designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASDAQ Exchange has requested that the Commission waive the 30-day operative delay. The Commission notes that the NASDAQ Exchange's proposal is substantially similar to the proposal of another national securities exchange previously approved by the Commission and does not raise any new substantive issues.[17] The NASDAQ Exchange proposes to implement the proposed rule change when PHLX implements its XLII trading system, and states that waiving the operative delay will ensure that the NASDAQ Exchange is able to implement the proposed rule change at such time.[18] For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[19]

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–NASDAQ–2009–047 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–2009–047. 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 NASDAQ 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–NASDAQ–2009–047 and should be submitted on or before June 19, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[17] *See* Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx-2008–31).

[18] *See* SR–NASDAQ–2009–047, Items 2 and 7.

[19] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59945; File No. SR–OCC–2009–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cross-Margining of Security Futures on Exchange-Traded Funds Based on Broad-Based Stock Indices

May 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 17, 2009, The Options Clearing Corporation (''OCC'') 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 OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act[2] and Rule 19b–4(f)(1)[3] thereunder 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 would certify security futures contracts on two exchange-traded funds (''ETFs'') based on broad-based stock indices as eligible contracts for purposes of OCC–CME cross-margining.

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.[4]

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

In proposed rule change File Nos. SR–OCC–2008–03 and SR–OCC–2008–12, respectively, OCC submitted rule changes to (i) expand its cross-margining programs with commodity clearing organizations to include as eligible contracts security futures on ETFs based on broad-based securities indices and (ii) file an Amended and Restated OCC–CME Cross-Margining Agreement (''OCC–CME XM Agreement'') and related forms of clearing member and market professional's agreements.[5] The Exhibit A attached to the OCC–CME XM Agreement referenced security futures on two such ETFs, Standard & Poor's Depository Receipts (''SPY'') and

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

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

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release Nos. 57543 (March 20, 2008), 73 FR 16405 (March 27, 2008) and 58258 (July 30, 2008), 73 FR 46133 (August 7, 2008), respectively.

Diamonds Trust (''DIA''), as eligible contracts, but the filing did not specifically certify them as such.

As noted in SR–OCC–2008–03, OCC had not included security futures on ETFs based on broad-based stock indices as eligible contracts in the OCC–CME cross-margining program because it was awaiting the issuance of an order by the Commodity Futures Trading Commission (''CFTC'') providing relief from certain provisions of Section 4d(a) of the Commodity Exchange Act. The CFTC staff recently contacted OCC and CME to request that each organization separately file with the CFTC rule changes certifying futures on SPY and DIA as eligible cross-margining contracts in connection with the issuance of the order.[6] Although OCC functions as an SEC-registered clearing agency in connection with the OCC–CME cross-margin program, the CFTC made the request of OCC in its capacity as a CFTC-registered derivatives clearing organization. In response, OCC is submitting this filing to certify that futures on SPY and DIA will be eligible contracts for the OCC–CME cross-margining program upon issuance of the CFTC order and has attached as Exhibit 5A to the filing of proposed rule change a current Exhibit A to the OCC–CME XM Agreement.

The proposed change is consistent with Section 17A of the Act because it enhances the utility of an existing cross-margining program by permitting the inclusion of contracts that did not exist at the time the program was originally implemented. Cross-margining reduces systemic risk while providing lower margin costs to participants. Therefore, expanding the positions that may be included in cross-margining is beneficial to the clearing system and its participants. The proposed rule change is not inconsistent with the existing rules of OCC, including any other 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.

[6] Changes to Exhibit A are not required to be filed with the Commission. *See* Securities Exchange Act Release No. 57118 (January 9, 2008) 73 FR 2970 (January 16, 2008) (File No. SR–OCC–2007–19).

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[7] and Rule 19b–4(f)(1)[8] thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of OCC. At any time within sixty days of the filing of such 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–OCC–2009–09 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–2009–09. 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–2009–09 and should be submitted on or before June 19, 2009.

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

[8] 17 CFR 240.19b–4(f)(1).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59963; File No. SR–BATS–2009–012]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules To Offer an After Hours Trading Session

May 21, 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 May 20, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] 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.

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).