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 Number SR–BX–2009–046 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–BX–2009–046. 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 business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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–BX–2009–046 and should be submitted on or before September 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20063 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60501; File No. SR–NYSE–2009–80]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend its Public Float Requirement for Initial Public Offerings

August 13, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on August 5, 2009, New York Stock Exchange LLC (the ''NYSE'' 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 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 proposes to amend its market value of publicly-held shares requirement for initial public offerings (''IPOs''), spin-offs and companies listed under the Exchange's Affiliated Company standard. The text of the proposed rule change is available at the Exchange, the 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 these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

Section 102.01B of the Manual requires that a company listing at the time of its IPO or as a result of a spin-off or under the Affiliated Company standard of Section 102.01C(iii) must demonstrate an aggregate market value of publicly-held shares (''public float'') of $60 million at the time of listing. The Exchange proposes to reduce this requirement from $60 million to $40 million. A reduction in the public float requirement to $40 million for companies that are new to the public markets will enable companies to list that would not meet the current $60 million public float requirement but that otherwise qualify to list. The proposed lowering of the public float requirement would be applicable to real estate investment trusts listed under Section 102.05, but not closed-end funds listed under Section 102.04 (which will continue to be subject to a $60 million public float requirement) or special purpose acquisition companies (''SPACs'') listed under Section 102.06 (which are subject to a $200 million public float requirement). As closed-end funds and SPACs are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies, the Exchange does not believe that it is unfairly discriminatory to apply different public float requirements to them than are applicable to operating companies.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest and does not raise any novel regulatory issues. The Exchange notes that the proposed $40 million public float requirement is higher than the public float requirements under the various Nasdaq Global Market initial listing standards, which range from $8 million to $20 million.

The Exchange believes that the proposed amendment does not affect the status of NYSE listed securities under Securities Exchange Act Rule 3a51–1(a) (the ''Penny Stock Rule''),[4] as the amended standards satisfy the requirements of Exchange Act Rule 3a51–1(a)(2).[5]

All of the NYSE's equity listing standards meet the stock price and distribution requirements of Rule 3a51–1(a)(2), as all of the standards require

[4] 17 CFR 240.a51–1(a).

[5] 17 CFR 240.a51–1(a)(2).

companies to have a minimum stock price of $4.00 and at least 1.1 million publicly-held shares at the time of initial listing. Companies are generally required to have 400 round lot holders at the time of listing, except that companies listing in connection with a transfer or quotation listing may list on the basis of (a) 2,200 total stockholders plus an average monthly trading volume of 100,000 shares (for the most recent six months) or (b) 500 total stockholders plus an average monthly trading volume of one million shares (for the most recent 12 months).

The Exchange believes that, in addition to meeting the stock price and distribution requirements of Rule 3a51–1(a)(2), all of the Exchange's equity listing standards meet or exceed the other applicable requirements of that rule. The three-year earnings requirement of the Earnings Test exceeds the net income prong of Rule 3a51–1(a)(2)(i)(A)(3) and the operating history prong of Rule 3a51–1(a)(2)(i)(B). The $50 million stockholders' equity requirement of the Assets and Equity Test exceeds the $5 million in stockholders' equity required by Rule 3a51–1(a)(2)(i)(A)(1) and its $150 million global market capitalization requirement exceeds the $50 million required by the market value of listed securities prong of Rule 3a51–1(a)(2)(i)(B). The Exchange's Valuation/Revenue Test, Pure Valuation/Revenue Test, Affiliated Company Test and Assets and Equity Test require a global market capitalization of $500 million, $750 million, $500 million and $150 million, respectively. The Exchange notes that Rule 3a51–1(a)(2)(i)(A)(2) requires a market value of listed securities of $50 million calculated over a 90 consecutive day period, while the global market capitalization requirements of the Valuation/Revenue Test, Pure Valuation/Revenue Test, Affiliated Company Test and Assets and Equity Test are measured at a single point in time. However, the $50 million in market value of listed securities requirement of Rule 3a51–1(a)(2)(i)(A)(2) is far lower than the global market capitalization requirements of the Exchange's Valuation/Revenue Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity test. Consequently, the Exchange believes that the global market capitalization requirements of the Valuation/Revenue Test, the Pure Valuation/Revenue Test, the Affiliated Company Test and the Assets and Equity Test are comparable to, and arguably more stringent than, the $50 million market value of listed securities requirement of Rule 3a51–1(a)(2).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed amendment is consistent with the investor protection objectives of the Act in that the proposed public float requirement is set at a high enough level that only companies that are suitable for listing on the Exchange will qualify to list. As closed-end funds and SPACs are subject to their own separate listing standards and have characteristics that make them significantly different from operating companies, the Exchange does not believe that it is unfairly discriminatory to apply different public float requirements to them than are applicable to operating companies.

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 Exchange Act.

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

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The Exchange's initial listing standards for equity listings after adoption of the proposed amendment will continue to be as stringent as, or more stringent than, those of other national securities exchanges. Consequently, the Exchange believes the proposed rule change does not raise any novel regulatory issues or significantly affect the protection of investors or the public interest.

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 Exchange 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.* Please include File Number SR–NYSE–2009–80 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.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78a.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, the Commission notes that Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

All submissions should refer to File Number SR–NYSE–2009–80. 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 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–2009–80 and should be submitted on or before September 11, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–20130 Filed 8–20–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60499; File No. SR–CBOE–2009–007]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Tied Hedge Transactions

August 13, 2009.

I. Introduction

On February 13, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow hedging stock, security futures, or futures contract positions to be represented currently with option facilitations or solicitations in the trading crowd (''tied hedge'' orders). The proposed rule change was published for comment in the **Federal Register** on March 2, 2009.[3] The Commission received one comment letter on the proposal.[4] CBOE responded to the comment letter on August 11, 2009.[5] CBOE filed Amendment No. 1 to the proposed rule change on August 11, 2009. This notice and order provides notice of filing of Amendment No. 1 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

CBOE Rule 6.74 generally sets forth the procedures by which a floor broker may cross an order with a contra-side order. Transactions executed pursuant to Rule 6.74 are subject to the restrictions of paragraph (e) of Rule 6.9, *Solicited Transactions,* which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as ''anticipatory hedging'').

A. Anticipatory Hedging Rule

CBOE Rule 6.9, adopted in 1994, was originally designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way.[6] In addition to requiring disclosure of orders and clarifying the priority principles applicable to solicited transactions, CBOE Rule 6.9 provides that it is inconsistent with just and equitable principles of trade for any member or associated person who has knowledge of all the material terms of an original order and a solicited order (including a facilitation order) that matches the original order's price to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any ''related instrument.''[7]

B. Proposed Exception to Anticipatory Hedging Rule

In order to address CBOE's perceived concerns associated with increased volatility and decreased liquidity and to more effectively compete with the over-the-counter market,[8] the Exchange is now proposing to adopt a limited exception to its anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception would be consistent with the original design of CBOE Rule 6.9(e), but would set forth a more practicable approach that would facilitate hedging in today's trading environment while still encouraging meaningful competition among upstairs and floor traders.[9]

With a tied hedge transaction, Exchange members would be permitted to first hedge an option and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. Under the proposal, the original option order must be within designated size parameters, which would be determined by the Exchange and could not be smaller than 500 contracts. In addition, the original option order must be in a

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59435 (February 23, 2009), 74 FR 9115 (''Notice'').

[4] *See* Letter from Michael J. Simon, Secretary, International Securities Exchange, LLC (''ISE''), to Nancy M. Morris, Secretary, Commission dated March 25, 2009 (''ISE Letter'').

[5] *See* Letter from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Elizabeth M. Murphy, Secretary, Commission dated August 11, 2009 (''CBOE Letter'').

[6] According to the Exchange, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the CBOE floor, the execution of such orders would not be consistent with CBOE rules designed to promote order interaction in an open-outcry auction. For example, CBOE Rule 6.43, *Manner of Bidding and Offering,* requires bids and offers to be made at the post by public outcry, and Rule 6.74 imposes specific order exposure requirements on floor brokers seeking to cross buy orders with sell orders. *See* Notice, *supra* note 3, at 9116.

[7] CBOE Rule 6.9(e) defines ''related instrument'' to mean ''in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index. With respect to an SPX option, an OEX option is a related instrument, and vice versa.''

[8] *See* Notice, *supra* note 3, at 9116 (discussing CBOE's rationale behind its proposal).

[9] *See id.* at 9120.