

a customer may choose to route an order to NYBX in order to include more flexible instructions in the order. For example, an order entered in the NYBX Facility can include a minimum triggering volume ("MTV") instruction, which would require that the Book have sufficient contra-side liquidity before the order in NYBX attempts to execute. No execution of an NYBX order will be attempted if the MTV is not met.

The Exchange believes that the proposed d-Quote functionality is similar to how orders in the NYBX Facility are treated, in that orders in that facility do not require the Exchange contra-side liquidity to be at the Exchange BBO before the NYBX order is triggered for execution. Therefore, the benefit from this proposed d-Quote functionality is already available in another form to customers via the NYBX Facility. By modernizing d-Quote functionality, the Exchange is therefore not only replacing functionality that was previously eliminated, but is also providing customers who elect to use a Floor broker with functionality that is already available in another format, thereby meeting the diverse needs of all customers.

## 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act<sup>9</sup> which requires the rules of an exchange 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. The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>10</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that permitting d-Quotes to consider all available contra-side liquidity when determining whether the discretionary size range of the d-Quote has been met meets such goals because it ensures that customer orders eligible to trade will execute against willing contra-side liquidity.

### *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**

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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 21-day comment period.

### **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-2009-55 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSE-2009-55. 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 NYSE. 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 publicly available. All submissions should refer to File Number SR-NYSE-2009-55 and should be submitted on or before July 2, 2009.

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

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60048; File No. SR-CBOE-2009-035]

### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees**

June 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 29, 2009, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 the CBOE. The Commission is publishing this notice to

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

<sup>10</sup> 15 U.S.C. 78k-1(a)(1).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

solicit comments on the proposed rule change from interested parties.

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

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status ("Temporary Members") pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 ("Rule 3.19.02") and (ii) the monthly access fee for Interim Trading Permit ("ITP") holders under CBOE Rule 3.27. 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, CBOE 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. The CBOE 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*

##### **1. Purpose**

The current access fee for Temporary Members under Rule 3.19.02<sup>2</sup> and the current access fee for ITP holders under Rule 3.27<sup>3</sup> are both \$9,014 per month. Both access fees are currently set at the indicative lease rate (as defined below) for May 2009. The Exchange proposes to adjust both access fees effective at the beginning of June 2009 to be equal to the indicative lease rate for June 2009 (which is \$10,171). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be \$10,171 per month commencing on June 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest

clearing firm floating monthly rate<sup>4</sup> of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.<sup>5</sup> The Exchange determined the indicative lease rate for June 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of June 2009 to set the proposed access fees (instead of clearing firm floating monthly rate information for the month of May 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of June 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-12 with respect to the original Temporary Member access fee.<sup>6</sup> Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR-CBOE-2008-77 with respect to the original ITP access fee.<sup>7</sup>

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii)

<sup>4</sup> Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

<sup>5</sup> The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

<sup>6</sup> See Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR-CBOE-2008-12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

<sup>7</sup> See Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR-CBOE-2008-77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

of the Act<sup>8</sup> to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated.

Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

#### *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*

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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4<sup>12</sup> thereunder. 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,

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

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

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>2</sup> See Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR-CBOE-2007-107) for a description of the Temporary Membership status under Rule 3.19.02.

<sup>3</sup> See Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR-CBOE-2008-40) for a description of the Interim Trading Permits under Rule 3.27.

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-CBOE-2009-035 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-2009-035. 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 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 No. SR-CBOE-2009-035 and should be submitted on or before July 2, 2009.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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#### DEPARTMENT OF STATE

**[Public Notice 6658]**

#### **Title: Meetings of the United States-Chile Environment Affairs Council and Joint Commission for Environmental Cooperation**

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of State and the Office of the United States Trade Representative (USTR) are providing notice that, as set forth in Chapter 19 (Environment) of the United States-Chile Free Trade Agreement (FTA) and the United States-Chile Environmental Cooperation Agreement (ECA), the two governments intend to hold the fifth meeting of the Environment Affairs Council (the "Council") and the third meeting of the Joint Commission for Environmental Cooperation (the "Commission") in Washington, DC on July 1st, 2009. A public information session will be held for on July 1st, at 3 p.m., in room 1107 at the U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. If you would like to attend the session, please send the following information to Robert Wing at the fax number or e-mail address listed below under **ADDRESSES**: (1) Your name, (2) your date of birth, and (3) the number of a valid identification card that a government has issued to you.

The purpose of the Council and Commission meeting is detailed below under **SUPPLEMENTARY INFORMATION**.

The meeting agenda will include an overview of Chapter 19 and review of its implementation, progress report on projects outlined in the FTA's Environment Chapter, a discussion of the roles and activities of the Trade and Environment Policy Advisory Committee and the public advisory committee that advises the Chilean government on trade and environment policy issues, an overview of progress of implementing selected projects under the 2007-2008 Work Program pursuant to the United States-Chile ECA and the presentation of a new ECA Work Program. The Department of State and USTR invite interested agencies,

organizations, and members of the public to submit written comments or suggestions regarding agenda items and to attend the public session.

In preparing comments, we encourage submitters to refer to:

- The FTA's Environment Chapter including Annex 19.3, and the Final Environment Review of the FTA, available at: [http://www.ustr.gov/Trade\\_Agreements/Bilateral/Chile\\_FTA/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Bilateral/Chile_FTA/Section_Index.html).
- The ECA, available at: <http://www.state.gov/g/oes/rls/or/22185.htm>.

**DATES:** To be assured of timely consideration, comments are requested no later than June 25, 2009.

**ADDRESSES:** Written comments or suggestions should be submitted to both: (1) Robert Wing, U.S. Department of State, Bureau of Oceans, Environment, and Science, Office of Environmental Policy by electronic mail at [wingRD@state.gov](mailto:wingRD@state.gov) with the subject line "US-Chile EAC Meeting" or by fax to (202) 647-5947; and (2) Mara M. Burr, Deputy Assistant United States Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative by electronic mail at [mburr@ustr.eop.gov](mailto:mburr@ustr.eop.gov) with the subject line "US-Chile EAC Meetings" or by fax to (202) 395-9517.

**FOR FURTHER INFORMATION CONTACT:** Robert Wing, Telephone (202) 647-9266 or Mara M. Burr, Telephone (202) 395-7320.

**SUPPLEMENTARY INFORMATION:** The United States-Chile FTA entered into force on January 4, 2004. Article 3 of Chapter 19 (Environment) of the FTA establishes an Environment Affairs Council, which is required to meet at least once a year to discuss the implementation of, and progress under, Chapter 19. Chapter 19 requires that meetings of the Council include a public session. Under Chapter 19, the two governments agreed to undertake eight specific cooperative activities set out in Annex 19.3 of the Chapter and to negotiate a United States-Chile Environmental Cooperation Agreement to further environmental cooperative activities. The ECA entered into force on May 1, 2004 and sets out a framework for environmental cooperative activities between the two governments. Article II of the ECA establishes the United States-Chile Joint Commission for Environmental Cooperation, with responsibilities that include developing and periodically reviewing a Work Program. The Commission is required to meet at least every two years. The first meetings of the Council and the Commission were held on July 22, 2004, in Santiago, Chile, and the third meeting

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