposing to assess a \$500 fine for a first offense, a \$1,000 fine for a second offense and a \$2,500 fine for a third offense. Any subsequent offenses would be assessed a \$5,000 fine or would be referred to the Business Conduct Committee. The number of offenses will be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

Among other things, CBOE Rule 4.13 requires each member to report to the Exchange the account and position information of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. Members report this information on the Large Option Position Report. CBOE, as a member of the Intermarket Surveillance Group (the "ISG"), as well as certain other self-regulatory organizations ("SROs") executed and filed on October 29, 2007 with the Securities and Exchange Commission, a final version of the Agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934 (as amended) (the "Agreement")<sup>12</sup> and as amended on

<sup>8</sup> See AMEX Rule 590 Section (g) of Part 1, BOX Rule Chapter X Section 2(g) and ARCA Rule 10.12(k)(i)(35).

<sup>9</sup> Exchange Rule 1.1(ccc) provides: "With respect to a Market-Maker who is obligated to provide continuous electronic quotes on the Hybrid Trading System ("Hybrid Market-Maker"), the Hybrid Market-Maker shall be deemed to have provided "continuous electronic quotes" if the Hybrid Market-Maker provides electronic two-sided quotes for 99% of the time that the Hybrid Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day. If a technical failure or limitation of a system of the Exchange prevents the Hybrid Market-Maker from maintaining, or prevents the Hybrid Market-Maker from communicating to the Exchange, timely and accurate electronic quotes in a class, the duration of such failure shall not be considered in determining whether the Hybrid Market-Maker has satisfied the 99% quoting standard with respect to that option class. The Exchange may consider other exceptions to this continuous electronic quote obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances."

<sup>10</sup> Exchange Rule 8.7 requires Market-Makers to continuously quote in 60% of the series in their

appointed classes for those series with a time to expiration of less than nine months. Exchange Rule 8.15A requires Lead Market-Makers to provide continuous quotes in 90% of the series in their appointed classes. Exchange Rule 8.85 requires Designated Primary Market-Makers to provide continuous quotes in 90% of the series in multiply-listed, appointed classes and 100% of the series in singly-listed, appointed classes. Lastly, Exchange Rule 8.93 requires Electronic Designated Primary Market-Makers to provide continuous quotes in 90% of their appointed classes (or, alternatively respond to 98% of Request for Quotes if such functionality is available in an allocated class).

<sup>11</sup> Exchange Rule 8.15A requires Lead Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes. Exchange Rule 8.85 requires Designated Primary Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes. Exchange Rule 8.93 requires Electronic Designated Primary Market-Makers to ensure that a trading rotation is initiated in accordance with Rule 6.2B in 100% of the series in their appointed classes.

<sup>12</sup> See Securities Exchange Act Release No. 34–56941 (December 11, 2007).

April 11, 2008<sup>13</sup> and October 9, 2008.<sup>14</sup> The participants to the Agreement incorporated the surveillance and sanctions of large options position reporting violations into the Agreement as of November 1, 2008. As such, the SROs have agreed that their respective rules concerning the reporting of large options positions, are common rules. As a result, this amendment to the Minor Rule Violation Plan will further result in the consistency of the sanctions among the SROs who are signatories to the Agreement with respect to regulatory actions arising from large option position reporting surveillance.

#### *Failure To Provide Prior Capital Withdrawal Notice*

With limited exceptions, Rule 15c3–1(e)(1) under the Act<sup>15</sup> requires brokers or dealers to provide notice to the Commission (in Washington, DC and the applicable regional office), the broker or dealer's Designated Examining Authority and, as applicable, the Commodity Futures Trading Commission at least "two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 day period, 30 percent of the broker or dealer's net capital." CBOE is proposing to incorporate violations of Rule 15c3–1(e)(1) under the Act<sup>16</sup> into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(16). CBOE believes that these violations may be handled more efficiently under the Minor Rule Violation Plan.

CBOE is proposing to assess a \$2,500 fine for a first offense and a \$5,000 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

#### *Failure To Provide Post Capital Withdrawal Notice*

With limited exceptions, Rule 15c3–1(e)(1) under the Act<sup>17</sup> requires brokers or dealers to provide notice to the Commission (in Washington, DC and the applicable regional office), the broker or dealer's Designated Examining Authority and, as applicable, the Commodity Futures Trading Commission within "two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the broker or dealer's excess net capital." CBOE is proposing to incorporate violations of Rule 15c3–1(e)(1)(ii) under the Act<sup>18</sup> into the Exchange's Minor Rule Violation Plan under Exchange Rule 17.50(g)(17). CBOE believes that these violations may be handled more efficiently under the Exchange's Minor Rule Violation Plan.

CBOE is proposing to assess a \$1,000 fine for a first offense and a \$2,500 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

#### *Failure To Designate and Identify AML Compliance Contact*

Exchange Rule 4.20 requires each member organization (and each member not associated with a member organization) to develop and implement a written AML compliance program. This rule requires a member or member organization (as applicable) to designate and identify to the Exchange a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the AML compliance program. Members and member organizations (as applicable) are also required to provide prompt notification to the Exchange regarding any change in such designation. CBOE believes that violations arising from a member or member organization's failure to provide such designation or notification of any change in such designation would be handled more efficiently

under the Exchange's Minor Rule Violation Plan. CBOE is proposing to incorporate violations related to the failure to designate and identify the AML compliance program contact into the Minor Rule Violation Plan under Exchange Rule 17.50(g)(18).

CBOE is proposing to assess a \$1,000 fine for a first offense and a \$2,500 fine for a second offense. Any subsequent offenses would be referred to the Business Conduct Committee. The number of offenses shall be calculated on a rolling twenty-four month period. CBOE believes that establishing a rolling twenty-four month period for cumulative violations will serve as an effective deterrent to future violative conduct. As with other violations covered under the Exchange's Minor Rule Violation Plan, any egregious activity may be referred to the Exchange's Business Conduct Committee.

CBOE notes that this provision is consistent with the minor rule violation plans in place at the ARCA and the Financial Industry Regulatory Authority ("FINRA").<sup>19</sup>

#### *Amendments to Exchange Rule 17.50 Interpretations and Policies*

CBOE is proposing to delete Interpretation and Policy .01(a) from Exchange Rule 17.50. Exchange Rule 17.50(g)(1) currently sets forth the sanction levels under the Minor Rule Violation Plan for position limit violations. Prior to July 2008, Exchange Rule 17.50(g)(1)(a) set forth the sanction levels under the Minor Rule Violation Plan for position limit violations of non-member customers and Exchange Rule 17.50(g)(1)(b) set forth the sanction levels for position limit violations for all other accounts. The Commission approved a rule filing eliminating the distinction between non-member customers and all other accounts in Exchange Rules 17.50(g)(1)(a) and 17.50(g)(1)(b) in July 2008 and incorporating the sanction levels for position limit violations under Exchange Rule 17.50(g)(1).<sup>20</sup> Interpretation and Policy .01(a) specifically references and provides clarification for Rule 17.50(g)(1)(a). Since this provision no longer exists, this Interpretation and Policy is obsolete. Therefore, CBOE is proposing to delete Interpretation and Policy .01(a). As a result of this change, CBOE is also proposing to delete the section

<sup>13</sup> See Securities Exchange Act Release No. 34–57649 (April 11, 2008).

<sup>14</sup> See Securities Exchange Act Release No. 34–58765 (October 9, 2008).

<sup>15</sup> 17 CFR 240.15c3–1(e)(1).

<sup>16</sup> 17 CFR 240.15c3–1(e)(1)(i).

<sup>17</sup> *Supra* at note 8.

<sup>18</sup> 17 CFR 240.15c3–1(e)(1)(ii).

<sup>19</sup> See ARCA Rule 10.12(k)(iii)(12) and FINRA Rule 9217 (as it applies to New York Stock Exchange Rule 445(4)).

<sup>20</sup> See Securities Exchange Act Release No. 34–58119 (July 8, 2008), 73 FR 40646 (July 15, 2008) (SR–CBOE–2008–053).

designation of Interpretation and Policy .01(b) as this distinction is no longer necessary under Interpretation and Policy .01.

#### *Violations of Trading Conduct and Decorum Policies*

CBOE is proposing to issue a new Regulatory Circular to update and replace Regulatory Circular RG09–26. CBOE is proposing to modify the Circular to (i) establish a rolling twenty-four month look-back period for all offenses; (ii) establish fixed fine levels for Class A and Class B Offenses; (iii) change the classification of certain offenses; and (iv) remove obsolete or duplicative violations from the list of Class A and Class B Offenses. CBOE has attached the proposed changes to the revised circular in Exhibit 5.

CBOE is proposing to increase the look-back period from twelve months to twenty-four months for Class A Offenses and Class B Offenses. CBOE believes that the increased look-back period will serve as a deterrent for future similar conduct.

CBOE is also proposing to adopt fixed fine levels for trading conduct and decorum violations to promote consistency in the application of these fines. For Class A Offenses, CBOE will assess a fine of \$1,000 for the first violation, \$2,500 for the second violation and \$5,000 for the third violation. CBOE is also proposing to remove the reference to “Subsequent Offenses” for Class A Offenses. CBOE believes that any member or member organization that is cited for more than three Class A Offenses within a rolling twenty-four month period should be referred to the Business Conduct Committee for formal disciplinary action. The nature of these violations warrants formal disciplinary action where recidivist behavior is involved. For Class B Offenses, CBOE is proposing to assess a fine of \$250 for a first offense, \$500 for a second offense, \$1,000 for a third offense and \$2,500 for any subsequent offenses.

CBOE is proposing to move one violation from a Class B Offense to a Class A Offense. Market-Makers are obligated to respond to a request for a market by an Order Book Official or PAR Official. Failure to respond to such a request has historically been considered a Class B Offense. Due to the nature of this violation, CBOE believes that it is more appropriate for this violation to be classified as a Class A Offense. In addition, CBOE is proposing to remove the qualification that a response must be provided to an Order Book Official since the obligation to respond to a market is not limited to

requests for quotes from Order Book Officials. For example, Exchange Rule 8.7(d) sets forth the requirements for Market-Makers to respond to a request for quote from members, including floor brokers and PAR Officials.

CBOE is proposing to remove quote width violations from the Class A Offense list as CBOE is proposing that this violation be covered under Exchange Rule 17.50(g)(14). CBOE is also proposing to delete the Class A Offense relating to Violations of Rule 8.51 (Firm Quote) as this provision is duplicative. Firm quote violations are generally addressed under Exchange Rule 17.50(g)(5).

CBOE is proposing to clarify that the Class B Offense related to smoking applies to the use of any tobacco products in unauthorized areas. CBOE does not permit the use of any tobacco products inside the Exchange building. Further, the State of Illinois prohibits smoking in any public building and within fifteen feet of any public entrance.<sup>21</sup>

CBOE is proposing to delete a Class A Offense for Enabling/Assisting a Suspended Member or Associated Person to Gain Improper Access to the Floor. CBOE is also proposing to delete a Class B Offense for Gaining/Enabling Improper Access to the Floor. CBOE has significantly increased its physical security restrictions in recent years. Access to the trading floor requires use of a valid badge and a fingerprint scan associated with that badge. Further, CBOE believes that any attempt to enable improper access compromises the security of the Exchange. Such violations are considered very serious in nature and should be reviewed by the Business Conduct Committee.

CBOE is proposing to delete the Class A Offense for Effecting or Attempting to Effect a Transaction with No Public Outcry. CBOE no longer believes that this conduct is minor in nature. CBOE is also proposing to delete the Class B Offenses relating to Improper Use of Runners' Aisle, Trading in the Aisle and Impermissible Use of Member Phones. CBOE no longer sees these types of violations. CBOE is proposing to remove the Class B Offense of a Visitor Badge Returned Late or Not Returned. In addition, CBOE is proposing to delete a Class B Offense relating to a DPM Failure to Activate or Deactivate RAES. Since RAES is no longer available at CBOE, this provision is obsolete.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it would promote just and equitable principles of trade and protect investors and the public interest. The Exchange believes that the proposed rule changes will strengthen its ability to carry out its oversight responsibilities as a self-regulatory organization and reinforce its surveillance and enforcement functions. Additionally, this proposed rule change will promote consistency in minor rule violations and respective SRO reporting obligations as set forth pursuant to Regulation 240.19d–1(c)(2) of the Act.

#### *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 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

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(6).

<sup>21</sup> See Illinois Public Act 095–0017.

Number SR-CBOE-2009-037 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2009-037. 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 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-2009-037 and should be submitted on or before July 27, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9-15775 Filed 7-2-09; 8:45 am]

**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60176; File No. SR-NYSEAmex-2009-30]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Extend Through September 30, 2009, Its Waiver of Registered Representative Fees for New York Stock Exchange Member Organizations**

June 25, 2009.

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> notice is hereby given that on June 23, 2009, NYSE Amex LLC (the "Exchange" or "NYSE Amex") 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 NYSE Amex. 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 extend through September 30, 2009, its waiver of registered representative fees for New York Stock Exchange ("NYSE") member organizations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### **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**

In connection with the acquisition of the American Stock Exchange (renamed

NYSE Amex after the acquisition) by NYSE Euronext, all equities trading conducted on or through the American Stock Exchange legacy trading systems and facilities located at 86 Trinity Place, New York, New York, was moved on December 1, 2008, to the NYSE trading facilities and systems located at 11 Wall Street, New York, New York (the "NYSE Amex Trading Systems"), which are operated by the NYSE on behalf of NYSE Amex (the "Equities Relocation"). At the time of the Equities Relocation, by operation of NYSE Amex Equities Rule 2, all NYSE member organizations automatically became NYSE Amex member organizations. By acquiring NYSE Amex membership, the NYSE member organizations that were not previously NYSE Amex members would become subject to the NYSE Amex registration fees for all of their employees who serve as registered representatives. As these NYSE member organizations that had no NYSE Amex business prior to the Equities Relocation became NYSE Amex members without any action on their own part, NYSE Amex waived the application of its registered representative fees to those firms for the month of December. At that time, NYSE Amex stated that it expected to submit a filing to adopt a revised registered representative fee commencing January 1, 2009.<sup>3</sup> The waiver was subsequently extended until June 30, 2009.<sup>4</sup> NYSE Amex has not yet determined how best to revise its registration fees in light of the accession to NYSE Amex membership of these NYSE member organizations. As such, NYSE Amex believes that it is appropriate to continue for the present its waiver of registered representative fees payable by member organizations which acquired their membership automatically in connection with the Equities Relocation. NYSE Amex will submit an amended filing to the Commission at such time as it wishes to end this waiver. In any event, the waiver as extended by this filing will expire on September 30, 2009. Consequently, NYSE Amex must submit a filing on or prior to that date to either adopt a new fee approach or to further extend the term of the waiver.

References to the Exchange in Footnote 2 of the NYSE Amex Options Price List are being changed in this filing from "NYSE Alternext US" and "NYSE Alternext" to "NYSE Amex," to

<sup>3</sup> See Exchange Act Release 59045 (December 3, 2008), 73 FR 75151 (December 10, 2008) (SR-NYSEALTR-2008-09).

<sup>4</sup> See Exchange Act Release 59170 (December 29, 2008), 74 FR 486 (January 6, 2009) (SR-NYSEALTR-2008-19).

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

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

<sup>24</sup> 17 CFR 200.30-3(a)(12) and 200.30-3(a)(44).