

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.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

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.<sup>3</sup> The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.<sup>4</sup>

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,<sup>5</sup> 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 ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc.
155	CLEN	Ciena Corp	248	ACL	Alcon Inc.
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd.
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc.
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp.
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc.
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp.
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp.
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc.
178	APOL	Apollo Group Inc	259	STT	State Street Corp.
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd.
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261	NFLX	NetFlix Inc.
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd.
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc.
194	IOC	InterOil Corp	264	TIF	Tiffany & Co.

<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> 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.

<sup>4</sup> See Rule 21.5 regarding the Penny Pilot.

<sup>5</sup> 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).

Nat'l ranking	Symbol	Security name	Nat'l ranking	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 Fund.	274 .....	SEED .....	Origin Agritech Ltd.
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.<sup>6</sup> In particular, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>7</sup> 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 Act<sup>8</sup> and paragraph (f)(1) of Rule 19b-4 thereunder,<sup>9</sup> 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](mailto: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

<sup>6</sup> 15 U.S.C. 78f(b).

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 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.<sup>10</sup>

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

[FR Doc. 2010-11095 Filed 5-10-10; 8:45 am]

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## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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,<sup>3</sup> 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,<sup>4</sup> 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,<sup>5</sup> 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.

<sup>10</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> 17 CFR 240.17d-2.

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