Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including, without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from February 17, 2009, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–3841 Filed 2–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59406; File No. SR–CBOE–2009–006]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Rules Relating to DPMs and LMMs

February 13, 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 February 11, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 amend CBOE rules relating to relating to [sic] DPMs and LMMs. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Exchange's Office of the Secretary, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. LMMs, similarly, function in option classes allocated to them as a Market-Maker, and also are subject to other obligations under Rule 8.15A (for Hybrid classes) or as otherwise provided in CBOE's Rules. Recently, CBOE amended its rules to provide DPMs with the flexibility to operate remotely away from CBOE's trading floor as a so-called ''Off-Floor DPM.'' (*See, e.g.*, Rules 8.80 and 8.83.) The purpose of this rule filing is to amend CBOE's rules to provide that CBOE in its discretion may appoint an ''On-Floor LMM'' in option classes in which an ''Off-Floor DPM'' is appointed. Although CBOE does not believe it is necessary for an On-Floor LMM to be appointed in each option class in which an ''Off-Floor DPM'' is appointed, CBOE believes that having an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and may be beneficial.

In connection with this change, CBOE also proposes to amend its rules relating to the obligations of LMMs and LMM participation entitlements, in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. First, CBOE proposes to amend paragraph (b)(i) of Rule 8.15A to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM shall be obligated to comply with the quoting obligations of Market-Makers in Hybrid classes as set forth in Rule 8.7(d). These obligations generally include a continuous open outcry quoting obligation and the obligation to continuously quote electronically in 60% of the series with less than nine months to expiration of each allocated class. The Off-Floor DPM would continue to be required to meet the continuous electronic quoting obligation set forth in Rule 8.85(a)(i), namely, to continuously quote in at least 90% of the series of each multiply-listed option class allocated to it and in 100% of the series of each singly-listed option class allocated to it. CBOE does not believe it is necessary to require the On-Floor LMM to satisfy the more extensive electronic quoting obligation of DPMs given that the Off-Floor DPM will be performing this function and the On-Floor LMM will not be eligible to receive a participation entitlement for transactions executed electronically. (*See* Rule 8.15B(b).)

CBOE also proposes to amend paragraphs (b)(iv) and (b)(vi) of Rule 8.15A to provide that the obligations set forth therein will be assigned to the Off-Floor DPM in those option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed. CBOE believes that it is appropriate that these two obligations, which pertain to the prompt initiation of an opening trading rotation and the use of a DPM's account for Linkage, be the responsibility of the Off-Floor DPM given that it will have the principal electronic quoting obligation in the option class and will be eligible to receive a participation entitlement for electronic transactions.

CBOE also proposes to amend Rule 8.15A and Rule 8.15B to provide that in option classes in which both an On-Floor LMM and an Off-Floor DPM have been appointed, the On-Floor LMM may receive a participation entitlement with respect to orders represented in open

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

outcry on CBOE's trading floor. CBOE believes that it is appropriate for the On-Floor LMM to receive a participation entitlement for orders represented in open outcry given that the On-Floor LMM will have a continuous open outcry quoting obligation,[5] is expected to be continually present at the trading station and resolve disputes relating to transactions in the option classes in which the LMM is appointed, make competitive open outcry markets, and promote CBOE in a manner likely to enhance CBOE's ability to compete successfully for order flow in the classes it trades, among other obligations. CBOE notes that its rules currently provide that an Off-Floor DPM shall not receive a participation entitlement with respect to orders represented in open outcry on CBOE's trading floor, so it is reasonable for an On-Floor LMM to receive an entitlement for open outcry transactions given its obligations including the continuous open outcry quoting obligation.

Finally, CBOE notes that the provisions of Rule 8.15A not being amended by this proposed rule change will continue to apply to the On-Floor LMM that is appointed in option classes in which an Off-Floor DPM is appointed. For example, the On-Floor LMM will continue to be obligated to honor its displayed quotations (*See* Rule 8.15A(b)(ii)); perform these obligations for a period of one expiration cycle (*See* Rule 8.15A(b)(iii)); respond to open outcry requests for quotes by a floor broker (*See* Rule 8.15A(b)(v)); and maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that conduct a brokerage operation in classes allocated to the On-Floor LMM or act as a specialist or Market-Maker in any security underlying options allocated to the LMM, and otherwise comply with the requirements of Rule 4.18 regarding the misuse of material, non-public information (*See* Rule 8.15A(b)(vii)).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, in that allowing CBOE to appoint an On-Floor LMM in an option class in which an Off-Floor DPM has been appointed provides additional flexibility and, therefore, could be beneficial and contribute to the maintenance of a fair and orderly market.

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 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, 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[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

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*. Please include File Number SR–CBOE–2009–006 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–2009–006. 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 self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–006 and should be submitted on or before March 17, 2009.

[5] Rule 8.7(d) provides that Market-Makers have a continuous open outcry quoting obligation. Specifically, it states ''in response to any request for quote by a floor broker, in-crowd Market-Makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum number of contracts determined by the Exchange on a class by class basis, which minimum shall be at least one contract and which minimum can vary for non-broker-dealer orders and broker-dealer orders.''

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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 the pre-filing requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–3861 Filed 2–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59413; File No. SR–NSCC–2009–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Addendum O To Allow Admission of Entities That Are Organized in a Country Other Than the U.S. for Admission as Limited Members

February 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 28, 2009, the National Securities Clearing Corporation (''NSCC'') 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 NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] 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 will permit entities that are organized in a country other than the United States and that are not otherwise subject to U.S. Federal or State regulation to be eligible to become Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members.

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

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

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

Prior to this rule change, NSCC permitted entities that are organized in a country other than the United States and that are not otherwise subject to U.S. Federal or State regulation (''non-U.S. entities'') to become Direct Clearing Corporation Members only. The proposed rule change amends Addendum O to NSCC's Rules and Procedures by expanding the types of membership categories available to non-U.S. entities. Specifically, non-U.S. entities will be able to apply to be Mutual Fund/Insurance Services Members, Fund Members, and Insurance Carrier/Retirement Services Members.[4]

NSCC believes that such change is appropriate because the admission process that is already in place is designed to mitigate the risks posed to NSCC by admission of non-U.S. members. For example, admission is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character, and each member must continue to be in a position to demonstrate to NSCC that it meets these standards as an ongoing condition of membership.

Furthermore, Addendum O to NSCC's rules establishes additional admissions criteria applicable to non-U.S. entities that address the unique risks associated with their admission, including: (1) That the entity is not subject to U.S. Federal or State regulation; (2) that the operation of the laws of the entity's home country and time zone differences may impede the successful exercise of NSCC's rights and remedies, particularly in the event of the entity's failure to settle; and (3) that financial information about the non-U.S. entity made available to NSCC for monitoring purposes may be less adequate than information about U.S.-based entities.[5] In addition to executing the standard NSCC membership agreement, Addendum O requires that the non-U.S. entity enter into a series of undertakings and agreements that are designed to address jurisdictional concerns and to assure that NSCC is provided with audited financial information in a format that is acceptable to NSCC. The non-U.S. entity must also be subject to regulation in its home country and be in good standing with its home country regulator. In order to address the risks presented by acceptance of financial statements prepared in non-U.S. GAAP, Addendum O provides for a higher capital requirement than that otherwise applicable for admission under NSCC rules.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] because the proposed policy does not unfairly discriminate against non-U.S. entities seeking admission to NSCC because it appropriately takes into account the unique risks to the clearing corporation raised by their admission.

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

NSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

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

NSCC has not solicited or received written comments relating to the proposed rule change. NSCC will notify the Commission of any written comments it receives.

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

The foregoing rule change has become effective pursuant to Section

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] Rule 2 and Addendum B address admission of applicants as members of NSCC. Admission of an applicant whose use of NSCC services is limited to mutual fund services and/or insurance and retirement processing services is subject to the following provisions of Addendum B, depending on the particular capacity in which the applicant seeks to act: Section 2 of Addendum B (Mutual Fund/Insurance Services Members); Section 3 of Addendum B (Fund Members); Section 4 of Addendum B (Insurance Carrier/Retirement Services Members). NSCC has not yet established admission criteria applicable to non-U.S entities that are insurance companies. NSCC will file a proposed rule change extending Addendum O to such non-U.S. applicants at such time as it has established applicable criteria.

[5] Addendum O was adopted by NSCC pursuant to Securities Exchange Act Release No. 58344, (Aug. 12, 2008), 73 FR 48413 (Aug. 19, 2008) [File No. SR–NSCC–2007–15]. Certain of the criteria set forth in Addendum O may be waived where inappropriate to a particular applicant or class of applicants (*e.g.*, a foreign government, international or national central securities depositories).

[6] 15 U.S.C. 78q–1(b)(3)(F).