

ISE rule(s)	FINRA (NASD) or SEC section
2114. Doing Business with the Public <sup>2</sup> .....	NASD Rules 2310 Recommendations to Customers (Suitability); 2320 Best Execution and Interpositioning; 2330 Customers' Securities or Funds; 2340 Customer Account Statements; 2341 Margin Disclosure Statement; 2350 Broker/Dealer Conduct on the Premises of Financial Institutions; 2360 Approval Procedures for Day-Trading Accounts; 2361 Day-Trading Risk Disclosure Statement; 2370 Borrowing From or Lending to Customers.

<sup>1</sup> FINRA shall have Regulatory Responsibilities for Dual Members to the extent that a Dual Member is, and remains, a member of SIPC.

<sup>2</sup> In connection with the approval of ISE Rule 2114, the Commission noted that since ISE is requiring Equity EAMs that do business with the public to become members of NASD (n/k/a FINRA), those ISE members are required to comply with FINRA (NASD) rules that govern the practice of members when doing business with the public. The Commission noted that, among other things, these members would be obligated to comply with these listed FINRA (NASD) Rules. See Exchange Act Release No. 54401 (September 1, 2006), 71 FR 53483 (September 11, 2006) (Order Granting Accelerated Approval of SR-ISE-2006-53).

\* \* \* \* \*

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

Pursuant to Section 17(d)(1) of the Act<sup>15</sup> and Rule 17d-2 thereunder,<sup>16</sup> after April 28, 2010, the Commission may, by written notice, declare the plan submitted by ISE and FINRA, File No. 4-596, to be effective if the Commission finds that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national system for the clearance and settlement of securities transactions and in conformity with the factors set forth in Section 17(d) of the Act.

### IV. Solicitation of Comments

In order to assist the Commission in determining whether to approve the 17d-2 Plan and to relieve ISE of the responsibilities which would be assigned to FINRA, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

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. 4-596 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. 4-596. 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,<sup>17</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 Web site viewing and printing 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 plan also will be available for inspection and copying at the principal offices of ISE and FINRA. 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. 4-596 and should be submitted on or before April 28, 2010.

<sup>17</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>18</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

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

[FR Doc. 2010-8350 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61848; File No. SR-NYSE-2010-31]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending Rule 70 in Order To Update Functionality Relating to the Entry of D-Quotes and Pegging E-Quotes

April 6, 2010.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 1, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 Rule 70 in order to update functionality relating to the entry of d-Quotes and pegging e-Quotes. The text of the proposed rule change is available at the Exchange, on the Commission's Web site at <http://www.sec.gov>, the

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>15</sup> 15 U.S.C. 78q(d)(1).

<sup>16</sup> 17 CFR 240.17d-2.

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 Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend its rules to provide that d-Quotes and pegging e-Quotes that are entered 10 seconds or less before the scheduled close will automatically be rejected by Exchange systems. Accordingly, on a regular trading day, Exchange systems will reject d-Quotes or pegging e-Quotes entered at or after 3:59:50 p.m. On days where trading closes at 1 p.m., e.g., the day after Thanksgiving, Exchange systems will reject d-Quotes or pegging e-Quotes eligible for the close entered at or after 12:59:50 p.m.<sup>4</sup>

The Exchange believes that the 10 second cut-off will contribute to a more orderly closing process, by providing an opportunity for contra-side interest, including the new Closing Offset ("CO") order, to flow into the Exchange market. This proposed change is consistent with the Exchange's ongoing effort to streamline the closing process and enhance transparency at the close. In light of recent enhancements to the imbalance feed information, the Exchange believes that designating a cut-off time before the close for the entry of d-Quotes and pegging e-Quotes will contribute to these objectives.

Currently, d-Quotes and pegging e-Quotes are added to the pre-close data feed beginning at 3:55 p.m., and updated every five seconds until the close. The Exchange believes that a 10 second cut-off prior to the close for entry of d-Quotes and pegging e-Quotes will provide sufficient time for all market participants to electronically

<sup>4</sup> NYSE Amex LLC has filed a companion rule proposal to conform its equities rules to the changes proposed in this filing. See SR-NYSEAmex-2010-34.

recognize and respond to this information by entering offsetting interest to mitigate market impact, by entering limit orders or the new CO order.<sup>5</sup> The Exchange further believes that the 10-second cut off will not materially impact a Floor broker's ability to represent customer interest in the closing transaction because, like other market participants, Floor brokers can enter offsetting market-on-close or limit-on-close orders or CO orders in that 10-second period. Floor brokers also continue to have the ability to represent interest orally at the close. However, the Exchange believes that the proposed cut-off period will have minimal impact on current trading practices of Floor brokers because the manual entry process for d-Quotes in the handheld devices creates physical constraints that naturally limit the number of d-Quotes that can be sent in the last 10 seconds. Therefore, the cut-off time should not impose a significant limitation on Floor brokers that is not already present because of the manual aspect of d-Quote entry. The proposed change is also consistent with ongoing regulatory guidance that encourages all market participants, including Floor brokers, to avoid holding back large interest until at or near the close.<sup>6</sup>

To effect this change, the Exchange proposes to amend Rules 70.25(a)(ii) and 70.26(iii) to provide that Exchange systems will reject d-Quotes or pegging e-Quotes, as applicable, that are entered 10 seconds or less before the scheduled close. The Exchange also proposes to add to Rule 70(h)(i) to cross reference Supplementary Material .25 and .26 of Rule 70 to reflect that those rules also impact how Floor broker agency interest interacts in the closing process. The Exchange notes that any d-Quotes or pegging e-Quotes eligible for the close that were entered before this proposed cut-off time remain eligible to participate in the close. The Exchange will notify members and member organizations, including Floor brokers, of these rule changes and the date they will be implemented by issuing a Trader Notice and/or publication of an Information Memorandum.

#### 2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the

<sup>5</sup> See Securities Exchange Act Release Nos. 61233 (Dec. 23, 2009), 74 FR 69169 (Dec. 30, 2009) (SR-NYSE-2009-111); 61244 (Dec. 28, 2009), 75 FR 4797 [sic] (Jan. 5, 2010) (SR-NYSEAmex-2009-81). The Exchange implemented these rule changes for both NYSE and NYSE Amex Equities on March 1, 2010.

<sup>6</sup> See e.g., NYSE Regulation Information Memo 09-29 (June 19, 2009), published at <http://www.nyse.com>.

Act,<sup>7</sup> which requires the rules of an exchange 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 proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>8</sup> of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets and the practicability of brokers executing investor's orders in the best market. The Exchange believes that the proposed updates to Floor broker functionality meet such goals as it will contribute to a more orderly closing process, by providing an opportunity for contra-side interest to flow into the Exchange market.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is 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.

## 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, 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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the

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

<sup>8</sup> 15 U.S.C. 78k-1(a)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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 this requirement.

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-NYSE-2010-31 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-NYSE-2010-31. 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 Web site viewing and printing 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 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-NYSE-2010-31 and should be submitted on or before May 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8363 Filed 4-12-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61857; File No. SR-CBOE-2010-030]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add a Note to Rule 4.11 Advising the Delta-Based Equity Hedge Exemption Is Not Currently Available for Customers

April 7, 2010.

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 March 26, 2010, 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 has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act, and Rule 19b-4(f)(1) thereunder, 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 Substance of the Proposed Rule Change

CBOE proposes to add a note to the beginning of Interpretation and Policy .04 (c) to Rule 4.11, *Delta-Based Equity Hedge Exemption*, advising that this exemption is not currently available to customers. The text of the rule proposal is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

<sup>11</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.

#### 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 Commission previously approved CBOE's proposed rule change, as modified [sic] Amendment No. 1, to extend the delta hedging exemption from equity option position limits to positions of customers who hedge those positions in accordance with a pricing model maintained and operated by the Options Clearing Corporation.<sup>3</sup> Consistent with Amendment No. 1 and the approval order, which provided that CBOE was adopting the delta hedging exemption for customers but not implementing it immediately, the purpose of this rule change is to add a note the beginning of Interpretation and Policy .04 (c) to Rule 4.11, *Delta-Based Equity Hedge Exemption*, advising that this exemption is not currently available to customers. Specifically, the Exchange proposes to add the following language,

**\* Note:** The Delta-Based Equity Hedge Exemption for customers is not currently available and customers may not seek to rely on the Delta-Based Equity Hedge Exemption. The Exchange will issue a Regulatory Circular to announce when the Delta-Based Equity Hedge Exemption is available to customers.

###### 2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act<sup>5</sup> requirements that the rules of an

<sup>3</sup> See Securities Exchange Act Release No. 60555 (August 21, 2009), 74 FR 43741 (August 27, 2009).

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

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