

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-NYSE-2009-124) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,<sup>33</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61232; File No. SR-CBOE-2009-094]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Increasing the Session Fee for the Regulatory Element of Continuing Education Requirements

December 23, 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 17, 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. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</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 parties.

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

CBOE proposes to amend its Fees Schedule to increase the session fee for the Regulatory Element of the Continuing Education requirements of Rule 9.3A with an implementation date

January 4, 2010. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.org/Legal>, at the Exchange's Office of the Secretary, 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, 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 Regulatory Element, a computer-based education program administered by the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) to help ensure that registered persons are kept up-to-date on regulatory, compliance, and sales practice matters in the industry, is a component of the Securities Industry Continuing Education Program ("Program") under Rule 9.3A. The Securities Industry/Regulatory Council on Continuing Education ("Council") was organized in 1995 to facilitate cooperative industry/regulatory coordination of the administration and future development of the Program in keeping with applicable industry regulations and changing industry needs. Its roles include recommending and helping develop specific content and questions for the Regulatory Element, defining minimum core curricula for the Firm Element component of the Program, and developing and updating information about the Program for industry-wide dissemination.<sup>5</sup>

It is the Council's responsibility to maintain the Program on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.<sup>6</sup> CBOE members

currently pay \$75 each time one of their registered persons participates in the Regulatory Element. Following the consolidation of NASD's and NYSE Regulation's member regulation operations and the creation of FINRA, FINRA assumed responsibility for all aspects of the Program and thereafter conducted a financial review and evaluation of the program's budget. Based on this assessment, FINRA determined that an increase in the Regulatory Element session fee is necessary to cover the full costs associated with the Program, including costs associated with the redesign of the Regulatory Element.<sup>7</sup>

CBOE's proposed implementation date is January 4, 2010.<sup>8</sup>

###### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act")<sup>9</sup>, in general, and furthers the objectives of Sections 6(b)(4)<sup>10</sup> and 6(b)(5)<sup>11</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities, and that CBOE rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. CBOE believes that the proposed rule change is designed to accomplish these ends by enabling the Program to be maintained on a revenue neutral basis while maintaining adequate reserves for unanticipated future expenditures.

##### 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 [sic] purposes of the Act.

<sup>7</sup> The redesign updates the presentation and content of the Regulatory Element to take advantage of the latest innovations in adult learning theories and technological advances. This is the first such large-scale redesign since the inception of the Program and should result in a significantly improved product and experience for members. FINRA will first implement the redesign of the General Program (S101) and the Series 6 Program (S106). The redesign of the Supervisors Program (S201) will be implemented at a later stage.

<sup>8</sup> The Commission notes that this proposed rule change would increase the Regulatory Element session fee from \$75 to \$100.

<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. 78f(b)(5).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> The Council currently consists of 20 individuals, 14 of whom are securities industry professionals and six of whom represent self-regulatory organizations, including CBOE.

<sup>6</sup> The Regulatory Element session fee was initially set at \$75 when NASD established the continuing education requirements in 1995.

*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>12</sup> and subparagraph (f)(2) of Rule 19b-4<sup>13</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, 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-2009-094 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-2009-094. 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 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-2009-094 and should be submitted on or before January 20, 2010.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61233; File No. SR-NYSE-2009-111]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving the Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Rule 123C To Modify the Procedures for Its Closing Process and Making Conforming Changes to NYSE Rules 13 and 15

December 23, 2009.

#### I. Introduction

On November 9, 2009, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to modify the procedures for its closing process in Rule 123C and make conforming changes to NYSE Rules 13 ("Definitions of Orders") and Rule 15 ("Pre-Opening Indications"). The proposed rule change was published for comment in the **Federal Register** on

November 17, 2009.<sup>3</sup> On November 25, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received one comment letter on the proposal.<sup>5</sup> This order approves the proposed rule change as amended.

#### II. Description of the Proposal

The Exchange seeks to amend NYSE Rule 123C to modify its closing process.<sup>6</sup> Specifically, the Exchange proposes to amend NYSE Rule 123C to: (i) Extend the time for the entry of Market "At-The-Close" ("MOC") and Limit "At-The-Close" ("LOC") orders from 3:40 p.m. to 3:45 p.m.; (ii) amend the procedures for the entry of MOC/LOC orders in response to imbalance publications and regulatory trading halts; (iii) change to the cancellation time for MOC/LOC orders to 3:58 p.m.; (iv) require only one mandatory imbalance publication; (v) rescind the provisions governing Expiration Friday Auxiliary Procedures for the Opening and Due Diligence Requirements; (vi) modify the dissemination of Order Imbalance Information pursuant to NYSE Rule 123C(6) to commence at 3:45

<sup>3</sup> See Securities Exchange Act Release No. 60974 (November 9, 2009), 74 FR 59299 ("Notice").

<sup>4</sup> In Amendment No. 1, the Exchange proposes to correct an erroneous cross-reference in Exhibit 5. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

<sup>5</sup> See Letter from John F. Neary, Managing Director, Morgan Stanley, to Elizabeth M. Murphy, Secretary, Commission, dated December 8, 2009 ("Morgan Stanley Letter").

While the Morgan Stanley Letter welcomed the incremental progress under the proposal with regard to transparency, the commenter urged NYSE to adopt additional changes to the closing process, including mandating a final and absolute cutoff time for participation in the closing process and instituting a more transparent and accurate calculation of the real time closing imbalance feed.

On December 18, 2009, NYSE responded to the Morgan Stanley letter. See Letter from Janet M. Kissane, Senior Vice President—Legal & Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission ("Response Letter"). In the Response Letter, NYSE noted that it took into consideration input provided by its diverse constituent base, including Morgan Stanley, in crafting the changes to the closing process, as well as accommodating the interests of diverse constituencies whose business models vary widely, and ensuring that changes are implemented in a way that minimizes the possibility of unintended consequences. NYSE stated that, given available development resources and the complexity of modern markets, it was hesitant to introduce a level of incremental change that could have broad-ranging and unforeseen consequences. NYSE noted further that, as it implements the changes to the closing process, it will continue to work with its varied constituency, including Morgan Stanley, to assess the operation of the closing process, with an eye toward any potential changes in the behavior of market participants and to identify further ways to enhance the efficiency and transparency of the Close.

<sup>6</sup> Conforming changes related to the information disseminated prior to the opening transaction are also proposed.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</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.