

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

DTC does not believe that the proposed rule change would have any impact on or 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 relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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

Section 17A(b)(3)(C) of the Act requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission has previously found that DTC's participants are fairly represented in the selection of its Board and in the administration of its affairs.<sup>4</sup> This rule change should not have any adverse effect on DTC's participants' representation in the selection of NSCC's Board or in the administration of NSCC's affairs. The Commission also recognizes that it may benefit DTC to have non-participants directors on the Board because such directors may provide skills or perspectives not possessed by participant directors. Therefore, the Commission finds that DTC's proposed rule change to have non-participant directors serve on its Board should provide benefits while continuing to provide for the fair representation of DTC's participants in the selection of its directors and administration of its affairs.

DTC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving DTC will be able to implement the rule change in time to include non-participant directors on its Board for the 2010 Board term.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

<sup>4</sup> See, e.g., Securities Exchange Act Release No. 52922 (December 7, 2005), 70 FR 74070 (December 14, 2005) (File Nos. SR-DTC-2005-16, SR FICC-2005-19, and SR-NSCC-2005-14).

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-DTC-2009-16 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-DTC-2009-16. 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 Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at [http://www.dtcc.com/legal/rule\\_filings/dtc/2009-16.pdf](http://www.dtcc.com/legal/rule_filings/dtc/2009-16.pdf). 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-DTC-2009-16 and should be submitted on or before January 19, 2010.

**V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of

Section 17A of the Act and the rules and regulations thereunder applicable.<sup>5</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-DTC-2009-16) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61205; File No. SR-NASDAQ-2009-105]

**Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IM-1002-1 To Reflect Changes to a Corresponding FINRA Rule**

December 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 3, 2009, the NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") 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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing this proposed rule change to amend NASDAQ IM-1002-1 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). The Exchange will implement the proposed rule change thirty days after the date of the filing.

<sup>5</sup> In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available at <http://nasdaqomx.cchwallstreet.com>, at the Exchange's principal office, 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, the Exchange 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 Exchange 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

Many of NASDAQ's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ also has initiated a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. In some cases, it is not possible for the rule numbers of NASDAQ rules to mirror corresponding FINRA rules, because existing or planned NASDAQ rules make use of those numbers. However, wherever possible, NASDAQ plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses NASDAQ IM-1002-1, which prohibits members and associated persons from filing with NASDAQ misleading information relating to membership or registration, and which formerly corresponded to NASD IM-1000-1. In SR-FINRA-2009-009,<sup>4</sup> FINRA redesignated that rule as FINRA Rule 1122 and made amendments to clarify and simplify the rule. NASD IM-1000-1 provided that the filing of membership or registration information as a Registered

Representative with FINRA which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed conduct inconsistent with just and equitable principles of trade and may be subject to disciplinary action.

FINRA's rule change clarified the rule's applicability to members and persons associated with members by specifying that "no member or person associated with a member" shall file incomplete or misleading membership or registration information. FINRA also eliminated the reference to the filing of registration information "as a Registered Representative" to clarify that the rule applies to the filing of registration information regarding any category of registration. In addition, FINRA deleted the reference that the prohibited conduct may be deemed inconsistent with just and equitable principles of trade and subject to disciplinary action as unnecessary and to better reflect the adoption of the NASD IM as a stand-alone FINRA rule. Likewise, NASDAQ is proposing to make changes to the text of IM-1002-1 that virtually mirror the changes made by FINRA to NASD IM-1000-1 so that the rules remain consistent for regulatory purposes.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general, and with Sections [sic] 6(b)(5) of the Act,<sup>6</sup> 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-1002-1 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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2009-105 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 No. SR-NASDAQ-2009-105. 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

<sup>4</sup> Securities Exchange Act Release No. 59789 (April 20, 2009), 74 FR 18767 (April 24, 2009) (SR-FINRA-2009-009).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

submission,<sup>9</sup> 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 NASDAQ. 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-NASDAQ-2009-105 and should be submitted on or before January 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61198; File No. SR-CBOE-2009-078]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of the Proposed Rule Change, as Modified by Amendment No. 1, Related to Professional Orders

December 17, 2009.

#### I. Introduction

On October 20, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> to amend its order execution rules to give certain non-

broker-dealer orders the same priority as broker-dealer orders. On November 3, 2009, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on November 12, 2009.<sup>4</sup> The Commission received three comment letters on the proposal.<sup>5</sup> This order approves the proposal, as modified by Amendment No. 1.

#### II. Description of CBOE's Proposal

CBOE proposes to adopt a new term, "Professional," which would be defined in proposed CBOE Rule 1.1(ggg) as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).<sup>6</sup> The definition would state that a Professional will be treated in the same manner as a broker or dealer in securities for purposes of specified order execution rules of CBOE.<sup>7</sup>

The use of this new term for purposes of these rules would result in

<sup>3</sup> Amendment No. 1 revised a paragraph in the Purpose section of the proposal relating to the application of Section 11(a) of the Act.

<sup>4</sup> See Securities Exchange Act Release No. 60931 (November 4, 2009), 74 FR 58355 (November 12, 2009) ("Notice").

<sup>5</sup> See letters from Charles B. Cox, dated November 11, 2009 ("Cox Letter"); Richard Weinstock, dated November 24, 2009 ("Weinstock Letter I"); and Richard Weinstock, dated December 3, 2009 ("Weinstock Letter II").

<sup>6</sup> The Professional designation would not be available in Hybrid 3.0 classes.

<sup>7</sup> Specifically, the orders of Professionals would be treated like broker-dealer orders for the purposes of CBOE Rules 6.2A (Rapid Opening System), 6.2B (Hybrid Opening System), 6.8C (Prohibition Against Members Functioning as Market-Makers), 6.9 (Solicited Transactions), 6.13A (Simple Auction Liaison), 6.13B (Penny Price Improvement), 6.45 (Priority of Bids and Offers—Allocation of Trades), 6.45A (Priority and Allocation of Equity Option Trades on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.45B (Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System) (except that Professional orders may be considered public customer orders, and therefore not be subject to the exposure requirements for solicited broker-dealer orders, under Interpretation and Policy .02), 6.53C(c)(ii) and (d)(v) and 6.53C.06(b) and (c) (Complex Orders on the Hybrid System), 6.74 (Crossing Orders) (except that Professional orders may be considered public customer orders subject to facilitation under paragraphs (b) and (d)), 6.74A (Automated Improvement Mechanism) (except Professional orders may be considered customer Agency Orders or solicited orders eligible for customer-to-customer immediate crosses under Interpretation and Policy .09), 6.74B (Solicitation Auction Mechanism), 8.13 (Preferred Market-Maker Program), 8.15B (Participation Entitlement of LMMs), 8.87 (Participation Entitlement of DPMS and e-DPMS), 24.19 (Multi-Class Broad-Based Index Option Spread Orders), 43.1 (Matching Algorithm/Priority), 44.4 (Obligations of SBT Market-Makers), and 44.14 (SBT DPM Obligations).

Professionals participating in CBOE's allocation process on equal terms with broker-dealers—*i.e.*, Professionals would not receive priority over broker-dealers in the allocation of orders on the Exchange. CBOE states that the proposal would not otherwise affect non-broker-dealer individuals or entities under CBOE rules, and that, in particular, all public customer orders would continue to be treated equally for purposes of rules relating to options exchange linkage.<sup>8</sup>

In addition, CBOE intends to require members to indicate whether public customer orders are "Professional" orders to assure that orders entered on the Exchange are properly represented.<sup>9</sup> To comply with this requirement, members would be required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as public customer orders or as Professional orders.<sup>10</sup>

The Exchange states that it intends to establish, in a separate rule filing, transaction fees applicable to Professionals, and that it would not commence the implementation of the instant proposal until such fees are in place.<sup>11</sup>

#### III. Commission Findings and Order Granting Approval of the Proposed Rule Change as Modified by Amendment No. 1

After careful consideration of the proposed rule change and the comments received, the Commission finds that the proposed rule change is consistent with the Act. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)<sup>12</sup> of the Act and the rules thereunder,<sup>13</sup> and in particular with:

Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange, among other things, be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market

<sup>8</sup> See CBOE Rules 6.14A and 6.80-6.82, which relate to routing of orders and linkage. These rules are not included by the proposed rule change in the list of rules, *supra*, for which the Professional designation would apply.

<sup>9</sup> CBOE has issued a regulatory circular outlining the procedures for the implementation of the proposal. See CBOE Regulatory Circular RG09-123 (November 6, 2009).

<sup>10</sup> *Id.*

<sup>11</sup> See Notice, *supra* note 4.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 17 CFR 240.19b-4.