

immediately effective under Rule 19b-4(f)(6)¹³ of the Act.

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. Please include File Number SR-CBOE-2009-062 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-2009-062. 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 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-2009-062 and should be submitted on or before October 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60665; File No. SR-CBOE-2009-052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Related to the Hybrid Matching Algorithms

September 14, 2009.

On July 17, 2009, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rules 6.45A and 6.45B to adopt a modified participation entitlement overlay to orders executed electronically on the CBOE Hybrid System ("Hybrid System"). The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

CBOE Rules 6.45A and 6.45B set forth, among other things, the manner in which electronic Hybrid System trades in options are allocated. Paragraph (a) of each rule essentially governs how incoming orders received electronically by the Exchange are electronically executed against interest in the CBOE quote. Paragraph (a) of both rules currently provides for several different matching algorithms, including price-time and pro-rata priority matching algorithms with additional priority

overlays.⁴ The priority overlays currently include: public customer priority, market turner priority, and participation entitlements for certain qualifying market-makers.⁵ These overlays are optional.

The purpose of the rule filing is to adopt the "modified participation entitlement," an additional optional priority overlay for the price-time and pro-rata matching algorithms. The modified participation entitlement will operate in the same manner as the existing participation entitlement for certain qualifying market-makers; however, if at the time of execution there is one or more public customer orders resting at the execution price but none was entered first in time sequence, then the market-maker participation entitlement and public customer priority overlays would not be applied to the allocation—i.e. the allocation would revert back to the price-time or pro-rata methods. The participation entitlement for certain qualifying market-makers would therefore only be applied to the execution of an inbound order if there are no public customer orders resting on the Hybrid System at the best price or if a public customer was the first to rest interest at the best price, in which case the public customer order would have priority over the order of the market maker. This outcome is a

⁴ Rules 6.45A and 6.45B also include the Ultimate Matching Algorithm ("UMA"). CBOE did not propose any changes to the UMA in this filing.

⁵ Under the existing participation entitlements, the Exchange may determine to grant market-makers participation entitlements pursuant to the provisions of Rules 8.87, Participation Entitlement of DPMS and e-DPMs; 8.13, Preferred Market-Maker Program; or 8.15B, Participation Entitlement of LLMs. More than one such participation entitlement may be activated for an option class (including at different priority sequences), however in no case may more than one participation entitlement be applied on the same trade. In allocating the participation entitlement, all of the following apply: (i) To be entitled to its participation entitlement, the market-maker's order and/or quote must be at the best price on the Exchange; (ii) the market-maker may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price (if pro-rata priority is in effect, and the market-maker's allocation of an order pursuant to its participation entitlement is greater than its percentage share of quotes/orders at the best price at the time that the participation entitlement is granted, the market-maker shall not receive any further allocation of that order); (iii) in establishing the counterparties to a particular trade, the participation entitlement must first be counted against that market-maker's highest priority bids or offers; and (iv) the participation entitlement shall not be in effect unless the public customer priority is in effect in a priority sequence ahead of the participation entitlement and then the participation entitlement shall only apply to any remaining balance. See Rules 6.45A(a)(ii)(2) and 6.45B(a)(i)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60420 (August 3, 2009), 74 FR 39989.

¹³ 17 CFR 240.19b-4(f)(6).

change from how the existing participation entitlement works today.⁶

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of an exchange be designed to 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, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The new priority overlay is the same as the current market-maker participation entitlement overlay, except that the participation entitlement will only be applied if there are no public customer orders resting at the best price or if a public customer was the first to rest interest at the best price. Otherwise, neither the current public customer priority overlay nor the market-maker participation entitlement priority overlay will be in effect. Thus, public customer orders will have priority over the orders of other market participants if they are the first orders entered at the best price; if they are not the first orders at the best price, then the order will be allocated among market participants using the underlying matching algorithm—price-time or pro-rata—both of which the Commission already has found as consistent with the Act.⁹ The Commission therefore believes that the modified participation entitlement priority overlay is consistent with the Act.

⁶ For example, assume the matching algorithm for an options class is established so that public customer orders have first priority, the modified participation entitlement has second priority, and any remaining balance is allocated using the pro-rata matching algorithm. If, at the time of execution, there is one or more public customer orders at the execution price but none is first in time sequence (for instance, because a market-maker quote was the first trading interest posted at the execution price), then the market-maker participation entitlement and public customer priority overlays would not be applied and the incoming order would be allocated solely on a pro-rata basis.

⁷ 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).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (Adopting CBOE Rule 6.45B).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2009-052), be, and hereby is, approved.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60668; File No. SR-BX-2009-043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving Proposed Rule Change To Extend a Holiday for Certain Registration and Processing Fees for Associated Persons

September 14, 2009.

I. Introduction

On July 23, 2009, NASDAQ OMX BX, Inc. ("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 extend a fee holiday for initial registration and processing and/or transfer and relicensing fees collected by the Exchange via Web CRD for the registration of associated persons of Exchange members. The proposed rule change was published for comment in the **Federal Register** on August 10, 2009.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange (as the Boston Stock Exchange), before its purchase by The NASDAQ OMX Group, Inc. in 2008,⁴ had ceased the trading of equity securities in 2007.⁵ In January 2009, when the Exchange's market center was launched, the Exchange adopted a new

set of Equity Rules, which include rules governing fees charged to members for registration of associated persons with the Exchange. Equity Rule 7003(b) sets forth the fees collected by the Exchange via the Web CRD system for initial registration and transfer or re-licensing: \$60 for each initial Form U4 filed for the registration of a representative or principal,⁶ and \$40 for each transfer or re-licensing of a representative or principal.⁷

The Exchange recognized that, in connection with the resumption of equities trading, additional firms might wish to become members of the Exchange, and if so, would need to register associated persons. Similarly, additional representatives or principals of pre-existing members might wish to trade equities on the Exchange and would thus need to register with the Exchange. Therefore, the Exchange waived these initial registration and transfer or re-licensing fees from January 1, 2009 to July 1, 2009.⁸ The Exchange proposed to extend this fee waiver period to cover the period from July 1, 2009 until October 1, 2009, to provide more time for associated persons that are new to equity trading through the Exchange to register, transfer, or re-license without incurring these costs. Registration events occurring after October 1, 2009 will be subject to the initial registration and/or transfer or re-licensing fees.⁹

III. Discussion and Commission Findings

The Commission has reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act¹¹ in that it provides for an equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities. The fee waiver applies to initial registration, transfer,

⁶ Rule 7003(b)(1).

⁷ Rule 7003(b)(2).

⁸ See Securities Exchange Act Release No. 59337 (February 2, 2009), 74 FR 6441 (February 9, 2009).

⁹ Rule 7003(b)(3) sets forth an annual fee of \$50 for each registered representative and principal for system processing. This annual fee was suspended on January 1, 2009 and will continue to be suspended until the Exchange submits a proposed rule change to reinstate it. See *id.* See also Notice.

¹⁰ 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).

¹¹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78s(b)(2).

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. 60427 (August 4, 2009), 74 FR 39986 (August 10, 2009) ("Notice").

⁴ See Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008).

⁵ See Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (May 8, 2008).