available for Web site viewing 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 the filing will also be available for inspection and copying at NYSE Arca's principal office. 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-NYSEArca-2010-39 and should be submitted on or before June 1,2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–11093 Filed 5–10–10; 8:45 am] BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62033; File No. SR–BATS– 2010–009]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Add Seventy-Five Options Classes to the Penny Pilot Program

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b–4 thereunder,² notice is hereby given that on April 30, 2010, BATS Exchange, Inc. (the "Exchange" or "BATS") 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 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 is filing with the Commission a proposal for the BATS Exchange Options Market ("BATS Options") to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot") on May 3, 2010.³ The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.⁴

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, 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 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 purpose of this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010. In the Exchange's filing to adopt rules to govern BATS Options,⁵ the Exchange proposed commencing operations for BATS Options by trading all options classes that were, as of such date, traded by other options exchanges pursuant to the Penny Pilot and then expanding the Penny Pilot on a quarterly basis, 75 classes at a time, through August 2010. Each such quarterly expansion would be of the seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under \$200 per share on the Expiration Friday prior to expansion, except that the month immediately preceding the addition of options to the Penny Pilot would not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l rank- ing	Symbol	Security name	Nat'l rank- ing	Symbol	Security name
153 155 157 158 159 162 163 171 176 178 181 185	CIEN AMLN CTIC MDT MNKD MNKD BRKB APOL BSX	Ciena Corp Amylin Pharmaceuticals Inc Cell Therapeutics Inc Medtronic Inc TiVo Inc MannKind Corp Medivation Inc Berkshire Hathaway Inc Apollo Group Inc Boston Scientific Corp	248	ACL STP SYMC AMED TM HK ENER BHP	JC Penney Co Inc. Alcon Inc. Suntech Power Holdings Co Ltd. Talbots Inc. Symantec Corp. Amedisys Inc. Toyota Motor Corp. Petrohawk Energy Corp. Energy Conversion Devices Inc. State Street Corp. BHP Billiton Ltd. NetFlix Inc.
188 190 194	ZION	Cliffs Natural Resources Inc		SPG	

⁸ 17 CFR 200.30–3(a)(12).

¹15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The rules of BATS Options, including rules applicable to BATS Options' participation in the Penny Pilot, were approved on January 26, 2010. See Securities Exchange Act Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031). BATS Options commenced operations on February 26, 2010. This proposal represents the first expansion of classes subject to the Penny Pilot since BATS Options commenced operations. ⁴ See Rule 21.5 regarding the Penny Pilot.

⁵ See Securities Exchange Act Release No. 61097 (December 2, 2009), 74 FR 64788 (December 8, 2009) (SR–BATS–2009–031) (Notice of Filing of Proposed Rule Change to Establish Rules Governing the Trading of Options on the BATS Options Exchange.

Naťl rank- ing	Symbol	Security name	Nat'l rank- ing	Symbol	Security name
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc.
204	GME	GameStop Corp	266	WAG	Walgreen Co.
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co.
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF.
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp.
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp.
215	XLP	Consumer Staples Select Sector SPDR	274	SEED	Origin Agritech Ltd.
		Fund.			
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp.
220	DTV	DIRECTV	279	DHI	DR Horton Inc.
223	WMB	Williams Cos Inc/The	280	ADBE	Adobe Systems Inc.
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp.
227	CELG	Celgene Corp	282	SPWR A	SunPower Corp.
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc.
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc.
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp.
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund.
237	COST	Costco Wholesale Corp	288	KBH	KB Home.
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc.
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc.
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co.
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co.
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd.
244	MT	ArcelorMittal			

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁶ In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,⁷ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A)(i) of the Act⁸ and paragraph (f)(1) of Rule 19b–4 thereunder,⁹ 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.

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 proposal 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*. Please include File No. SR–BATS–2010–009 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-BATS-2010-009. 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 changes 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 such filing will also 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

⁶ 15 U.S.C. 78f(b).

^{7 15} U.S.C. 78f(b)(5).

⁸15 U.S.C. 78s(b)(3)(A)(i).

⁹17 CFR 240.19b-4(f)(1).

available publicly. All submissions should refer to File No. SR-BATS-2010-009 and should be submitted on or before June 1, 2010.

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

Florence E. Harmon,

Deputy Secretary. [FR Doc. 2010-11095 Filed 5-10-10; 8:45 am] BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-62034; File No. SR-CBOE-2010-035]

Self-Regulatory Organizations; Chicago Board Options Exchange. Incorporated; Notice of Filing and Immediate Effectiveness of Proposed **Rule Change Amending CBOE Rules** 9.11, 9.18 and 9.21 To Correspond and Harmonize With Rules of the Financial Industry Regulatory Authority, Inc.

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b–4 thereunder,² notice is hereby given that the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") on April 9, 2010, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of the filing by 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

The Exchange proposes to amend its guarantees and profit sharing, confirmation to customers, and options communication rules to harmonize the Exchange's requirements with those of the Financial Industry Regulatory Authority ("FINRA"). 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'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, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d-2 under the Act,⁴ the BATS Exchange, Inc. ("BATS"), CBOE, C2 Options Exchange, Incorporated ("C2"), the International Securities Exchange, LLC ("ISE"), FINRA, the New York Stock Exchange LLC ("NYSE"), NYSE Amex LLC ("Amex"), NYSE Arca, Inc. ("Arca"), The NASDAQ Stock Market LLC ("NASDAQ"), NASDAQ OMX BX, Inc. ("BX"), and NASDAQ OMX PHLX, Inc. ("Phlx"), (collectively the "Options Self Regulatory Council"), entered into an agreement dated February 9, 2010 (the "17d-2 Agreement") to allocate regulatory responsibility for common rules.

First, by this proposal, the Exchange seeks to harmonize its "Sharing in Accounts" rule with FINRA's rule pursuant to the terms of the 17d-2 Agreement. In order to maintain substantial similarity with FINRA rules, the Exchange proposes to amend CBOE Rule 9.18(a) to clarify that the prohibition against guarantees also applies to persons associated with a member and to delete the language of CBOE Rule 9.18 related to profit sharing of a customer account, and replace it with the language of FINRA Rule 2150(c), Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same prohibition against sharing in accounts as CBOE Rule 9.18, but with additional limited exceptions. The general prohibition contained in CBOE Rule 9.18 against sharing in the profits or losses of a customer account is currently covered by the 17d–2 Agreement. However, the limited

exceptions of FINRA Rule 2150(c) are not covered by the 17d-2 Agreement. The Exchange proposes to add those limited exceptions to CBOE Rule 9.18 to harmonize its rule with the FINRA rule and add those limited exceptions pursuant to the 17d-2 Agreement. The portion of the rule prohibiting the guarantee of a customer against loss will remain unchanged.

Second, CBOE proposes to amend its confirmation rule, CBOE Rule 9.11, to add a requirement that confirmations disclose whether the transaction was an opening or closing transaction to harmonize the rule with FINRA Rule 2360(b)(12).

Third, CBOE proposes to amend its options communication rule, CBOE Rule 9.21, by deleting the term "market letters" in the definition of "sales literature" and adding the term "market letters" to the definition of "correspondence" to harmonize the rule with FINRA Rule 2220 and NASD Rule 2210(a)(2).

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the provisions of, and furthers the objectives of. Section 6(b)(5) of the Act,⁵ which requires, among other things, that the Exchange's rules must be 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. Specifically, the proposed rule changes, by harmonizing CBOE rules with FINRA rules, would provide CBOE Members with a clearer regulatory scheme. The Exchange further notes that the proposed rule changes are neither novel nor controversial and are modeled on existing FINRA rules.

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.

¹⁰ 17 CFR 200.30–3(a)(12).

^{1 15} U.S.C. 78s(b)(1).

²¹⁷ CFR 240, 19b-4.

^{3 17} CFR 240.19b-4(f)(6).

^{4 17} CFR 240.17d-2.

^{5 15} U.S.C. 78f(b)(5).