NYSE Arca Rule 2.100 at any time.[19] NYSE Arca may request an extension of this initial 10-day period for a specified amount of time by filing a proposed rule change with the Commission pursuant to Section 19(b)(2) of the Act, and the Commission must approve the NYSE Arca's proposal before any such extension could take effect.[20]

NYSE Arca notes that NYSE Arca, like other self-regulatory organizations (''SROs''), currently has the authority to halt trading in all stocks eligible for trading on NYSE Arca in the event of extraordinary market volatility.[21] NYSE Arca believes that the NYSE currently is the only SRO that monitors for the thresholds (*i.e.,* specified declines in the Dow Jones Industrial Average Index℠ (''DJIA'') from the previous day's close) used in these SRO trading halt rules. Accordingly, NYSE Arca proposes to establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable and NYSE Arca acts as the NYSE's alternative trading facility, as contemplated by NYSE Arca Rule 2.100.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, in part, that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 Commission believes that the proposal is reasonably designed to permit the NYSE to continue to operate in the event of an emergency, as defined in Section 12(k)(7) of the Act, by allowing the NYSE's corporate affiliate, NYSE Arca, to receive and process quotations in NYSE-listed securities and to execute orders in NYSE-listed securities on behalf of the NYSE in the event of an emergency condition.[24] A qualified Corporation officer would invoke the authority provided in NYSE Arca Rule 2.100 only in an emergency, as defined in Section 12(k)(7) of the Act.[25] NYSE Arca will make reasonable efforts to consult with the Commission prior to taking action under NYSE Arca Rule 2.100.[26] Any action taken under NYSE Arca Rule 2.100 would be operative for up to 10 calendar days from the date that NYSE Arca invokes its authority under the rule, and NYSE Arca may terminate action taken under the rule at any time.[27] To extend an action taken pursuant to NYSE Arca Rule 2.100 beyond the initial 10-calendar day period, NYSE Arca must file a proposed rule change with the Commission pursuant to Section 19(b)(2) under the Act, and the Commission would need to approve such an extension before it could take effect.[28] In addition, the Commission could, at any time, exercise its authority under Section 12(k)(2) of the Act[29] to terminate an action taken by NYSE Arca under NYSE Arca Rule 2.100.

NYSE Arca Rule 2.100 also addresses surveillance and the disciplinary procedures that would apply in the event that NYSE Arca acts as the NYSE's alternative trading facility, as provided in the rule. In particular, NYSE Arca will conduct surveillance of trading in NYSE-listed securities on behalf of the NYSE.[30] NYSE members, member organizations, and sponsored participants will remain subject to the NYSE's jurisdiction for any disciplinary actions related to the trading of NYSE-listed securities on or through the systems and facilities of NYSE Arca, and violations of NYSE Arca's rules will be referred to the NYSE for prosecution according to the NYSE's disciplinary rules.[31]

The Commission believes that NYSE Arca's proposal to delete obsolete language from NYSE Arca Rule 2.100 is consistent with the Act because it is designed to clarify the operation of NYSE Arca Rule 2.100. Finally, the Commission believes that NYSE Arca's proposal to establish a mechanism to calculate the DJIA thresholds in the event that trading on the NYSE becomes inoperable is consistent with the Act because it designed to help to maintain a fair and orderly market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (File No. SR–NYSE Arca–2009–90) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30543 Filed 12–23–09; 8:45 am]

BILLING CODE 8011–01–P

[19] *See* NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca will provide adequate prior notice to ETP Holders, Sponsored Participants, and investors regarding its intention to terminate any action taken under the rule. *See* NYSE Arca Rule 2.100(c)(3).

[20] *See* NYSE Arca Rule 2.100(c)(2).

[21] *See* NYSE Arca Rule 7.12.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] The Commission previously has approved proposals by other national securities exchanges to establish back-up trading arrangements. *See, e.g.,* Securities Exchange Act Release Nos. 51717 (May 19, 2005), 70 FR 30160 (May 25, 2005) (File No. SR–CBOE–2004–59) (approving proposal by the Chicago Board Options Exchange, Incorporated to enter into back-up trading arrangements with other exchanges); 51926 (June 27, 2005), 70 FR 38232 (July 1, 2005) (File No. SR–Phlx–2004–65) (approving proposal by the Philadelphia Stock Exchange (''Phlx'') to enter into back-up trading arrangements with other exchanges); 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (File No. SR–Phlx–98–25) (approving the trading of Dell options listed on the Phlx at the American Stock Exchange on a temporary basis); and 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (File Nos. SR–Amex–89–26; CBOE–89–21; PSE–89–28; and Phlx–89–52) (approving proposals to trade options listed on the Pacific Stock Exchange on other exchanges following an earthquake).

[25] *See* NYSE Arca Rule 2.100(a)(2) and (3)(i). *See also* note 10, *supra,* and accompanying text.

[26] *See* NYSE Arca Rule 2.100(c)(1).

[27] *See* NYSE Arca Rule 2.100(c)(2) and (3). NYSE Arca would provide adequate prior notice to ETP Holders, Sponsored Participants, and investors of its intention to terminate any action taken pursuant to NYSE Arca Rule 2.100. *See* NYSE Arca Rule 2.100(c)(3).

[28] *See* NYSE Arca Rule 2.100(c)(2).

[29] 15 U.S.C. 78*l*(k)(2).

[30] *See* NYSE Arca Rule 2.100(b)(5)(i).

[31] *See* NYSE Arca Rule 2.100(b)(5)(ii).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61183; File No. SR–CBOE–2009–087]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Establish a Pilot Program To Modify FLEX Exercise Settlement Values and Minimum Value Sizes

December 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2009, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the

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

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. 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 its rules regarding permissible exercise settlement values and minimum value sizes for Flexible Exchange Options (''FLEX Options'').[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

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 purpose of the filing is to modify the permissible exercise settlement values and minimum value sizes for FLEX Options. These options are governed by Exchange Chapters XXIVA and XXIVB.

Exercise Settlement Values for FLEX Index Options. We are proposing to amend the permissible exercise settlement values for FLEX Index Options. Currently under Rules 24A.4 and 24B.4, FLEX Options may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for FLEX Index Options can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (''a.m. settlement'' or ''p.m. settlement,'' respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.[4] However, only a.m. settlements are permitted if a FLEX Index Option expires on, or within two business days of, a third-Friday-of-the-month expiration (''Expiration Friday'').[5] We are proposing to eliminate this latter restriction on p.m. and specified average price settlements in FLEX Index Options on a pilot program basis.[6]

The proposal would become effective on a pilot program basis for a period of fourteen months. If the Exchange were to propose an extension of the program or should the Exchange propose to make the program permanent, then the Exchange would submit a filing proposing such amendments to the program. The Exchange notes that any positions established under the pilot would not be impacted by the expiration of the pilot. For example, a position in a PM-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the 14-month pilot. If the pilot program were not extended, then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction.[7]

As part of the pilot program, the Exchange would also submit a pilot program report to the Commission at least two months prior to the expiration date of the program (the ''annual report''). As described below, the annual report would contain an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. The annual report would be provided to the Commission on a confidential basis.

Analysis of Volume and Open Interest. For each broad-based FLEX Index class overlying an Expiration Friday, PM-settled FLEX Index series, the annual report would contain the following volume and open interest data:

(1) Monthly volume aggregated for all Expiration Friday, PM-settled FLEX Index series trades;

(2) monthly volume for Expiration Friday, PM-settled FLEX Index series trades aggregated by expiration date;

(3) monthly volume for individual Expiration Friday, PM-settled FLEX Index series;

(4) month-end open interest aggregated for all Expiration Friday, PM-settled FLEX Index series;

(5) month-end open interest for Expiration Friday, PM-settled FLEX Index series aggregated by expiration date;

(6) month-end open interest for individual Expiration Friday, PM-settled FLEX Index series; and

(7) ratios of monthly aggregate volume and month-end open interest for Expiration Friday, PM-settled FLEX Index and all series of that class (including the Expiration Friday, PM-settled FLEX Index series).

In addition to the annual report, the Exchange would provide the Commission with interim reports of the information listed in Items (1) through (7) above periodically as required by the Commission while the pilot is in effect. These interim reports would also be provided on a confidential basis.

For each broad-based FLEX Index class overlying an Expiration Friday, PM-settled FLEX Index option, the annual report would also contain the information noted in Items (1) through (7) above for Expiration Friday, AM-settled FLEX Index series. In addition, for each broad-based Non-FLEX Index class overlying the same index as an Expiration Friday, PM-settled FLEX Index option, the annual report would also contain the information noted in Items (1) through (7) above for Expiration Friday Non-FLEX Index series. This data on Expiration Friday, AM-settled FLEX Index series and Expiration Friday Non-FLEX Index series would cover the period of the

[3] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17.

[4] *See* Rules 24A.4(b)(3) and 24B.4(b)(3); *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17). The Exchange has determined to limit the averaging parameters to three alternatives: The average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. Any changes to the averaging parameters established by the Exchange would be announced to the membership via circular.

[5] For example, under the current rules, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

[6] No change is necessary or being requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

[7] The Exchange intends to address this point in a circular to members should the Exchange receive approval of this proposal.

annual report as well as a pre-pilot period to be determined by the Exchange and the Commission.

Analysis of FLEX Trading Patterns. The annual report would contain the following analysis of FLEX trading patterns:

(1) A time series analysis of open interest in Expiration Friday, PM-settled FLEX Index series; and

(2) an analysis of the distribution of Expiration Friday, PM-settled FLEX Index series trade sizes and of the number of trades that occur in each Expiration Friday, PM-settled FLEX Index series.

Analysis of Index Price Volatility and Share Trading Activity. For each broad-based index class overlying an Expiration Friday, PM-settled FLEX Index that has open interest in Expiration Friday, PM-settled FLEX Index series that exceed certain minimum parameters, the annual report would contain the following analysis related to index price changes and underlying share trading volume at the close on Expiration Fridays:

(1) A comparison of index price changes at the close of trading on a given Expiration Friday with comparable price changes from a control sample. The data would include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index (VIX), would be provided; and

(2) a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money Expiration Friday, PM-settled FLEX Index series. The data would include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for randomly selecting the component securities, and sample periods would be determined by the Exchange and the Commission.

Minimum Value Size Requirements for All FLEX Options. Second, we are proposing to eliminate the minimum value size requirements for FLEX Options. Currently under Rules 24A.4 and 24B.4, the minimum value size requirements are as follows:

• For opening transactions in any FLEX series in which there is no open interest at the time a FLEX Request for Quotes (''RFQ'') or FLEX Order, as applicable, is submitted is (i) for FLEX Equity Options, the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities; and (ii) for FLEX Index Options, $10 million Underlying Equivalent Value. For a pilot period ending February 28, 2010, the ''250 contracts'' component above has been reduced to ''150 contracts.''

• For a transaction in any currently-opened FLEX series resulting from an RFQ or from trading against the electronic book (other than FLEX Quotes responsive to a FLEX Request for Quotes and FLEX Orders submitted to rest in the electronic book) is (i) for FLEX Equity Options, the lesser of 100 contracts or the number of contracts overlying $1 million in the underlying securities in the case of opening transactions, and 25 contracts in the case of closing transactions; and (ii) for FLEX Index Options, $1 million Underlying Equivalent Value in the case of both opening and closing transactions; or (iii) in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less.

• The minimum value size for FLEX Quotes responsive to an RFQ and FLEX Orders (undecremented size) submitted to rest in the electronic book is 25 contracts in the case of FLEX Equity Options, and $1 million Underlying Equivalent Value in the case of FLEX Index Options, or in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less. In addition, with respect to FLEX Index Appointed Market-Makers, FLEX Quotes and FLEX Orders (undecremented size) must be for at least $10 million Underlying Equivalent Value or the dollar amount indicated in the Request for Quote (if applicable), whichever is less.

We are proposing to eliminate these minimum value size requirements on a fourteen month pilot program basis. If the Exchange were to propose an extension or an expansion of the minimum value size pilot program, or should the Exchange propose to make the program permanent, the Exchange would submit, along with any filing proposing such amendments to the program, a pilot program report that would provide an analysis of the program covering the period during which the program was in effect. This minimum value size report would include: (i) Data and analysis on the open interest and trading volume in (a) FLEX Equity Options for which series were opened with a minimum opening size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX Index Options for which series were opened with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions (*i.e.,* institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the pilot program and would be provided on a confidential basis.

The Exchange notes that any positions established under this pilot would not be impacted by the expiration of the pilot. For example, a 10-contract FLEX Equity Option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the 14-month pilot. If the pilot program were not extended, then the position could continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series.

Discussion. CBOE believes that expanding the exercise settlement values for FLEX Index Options and eliminating the minimum value size requirements for all FLEX Options on are [sic] important and necessary to the Exchange's efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. By making these changes, market participants would now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options. The Exchange also believes the proposed changes to the FLEX rules are wholly consistent with recent comments by Timothy F. Geithner, Secretary of the Treasury, to the U.S. Senate. In particular, Secretary Geithner has stated that:

''Market efficiency and price transparency should be improved in derivatives markets by requiring the clearing of standardized contracts through regulated [central counterparties] and by moving the standardized part of these markets onto regulated exchanges and regulated transparent electronic trade execution systems for OTC derivatives and by requiring development of a system for timely reporting of trades and prompt dissemination of prices and other trade information. Furthermore, regulated financial institutions should be encouraged to make greater use of regulated exchange-traded derivatives. Competition between appropriately regulated OTC derivatives markets and regulated exchanges will make both sets of markets more efficient and thereby better serve end-users of derivatives.'' [8]

CBOE notes that when the FLEX Option rules were initially proposed and approved almost sixteen years ago, the Exchange was uncertain what market impacts, if any, excessive FLEX positions would have on the market or on firms.[9] To minimize the risk of adverse market effects, at the time the FLEX rules were first introduced the Exchange put in place certain position limit boundaries (which have been modified over time) and the requirement that the FLEX expiration date be no closer than three business days from any Non-FLEX Option Expiration Friday (which has been eliminated).[10] Based on the Exchange's experience in trading FLEX Options to date—specifically with respect to the diversity in FLEX Option trading, the relatively small percentage FLEX Options trading compared to overall trading on the Exchange, and the lack of market disruptions or problems caused by or on existing FLEX Option expirations—CBOE no longer believes the restrictions on exercise settlement value are necessary to insulate Non-FLEX expirations from the potential adverse market impacts of FLEX expirations.[11] To the contrary, CBOE believes that the restriction actually places the Exchange at a competitive disadvantage to its OTC counterparts in the market for customized options, and unnecessarily limits market participants' ability to trade in an exchange environment that offers the added benefits of transparency, price discovery, liquidity, and financial stability.

The Exchange also notes that certain position limit, aggregation and exercise limit requirements would continue to apply to FLEX Options in accordance with Rules 24A.7, 24A.8, 24B.7 and 24B.8. Additionally, all FLEX options remain subject to the position reporting requirements of Rule 4.13(a).[12] Moreover, the Exchange and member organizations each have the authority, pursuant to Rule 12.10, to impose additional margin as deemed advisable. CBOE believes these existing safeguards serve sufficiently to help monitor open interest in FLEX Option series and significantly reduce any risk of adverse market effects that might occur as a result of large FLEX exercises in FLEX Option series that expire near Non-FLEX expirations and use a p.m. settlement.

The Exchange likewise believes that the elimination of the minimum value size requirement would provide FLEX-participating members with greater flexibility in structuring the terms of FLEX Options that best comports with their and their customers' particular needs. In this regard, the Exchange notes that the minimum value size requirement was also originally put in place over sixteen years ago to limit participation in FLEX Options to sophisticated, high net worth investors rather than retail investors. However, the Exchange believes the restriction is no longer necessary and is overly restrictive. Again, based on the Exchange's experience to date, the minimum value size requirement is too large to accommodate the needs of members and their customers—who may be institutional, high net worth or retail—that currently participate in the OTC market. In this regard, the Exchange notes that it has recently received numerous requests from broker-dealers representing institutional, high net worth and retail investors indicating that the minimum value size requirement prevents them from bringing transactions that are already taking place in the OTC market to an exchange environment. Thus, Exchange believes that eliminating the minimum value size requirement would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including

[8] *See* letter from Secretary Geithner to the Honorable Harry Reid, United States Senate (May 13, 2009), located at *http://www.financialstability.gov/docs/OTCletter.pdf.*

[9] *See* Securities Exchange Act Release Nos. 31361 (October 27, 1992) 57 FR 52655 (November 4, 1992) (SR–CBOE–92–17) (notice of filing of proposed rule change relating to Flexible Exchange Options) and 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (Order approving SR–CBOE–92–17). At the time of the proposal, the Exchange also anticipated that there would be limited secondary trading in any FLEX Option series having a particular expiration date due to the diversity inherent in FLEX Options and that FLEX expiration concentrations should be rare. These observations appear to be accurate for the trading in FLEX Options to date.

[10] When the expiration date restrictions were eliminated, the Exchange adopted the afore-mentioned restriction limiting exercise settlement values for FLEX Index Options that expire on, or within two business days of, an Expiration Friday to a.m. settlements. *See* Securities Exchange Act Release No. 59417 (February 18, 2009), 74 FR 8591 (February 25, 2009) (SR–CBOE–2008–115).

[11] In further support of its proposal, the Exchange also notes that the p.m. and specified average price settlements are already permitted for FLEX Index Options on any other business day except on, or within two business days of, Expiration Friday. The Exchange is not aware of any market disruptions or problems caused by the use of these settlement methodologies on these expiration dates. The Exchange is also not aware of any market disruptions or problems caused by the use of customized options in the OTC markets that expire on or near Expiration Friday and have a p.m. or specified average exercise settlement value. In addition, the Exchange believes the reasons for limiting expirations to a.m. settlement, which is something the SEC has imposed since the early 1990s for Non-FLEX Options, revolved around a concern about expiration pressure on the New York Stock Exchange (''NYSE'') at the close that are no longer relevant in today's market. Today, however, the Exchange believes stock exchanges are much better able to handle volume. There are multiple primary listing and unlisted trading privilege (''UTP'') markets, and trading is dispersed among several exchanges and alternative trading systems. In addition, the Exchange believes that surveillance techniques are much more robust and automated. In the early 1990s, it was also thought by some that opening procedures allow more time to attract contra-side interest to reduce imbalances. The Exchange believes, however, that today order flow is predominantly electronic and the ability to smooth out openings and closings is greatly reduced (*e.g.,* market-on-close procedures work just as well as openings). Also other markets, such as the NASDAQ Stock Exchange, do not have the same type of pre-opening imbalance disseminations as the NYSE, so many stocks are not subject to the same procedures on Expiration Friday. In addition, the Exchange believes that the NYSE has reduced the required time a specialist has to wait after disseminating a pre-opening indication. So, in this respect, the Exchange believes there is less time to react in the opening than in the close. Moreover, to the extent there may be a risk of adverse market effects attributable to p.m. settled options (or certain average price settled options related to the closing price) that would otherwise be traded in a non-transparent fashion in the OTC market, the Exchange believes that such risk would be lessened by making these customized options eligible for trading in an exchange environment because of the added transparency, price discovery, liquidity, and financial stability available.

[12] CBOE Rule 4.13(a) provides that ''[i]n a manner and form prescribed by the Exchange, each member shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The report shall indicate for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered.'' For purposes of this Rule, the term ''customer'' in respect of any member includes ''the member, any general or special partner of the member, any officer or director of the member, or any participant, as such, in any joint, group or syndicate account with the member or with any partner, officer or director thereof.'' Rule 4.13(d).

investors that currently trade in the OTC market for customized options, where similar size restrictions do not apply. The Exchange also believes that this may open up FLEX Options to more retail investors. The Exchange does not believe this raises any unique regulatory concerns because, as indicated above, existing safeguards—such as certain position limit, aggregation and exercise limit requirements, reporting requirements, and margin requirements—would continue to apply. In addition, the Exchange notes that FLEX Options are subject to the options disclosure document (''ODD'') requirements of Rule 9b–1[13] under the Act.[14] No broker or dealer can accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a definitive ODD (including FLEX Options), or approve the customer's account for the trading of such an option, unless the broker or dealer furnishes or has furnished to the customer a copy of the definitive ODD. The ODD contains a description, special features, and special risks of FLEX Options. Lastly, similar to any other options, FLEX Options are subject to member firm supervision and suitability requirements, such as in CBOE Rules 9.8 and 9.9.

In proposing these changes, CBOE is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their substantial investment portfolios, on the one hand, and the potential for adverse effects that the exercise settlement value and minimum value size restrictions were originally designed to address, on the other. CBOE is also cognizant of the OTC market, in which similar restrictions on exercise settlement value and minimum size do not apply. In light of these considerations and Secretary Geithner's recent comments on moving the standardized parts of OTC contracts onto regulated exchanges, CBOE believes these changes are appropriate and reasonable and would provide market participants with additional flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to, enhanced efficiency in initiating and closing out positions; increased market transparency; and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

For the foregoing reasons, CBOE believes that the proposed revisions to the exercise settlement values and minimum value size requirements are reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the pubic interest and investor protection.

2. Statutory Basis

By expanding permissible expiration dates for FLEX Options, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[15] in general and furthers the objectives of Section 6(b)(5) of the Act[16] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Exchange believes that the elimination of the p.m. settlement date restrictions for FLEX Index Options and the minimum size requirements for all FLEX Options in the manner proposed does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would provide members and investors with additional opportunities to trade customized options in an exchange environment and subject to exchange-based rules, and investors would benefit as a result.

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 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.

[13] 17 CFR 240.9b–1.

[14] 15 U.S.C. 78a *et seq.*

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

[16] 15 U.S.C. 78f(b)(5).

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 such proposed rule change, or

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

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–2009–087 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–CBOE–2009–087. 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 publicly available. All submissions should refer to File Number SR–CBOE–2009–087 and should be submitted on or before January 14, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30545 Filed 12–23–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61179; File No. SR–NYSEAmex–2009–89]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC Amending Rules 312– and 321–NYSE Amex Equities and Adopt New Rules 2262– and 2269–NYSE Amex Equities Filed by the Financial Industry Regulatory Authority, Inc.

December 16, 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 December 14, 2009, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') 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 self-regulatory organization. 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 Rules 312– and 321–NYSE Amex Equities and adopt new Rules 2262– and 2269–NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. (''FINRA'') and approved by the Securities and Exchange Commission (the ''Commission''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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

The purpose of the proposed rule changes is to amend Rules 312–NYSE Amex Equities (Changes Within Member Organizations) and 321–NYSE Amex Equities (Formation or Acquisition of Subsidiaries) and adopt new Rules 2262–NYSE Amex Equities (Disclosure of Control Relationship with Issuer) and 2269–NYSE Amex Equities (Disclosure of Participation or Interest in Primary or Secondary Distribution) to correspond with rule changes filed by FINRA and approved by the Commission.

Background. On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. (''NASD''), and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, as amended (the ''Act''), the New York Stock Exchange LLC (''NYSE''), NYSER and FINRA entered into an agreement (the ''Agreement'') to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations (''FINRA Incorporated NYSE Rules''). The Exchange became a party to the Agreement effective December 15, 2008.[4]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[5]

Proposed Conforming Amendments to NYSE Rules. FINRA adopted NASD Rules 2240 (Disclosure of Control Relationship with Issuer) and 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) as consolidated FINRA Rules 2262 and 2269, respectively.[6]

Because the protection provided by the new FINRA Rules, as well as existing or proposed FINRA Rules and SEC Rules,[7] is generally broader than that provided by FINRA Incorporated NYSE Rules 312(f) and 321.24, FINRA deleted those rules. Specifically, FINRA noted that, unlike FINRA Incorporated NYSE Rule 312(f)(2), consolidated FINRA Rules 2262 and 2269 would operate to protect customers without regard as to whether or not a member or member organization makes a recommendation on a security to a customer. In addition, FINRA noted that the requirements of FINRA Incorporated NYSE Rules 312(f)(1) and (3) are sufficiently addressed by consolidated FINRA Rules 2262 and 2269 and other rules. FINRA also noted that, unlike FINRA Incorporated NYSE Rule 321.24, consolidated FINRA Rules 2262 and 2269 require disclosure in transactions involving securities beyond those issued

[17] 17 CFR 200.30–3(a)(12).

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as ''Common Rules''); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[5] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[6] In its filing, FINRA also adopted NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as consolidated FINRA Rule 5260. *See* Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009). NYSE Amex is not adopting this FINRA Rule as it is not applicable to trading on the Exchange.

[7] According to FINRA, the requirements of consolidated FINRA Rules 2262 and 2269 are almost identical to SEA Rules 15c1–5 and 15c1–6, respectively. *See* Securities Exchange Act Release No. 60659 (September 11, 2009), 74 FR 48117 (September 21, 2009) (footnotes 4–6).