

the provisions of Section 6 of the Act,⁵ in general, and with Sections 6(b)(5) of the Act,⁶ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 changes will conform NASDAQ IM-2110-04 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

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

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

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

Written comments 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 does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

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-2009-083 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-NASDAQ-2009-083. 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 publicly available. All submissions should refer to File Number SR-NASDAQ-2009-083 and should be submitted on or before October 13, 2009.

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. 34-60666; File No. SR-CBOE-2009-062]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Dissemination of Certain Index Data

September 14, 2009.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on August 28, 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 and II below, which Items have been prepared by CBOE. The Exchange filed the proposal as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act⁴ and Rule 19b-4(f)(6) thereunder, which renders it effective upon filing.⁵ 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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") is not proposing any textual changes to the Constitution or Rules of CBOE in this filing. The Exchange is proposing to update statements that it made in Item 3 of previous filings made by the Exchange pursuant to Rule 19b-4, as described in subsection (a)(1) of Item 3 of this filing. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵ 17 CFR 240.19b-4(f)(6).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 200.30-3(a)(12).

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. 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, Proposed Rule Change

1. Purpose

CBOE currently disseminates values of its proprietary indexes and many of the indexes licensed by CBOE to underlie options traded on CBOE through the Options Price Reporting Authority ("OPRA"). Some of these indexes underlie options approved for listing and trading on CBOE by the Commission pursuant to filings submitted by CBOE pursuant to Rule 19b-4. In some of these filings, CBOE stated that the values of the respective indexes would be disseminated through OPRA.⁶

⁶For example, in its filing with respect to the options on the RVX, CBOE stated that "Volatility index levels [of the RVX] will be calculated by CBOE and disseminated at 15-second intervals to market information vendors via the Options Price Reporting Authority ("OPRA")," and the Commission noted this statement in its approval order for these options. See Securities Exchange Act Release No. 54643 (October 23, 2006), 71 FR 63367 (October 30, 2006) (notice of filing of File No. SR-CBOE-2006-73) and Securities Exchange Act Release No. 55425 (March 8, 2007), 72 FR 12238 (March 15, 2007) (approval of File No. SR-CBOE-2006-73). Similar statements were made in CBOE filings with respect to options on the following indexes: See Securities Exchange Act Release Nos. 32893 (September 14, 1993), 58 FR 49070 (September 21, 1993) (XSP); 58207 (July 22, 2008), 73 FR 43963 (July 29, 2008) (BXM); 32244 (April 29, 1993), 58 FR 27005 (May 6, 1993) (CEX); 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (VIX, VXD, VXN); 49698 (May 13, 2004), 69 FR 29152 (May 20, 2004) (VXB); 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (DJX, DXL, WDX); 39012 (September 3, 1997), 62 FR 47850 (September 11, 1997) (DTX); 39013 (September 3, 1997), 62 FR 47845 (September 11, 1997) (DUX, LDU); 41112 (February 25, 1999), 64 FR 10517 (March 4, 1999) (ECM, ZJ); 41009 (February 1, 1999), 64 FR 6410 (February 9, 1999) (DJR); 38353 (February 28, 1997), 62 FR 10888 (March 10, 1997) (NFT); 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (RUT); 48591 (October 2, 2003), 68 FR 58728 (October 10, 2003) (RUI, RUA); 51220 (February 17, 2005), 70 FR 09398 (February 25, 2005) (RMN); 32238 (April 29, 1993), 58 FR 27020 (May 6, 1993) (BIX); 32241 (April 29, 1993), 58 FR 27012 (May 6, 1993) (HCX); 32239 (April 29, 1993), 58 FR 27024 (May 6, 1993) (IUX); 32240 (April 29, 1993), 58 FR 27016 (May

Since 2006, CBOE has also disseminated values of its proprietary indexes and certain licensed indexes to major market data vendors outside of OPRA. For its proprietary and other indexes subject to a requirement that dissemination of the index values occur through OPRA pursuant to the filings noted above, the Exchange proposes to amend such requirement to permit dissemination of these values to major market data vendors solely outside of OPRA.

CBOE believes that its proposal to permit dissemination of its proprietary and certain other index values to major market data vendors solely outside of OPRA will continue to be in full compliance with the Commission's requirements with respect to the dissemination of values of indexes underlying options and CBOE's own applicable rules. CBOE Rule 24.2 requires that values of an underlying index be widely disseminated at least once every fifteen seconds if the listing of a class of options on the index is not the subject of a separate filing, and this will continue to be the case for index values that cease to be disseminated on OPRA.⁷ CBOE Rule 24.3(a) requires that "The Exchange shall disseminate or shall assure that the current index value is disseminated after the close of business and from time-to-time on days on which transactions in index options are made on the Exchange," and this also will continue to be the case for index values that cease to be disseminated on OPRA.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁸ in general, and Section

6, 1993) (RLX); and 34124 (May 27 1994), 59 FR 29310 (June 6 1994) (SGX, SVX).

⁷ See CBOE Rules 24.2(b)(10) (values of narrow-based index options must be "reported at least once every fifteen seconds during the time the index options are traded on the Exchange"), 24.2(d)(8) (values of micro narrow-based index options must be "reported at least once every fifteen seconds during the time the index options are traded on the Exchange"), and 24.2(f)(11) (the Exchange may trade options on a broad-based index pursuant to Rule 19b-4(c) of the Exchange act if " * * * (11) The current index value is widely disseminated at least once every fifteen (15) seconds by the Options Price Reporting Authority, CTA/CQ, NIDS or one or more major market data vendors during the time options on the index are traded on the Exchange"). It has been pointed out to CBOE that the language of 24.2(f)(11) is not parallel to the language of 24.2(b)(10) and 24.2(d)(8), particularly in the use of the word "disseminated" in the first of these provisions and the word "reported" in the second and third of them. CBOE believes that the three provisions are intended to be substantively parallel, and CBOE intends to amend these Rules in a separate filing to conform their language by using the word "disseminate" in all three provisions.

⁸ 15 U.S.C. 78f(b).

6(b)(5) of the Act⁹ in particular, in that it updates statements made by the Exchange in previous filings that would either become inaccurate or impede the Exchange from modifying its dissemination of index values in a manner that is consistent with the objectives 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 that is not necessary or appropriate in furtherance of 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 forgoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

The long standing policy of the Commission with respect to the dissemination of values of indexes underlying index options has been to ensure the wide dissemination and wide availability of index values to market participants. This policy is reflected in CBOE Rule 24.2, which requires that values of an underlying index be widely disseminated at least once every fifteen seconds if the listing of a class of options on the index is not the subject of a separate filing.¹² The Exchange believes the proposed rule change is consistent both with CBOE Rule 24.2 and this Commission policy. Based on the foregoing, the Exchange designates this proposed rule change as

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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 satisfied this requirement.

¹² See *supra* note 2.

immediately effective under Rule 19b-4(f)(6)¹³ of the Act.

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-2009-062 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-2009-062. 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 CBOE. 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-2009-062 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60665; File No. SR-CBOE-2009-052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Related to the Hybrid Matching Algorithms

September 14, 2009.

On July 17, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rules 6.45A and 6.45B to adopt a modified participation entitlement overlay to orders executed electronically on the CBOE Hybrid System ("Hybrid System"). The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of both rules currently provides for several different matching algorithms, including price-time and pro-rata priority matching algorithms with additional priority

overlays.⁴ The priority overlays currently include: public customer priority, market turner priority, and participation entitlements for certain qualifying market-makers.⁵ These overlays are optional.

The purpose of the rule filing is to adopt the "modified participation entitlement," an additional optional priority overlay for the price-time and pro-rata matching algorithms. The modified participation entitlement will operate in the same manner as the existing participation entitlement for certain qualifying market-makers; however, if at the time of execution there is one or more public customer orders resting at the execution price but none was entered first in time sequence, then the market-maker participation entitlement and public customer priority overlays would not be applied to the allocation—i.e. the allocation would revert back to the price-time or pro-rata methods. The participation entitlement for certain qualifying market-makers would therefore only be applied to the execution of an inbound order if there are no public customer orders resting on the Hybrid System at the best price or if a public customer was the first to rest interest at the best price, in which case the public customer order would have priority over the order of the market maker. This outcome is a

⁴ Rules 6.45A and 6.45B also include the Ultimate Matching Algorithm ("UMA"). CBOE did not propose any changes to the UMA in this filing.

⁵ Under the existing participation entitlements, the Exchange may determine to grant market-makers participation entitlements pursuant to the provisions of Rules 8.87, Participation Entitlement of DPMS and e-DPMS; 8.13, Preferred Market-Maker Program; or 8.15B, Participation Entitlement of LLMs. More than one such participation entitlement may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to its participation entitlement, the market-maker's order and/or quote must be at the best price on the Exchange; (ii) the market-maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price (if pro-rata priority is in effect, and the market-maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the market-maker shall not receive any further allocation of that order); (iii) in establishing the counterparties to a particular trade, the participation entitlement must first be counted against that market-maker's highest priority bids or offers; and (iv) the participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. See Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60420 (August 3, 2009), 74 FR 39989.

¹³ 17 CFR 240.19b-4(f)(6).