

\$150,000 minimum Clearing Fund contribution. OCC would expand this exemption to also apply to commodity options.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because it provides for the clearance of various commodity futures and options products without adversely affecting the prompt and accurate clearance and settlement of transactions in securities options, the prompt and accurate clearance and settlement of securities transactions, or the protection of securities investors and the public interest. The proposed rule change accomplishes this purpose by applying substantially the same rules and procedures to transactions in futures products that OCC applies to transactions in securities options. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

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

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

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> promulgated thereunder because the proposal changes effects a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2009-04 on the subject line.

*Paper Comments*

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

All submissions should refer to File Number SR-OCC-2009-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-OCC-2009-04 and should be submitted on or before April 28, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-7710 Filed 4-6-09; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-59666; File No. SR-NYSE-2009-35]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 48.10 To Extend the Temporary Provisions of the Rule Relating to the Ability of the Exchange To Declare an Extreme Market Volatility Condition and Suspend Certain NYSE Requirements Relating to the Closing of Securities at the Exchange**

March 31, 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 March 23, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 48.10 to extend the temporary provisions of the rule relating to the ability of the Exchange to declare an extreme market volatility condition and suspend certain NYSE requirements relating to the closing of securities at the Exchange. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

## 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 proposes to amend Rule 48.10 to temporarily extend the provisions of the rule relating to declaring an extreme market volatility condition at the close.<sup>6</sup>

On October 2, 2008, the Exchange filed for immediate effectiveness to amend NYSE Rule 48 to provide the Exchange with the ability to suspend certain rules at the close when extremely high market volatility could negatively affect the ability to ensure a fair and orderly close.<sup>7</sup> The Exchange amended Rule 48 on an immediate effectiveness basis in order to respond swiftly to market conditions at that time. Those amendments were adopted on a temporary basis with the understanding that if the Exchange would like to adopt the closing provisions on a permanent basis, such proposal must be filed for notice and comment.

The Exchange has filed a rule proposal to amend Rules 48 and 123C to delete from Rule 48 the provisions relating to declaring an extreme market volatility condition at the close and add them in modified form to Rule 123C (the "Rule 48/123C filing").<sup>8</sup> That rule proposal has been filed under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act")<sup>9</sup> and has been noticed for public comment. The

<sup>6</sup> NYSE Amex LLC has filed a companion rule filing to conform its Equities Rules to the changes proposed in this filing. See SR-NYSEAmex-2009-05, formally submitted March 23, 2009).

<sup>7</sup> See SEC Release No. 58743 (Oct. 7, 2008), 73 FR 60742 (Oct. 14, 2008) (SR-NYSE-2008-102).

<sup>8</sup> See SEC Release No. 59489 (Mar. 3, 2009), 74 FR 10330 (Mar. 10, 2009) (SR-NYSE-2009-18). NYSE Amex US LLC [sic] ("NYSE Amex") has filed a companion rule filings. See SEC Release No. 59488 (Mar. 3, 2009), 74 FR 10334 (Mar. 10, 2009) (SR-NYSEALTR-2009-15).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

comment period for that filing ends on March 31, 2009. In anticipation of the Rule 48/123C filing, the Exchange previously amended Rule 48.10 to extend from December 31, 2009 to March 27, 2009 the temporary time period that the Rule 48 at-the-close provisions would be in effect.<sup>10</sup> The Exchange now proposes to temporarily extend the Rule 48 at-the-close provisions pending the outcome of the Rule 48/123C filing. Accordingly, the Exchange proposes to amend Rule 48.10 to provide that the provisions of that rule relating to declaring an extreme market volatility condition at the close will end April 30, 2009.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>11</sup> that an Exchange have rules that are 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. In particular, this rule proposal will permit the temporary provisions of Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the foregoing proposed rule change:

- (i) Does not significantly affect the protection of investors or the public interest;
- (ii) Does not impose any significant burden on competition; and
- (iii) By its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time

<sup>10</sup> See SEC Release No. 59168 (Dec. 29, 2008), 74 FR 483 (Jan. 6, 2009) (SR-NYSE-2008-139). NYSE Amex also filed a companion rule filing. See SEC Release No. 59169 (Dec. 29, 2008), 74 FR 485 (Jan. 6, 2009) (SR-NYSEALTR-2008-18).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

as the Commission may designate, if 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

The Exchange has requested that the Commission waive the 30-day operative delay in order to permit the temporary provisions of Rule 48 to continue without interruption pending the outcome of the Rule 48/123C filing. The Commission believes such waiver is consistent with the protection of investors and the public interest.<sup>14</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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-2009-35 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-2009-35. This file

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 such 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-NYSE-2009-35 and should be submitted on or before April 28, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-59675; File No. SR-OCC-2009-05]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Flexibly Structured Options

April 1, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on March 19, 2009, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to

Section 19(b)(3)(A)(iii) of the Act<sup>2</sup> and Rule 19b-4(f)(4) thereunder<sup>3</sup> 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 the Substance of the Proposed Rule Change

The proposed rule change will amend OCC's By-Laws in order to clear and settle flexibly structured options traded on the Chicago Board Options Exchange ("CBOE").

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

Flexibly structured options are options that give investors the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, options exchanges generally do not permit flexibly structured options to be customized to expire on the same expiration date as any series of non-flexibly structured options that are listed for trading.<sup>4</sup> However, pursuant to a recent CBOE rule change, CBOE eliminated this restriction so that the parties to a flexibly structured option transaction can choose an expiration date that coincides with that of a series of non-flexibly structured options.<sup>5</sup> As a result of eliminating the expiration date restriction, it is now possible for new

flexibly structured options to become fungible with a series of non-flexibly structured options that are subsequently listed for trading. Thus, CBOE now permits flexibly structured options to be traded before identical non-flexibly structured options are listed for trading. Once an option series is listed on CBOE for trading as a non-flexibly structured option series, (i) all existing flexibly structured options having identical terms as the non-flexibly structured option series will be fully fungible with options in such series and (ii) any further trading in such series would be as non-flexibly structured options. As an exception to the foregoing, flexibly structured options will not become fungible with subsequently-introduced non-flexibly structured quarterly options or short term options.

In order to clear and settle flexibly structured options traded on CBOE in a manner that is consistent with CBOE's rules, OCC will change the definition of "flexibly structured option" in Article I of its By-Laws to clarify that an option will be classified as a flexibly structured option only if its variable terms do not correspond to the variable terms of any series of non-flexibly structured options listed for trading other than a series of quarterly options or short term options. Furthermore, existing flexibly structured options will be fungible with options in a subsequently listed non-flexibly structured option series other than quarterly options or short term options that have identical variable terms and will not be classified as flexibly structured options. The definition of "flexibly structured option" in Article XVII, Section 1 of OCC's By-Laws will be deleted because such definition is redundant. OCC will also amend the definition of "variable terms" in Article I of the By-Laws to clarify that the expiration date is a variable term for all types of options. Finally, other parts of the definition will also be revised to group together variable terms of option contracts and variable terms of futures contracts.

Prior to this rule change, OCC's rules provided that an expiring flexibly structured index option with an exercise settlement amount of \$1.00 or more was automatically exercised on its expiration date. In comparison, an expiring non-flexibly structured index option with an exercise settlement amount of \$1.00 or more except quarterly options or short term options was subject to the "exercise by exception" procedures under which the option will be exercised on its expiration date if the option holder does not give contrary exercise instructions. However, as described above, flexibly

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>4</sup> There are exceptions to this general prohibition. Subject to certain aggregation requirements for cash-settled options, CBOE permits flexibly structured options to expire on the same day as non-flexibly structured quarterly options and non-flexibly structured weekly options. Non-flexibly structured weekly options are called "short term options" in OCC's By-Laws and Rules. CBOE Rules 24A.7(d) and 24B.7(d).

<sup>5</sup> Securities Exchange Act Release No. 59417 (Feb. 18, 2009), 74 FR 8591 (Feb. 25, 2009) [SR-CBOE-2008-115].

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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