

this outcome, DTC proposes changing its procedures so that reclaims under \$15 million would not override DTC's risk management controls. Instead, such reclaims would recycle until the reclaim can settle without violating EuroCCP's net debit cap and collateral controls or until the reclaim drops at the recycle cutoff.<sup>11</sup> This is how DTC currently treats reclaims that are over \$15 million dollars.

Second, DTC proposes modifying its Settlement Service Guide so that pending valued and free transactions to or from the EuroCCP account would fail to settle or "drop" at 3:10 p.m.<sup>12</sup> Items that would drop include deliveries to EuroCCP failing due to lack of position by the delivering participant and items failing DTC's risk management controls. This cutoff time would allow EuroCCP to close its business day.

Third, the Receiver Authorized Delivery ("RAD") cutoff time would be 3:30 p.m. for both valued and free delivery transactions. DTC's current RAD<sup>13</sup> deadline for valued transactions is 3:30 p.m., but the RAD deadline for free delivery transactions is 6:30 p.m. To allow EuroCCP to halt transaction processing in the EuroCCP account and end its processing day, DTC would require a synchronized RAD cutoff time of 3:30 p.m. for valued and free delivery transactions.

DTC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act<sup>14</sup> and the rules and regulations thereunder because the proposed changes would facilitate prompt and accurate clearance and settlement of securities transactions by leveraging DTC settlement systems to process transactions in U.S. securities that are traded on European trading venues.

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

DTC does not believe that the proposed rule change would impose any burden on competition.

<sup>11</sup> If the reclaim drops at the recycle cutoff, then the receiving participant will retain the securities and the debit for the delivery it received from EuroCCP.

<sup>12</sup> DTC's current cutoff time for pending valued transactions is 3:10 p.m. and for pending free transactions is 6:35 p.m.

<sup>13</sup> RAD is a control mechanism which allows a participant to review transactions prior to completion of processing. It limits the exposure from misdirected or erroneously entered deliver orders, payment orders, and pledges.

<sup>14</sup> 15 U.S.C. 78q-1.

*(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 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**

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

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

**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-DTC-2009-17 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-2009-17. 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 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the DTC and on DTC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2009/dtc/2009-17.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2009/dtc/2009-17.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-2009-17 and should be submitted on or before January 26, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-61248; File No. SR-CBOE-2009-097]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Reserve Orders**

December 29, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "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 ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6)

<sup>15</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)(iii).

thereunder.<sup>4</sup> 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 adopt reserve orders. The text of the proposed rule change is available on the Exchange's website (<http://www.cboe.org/Legal>), on the Commission's Web site at <http://www.sec.gov>, at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the 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 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**

This filing seeks to adopt the reserve order-type which is already available on other exchanges. A "Reserve Order" permits orders to be entered with both displayed and non-displayed amounts. Both portions may be executed against incoming marketable orders. The displayed portion of a reserve order will be executed first, while the non-displayed portion will only be executed after all displayed interest (from other orders) at that price has been executed. Once the displayed portion of a reserve order has been executed and all displayed interest from other orders at that price has also been executed, the displayed portion will be replenished from the non-displayed portion up to the original display amount. Each time the display portion is replenished from the non-displayed portion, that new display portion will be given a new timestamp, while the reserve, non-displayed portion will retain the timestamp of its original entry. With respect to the non-displayed portion of a reserve order, the exposure

requirement of Rule 6.45A.01 and .02 and 6.45B.01 and .02 are satisfied if the displayable portion of the reserve order is displayed at its displayable price for one second (this mirrors provisions in place at other options exchanges that utilize reserve orders). These exposure provisions only apply to reserve orders that are electronically handled by the system.

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

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act")<sup>5</sup> and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.<sup>6</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change will give market participants greater flexibility to manage and display their orders, encouraging such participants to bring further liquidity to the market.

#### *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*

The Exchange neither solicited nor received comments on the proposal.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date

on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6)<sup>11</sup> thereunder.

At any time within 60 days of the filing of such 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-2009-097 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-2009-097. 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

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and the 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 the pre-filing requirement.

<sup>5</sup> 15 U.S.C. 78s(b)(1).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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

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 the filing also will be available for inspection and copying at the principal office of the 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-2009-097 and should be submitted on or before January 26, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61257; File No. SR-NYSE-2009-116]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Increase the Ceiling on Its Equity Ownership Interest in BIDS Holdings L.P. to Less Than 10%

December 30, 2009.

On November 18, 2009, the New York Stock Exchange LLC ("NYSE" or "Exchange") 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> proposing to increase the ceiling on the Exchange's equity ownership interest in BIDS Holdings L.P. ("BIDS") to less than 10% from the current level of less than 9%. The proposed rule change was published for comment in the **Federal Register** on November 27, 2009.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

On January 22, 2009, the Commission approved the formation of New York Block Exchange ("NYBX"), an

electronic trading facility of the Exchange for NYSE-listed securities, established as a joint venture between the Exchange and BIDS.<sup>4</sup> The governance structure as approved is reflected in the Limited Liability Company Agreement ("LLC Agreement") of New York Block Exchange LLC ("Company"), the entity that owns and operates NYBX. Pursuant to the LLC Agreement, the Exchange and BIDS each own a 50% economic interest in the Company. In addition, the Exchange, through its wholly-owned subsidiary, NYSE Market, Inc., owns less than 9% of the aggregate limited partnership interest in BIDS. BIDS, through its subsidiary, BIDS Trading, L.P. ("BIDS Trading"), operates BIDS Alternative Trading System (ATS). In connection with the establishment of NYBX, BIDS Trading became a member of the Exchange.

Absent prior Commission approval, the foregoing ownership arrangements would violate NYSE Rule 2B<sup>5</sup> for two reasons. First, the Exchange's indirect ownership interest in BIDS Trading violates the prohibition in Rule 2B against the Exchange maintaining an ownership interest in a member organization. Second, BIDS Trading is an affiliate of an affiliate of the Exchange,<sup>6</sup> which violates the prohibition in Rule 2B against a member of the Exchange having such affiliation.

Consequently, in the Approval Order, the Commission permitted an exception to NYSE Rule 2B, subject to a number of limitations and conditions. One of the conditions for Commission approval of the ownership arrangements was that the proposed exception from NYSE Rule 2B to permit NYSE's indirect interest in BIDS Trading and BIDS Trading's affiliation with the Company would be for a pilot period of 12 months.<sup>7</sup> Another condition for Commission approval was that NYSE, or any of its affiliates, would not directly or indirectly increase its equity interest in

<sup>4</sup> See Securities Exchange Act Release No. 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (order approving SR-NYSE-2008-120) ("Approval Order").

<sup>5</sup> NYSE Rule 2B provides, in relevant part, that: "[w]ithout prior SEC approval, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. \* \* \* The term affiliate shall have the meaning specified in Rule 12b-2 under the Act."

<sup>6</sup> Specifically, the Company is an affiliate of the Exchange, and BIDS Trading is an affiliate of the Company. The affiliation in each case is the result of the 50% ownership interest in the Company by each of the Exchange and BIDS.

<sup>7</sup> See Approval Order, 74 FR at 5018.

BIDS without prior Commission approval.<sup>8</sup>

The Exchange proposes to increase the ceiling of its equity ownership in BIDS from the current limit of less than 9% to less than 10%. BIDS is offering its members the opportunity to invest, on a pro rata basis, in a new class of preferred equity interests, and the Exchange wishes to participate in the new round of capital raising by BIDS without inadvertently exceeding the current limit. The Exchange represents that, based on its expectations, the participation of the Exchange in the capital raising could slightly increase its percentage ownership in BIDS to between 9% and 10%. Other than this increase in the Exchange's equity ownership, all of the other limitations and conditions required by the terms of the Approval Order for the exception to NYSE Rule 2B would continue to apply during the pilot period.<sup>9</sup> Further, the Exchange and its affiliates do not, and would continue not to, have any voting or other control arrangement with any of the other limited partners or general partner of BIDS.<sup>10</sup>

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.<sup>11</sup> In particular, the Commission finds that the proposed rule change furthers the objectives of Section 6(b)(1) of the Act,<sup>12</sup> which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The Commission also finds that the proposed rule change is consistent with, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in that it 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 facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*, n. 69.

<sup>11</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(1).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>12</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> See Securities Act Exchange Release No. 61043 (November 20, 2009), 74 FR 62612.