

general, to protect investors and the public interest.

The proposed amendments are identical to the current rules relating to the FINRA/NYSE Trade Reporting Facility ("FINRA/NYSE TRF") and would make FINRA rules governing the submission of trade cancellations consistent across the "FINRA Facilities."<sup>8</sup> The Commission believes such consistency should enhance market transparency and eliminate systematically imposed delays in the reporting of trade cancellations to the FINRA/Nasdaq TRF and ORF.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-FINRA-2009-082), be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61357; File No. SR-CBOE-2010-001]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Elimination of the Hybrid Electronic Quoting Fee

January 14, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 4, 2010, 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 CBOE. On January 12, 2010, CBOE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>8</sup> The ADF, FINRA/Nasdaq TRF, FINRA/NYSE TRF and ORF are collectively referred to herein as the "FINRA Facilities."

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule to eliminate the Hybrid Electronic Quoting Fee. The text of the proposed rule change is available on the Exchange's website (<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. 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 purpose of this proposed rule change is to eliminate the Hybrid Electronic Quoting Fee ("Quoting Fee"), which is applicable to all Market-Makers, DPMS, and e-DPMS (collectively "liquidity providers"). The Quoting Fee was implemented in February 2007 with the purpose of promoting and encouraging more efficient quoting.<sup>1</sup> Under the Quoting Fee, CBOE assesses all liquidity providers who are submitting electronic quotations to CBOE in Hybrid option classes a monthly amount of \$450 per membership utilized. CBOE also assesses or credits fees on liquidity providers that vary depending on: (i) The quality of the liquidity provider's quotation (a quotation is a bid and an offer); and (ii) the value of the underlying security and CBOE's bid in the option series.<sup>2</sup> If a liquidity provider is assessed (or credited) the Quoting Fee, the liquidity provider does not pay

<sup>1</sup> See Securities Exchange Act Release No. 54804 (November 21, 2006), 71 FR 69150 (November 29, 2006). The Quoting Fee was amended three times. See Securities Exchange Act Release No. 56602 (October 3, 2007), 72 FR 57620 (October 10, 2007); Securities Exchange Act Release No. 56927 (December 7, 2007), 72 FR 70912 (December 13, 2007); and Securities Exchange Act Release No. 58513 (September 11, 2008), 73 FR 54186 (September 18, 2008).

<sup>2</sup> See CBOE Fees Schedule, Section 17.

a member dues fee under Section 10 of the Fees Schedule.

The Exchange believes the Quoting Fee is no longer necessary to help mitigate quote message traffic. The Exchange believes liquidity providers generally are quoting more efficiently in response to the expansion of the Penny Pilot Program in order to remain competitive in the penny classes. In addition, the Exchange believes the other quote mitigation strategies it implemented at the inception of the Penny Pilot Program should continue to be effective in mitigating quotations.<sup>3</sup> Also, since the adoption of the Quoting Fee the Exchange has invested heavily to increase its options system capacity to handle greater quote message traffic. Accordingly, the Exchange believes it would be appropriate to eliminate the Quoting Fee.

Liquidity providers will continue to be charged \$450 per month as member dues under Section 10 of the Fees Schedule instead of as a Hybrid Electronic Quoting Fee.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>5</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 its members. The Exchange believes it is appropriate to eliminate the Quoting Fee because it is no longer necessary to help mitigate quote message traffic.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

<sup>3</sup> See Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</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-2010-001 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-2010-001. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2010-001 and should be submitted on or before February 12, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61323; File No. SR-NASDAQ-2009-116]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend Rule 2240 and 2250 To Reflect Changes to Corresponding FINRA Rules

January 11, 2010.

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 30, 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 Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> and Rule 19b-4 thereunder,<sup>5</sup> The NASDAQ Stock Market LLC (the "Exchange" or "NASDAQ") is filing with the Securities and Exchange Commission

("Commission") a proposed rule change to amend NASDAQ Rule 2240 and 2250 to reflect recent changes to corresponding rules of the Financial Industry Regulatory Authority ("FINRA"). The text of the proposed rule change is below. Additions are in italics; deletions are in brackets.

#### NASDAQ Stock Market Rules

\* \* \* \* \*

[2240. Disclosure of Control Relationship with Issuer  
Nasdaq Members shall comply with NASD Rule 2240 as if such Rule were part of Nasdaq's Rules.]

\* \* \* \* \*

[2250. Disclosure of Participation or Interest in Primary or Secondary Distribution

Nasdaq Members shall comply with NASD Rule 2250 as if such Rule were part of Nasdaq's Rules.]

\* \* \* \* \*

2262. Disclosure of Control Relationship with Issuer

*Nasdaq Members shall comply with FINRA Rule 2262 as if such Rule were part of Nasdaq's Rules.*

\* \* \* \* \*

2269. Disclosure of Participation or Interest in Primary or Secondary Distribution

*Nasdaq Members shall comply with FINRA Rule 2269 as if such Rule were part of Nasdaq's Rules.*

\* \* \* \* \*

#### 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

<sup>8</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).

<sup>4</sup> 15 U.S.C. 78s(b)(1).

<sup>5</sup> 17 CFR 240.19b-4.

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).