among its listed companies, as all companies will be subject to the same fee schedule. The proposed new initial listing fees for the listing of new classes of securities are not inequitable or unfairly discriminatory, as all companies will be subject to the same fee schedule. While companies that are subject to the $250,000 maximum fee under both the current and the proposed fee schedule do not benefit from the reduction in fees, this is appropriate because these companies already benefit from a lower effective listing fee per share than other 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 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–2009–83 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–2009–83. 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 the 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 available publicly. All submissions should refer to File Number SR–NYSE–2009–83 and should be submitted on or before October 8, 2009.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–22368 Filed 9–16–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60641; File No. SR–CBOE–2009–064]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to FLEX Equity Option Opening Transactions

September 9, 2009.

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 September 2, 2009, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 extend the period for its pilot program regarding the minimum value size for an opening transaction in FLEX Equity Option[5] series (''Pilot Program''), which would otherwise expire on September 4, 2009, through February 28, 2010. The text of the proposed rule change 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.

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

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Equity Options are flexible exchange-traded options contracts which overlie equity securities. FLEX Equity Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

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

On March 4, 2008, the Commission approved the Pilot Program.[6] The Pilot Program modifies the minimum value size for an opening transaction (other than FLEX Quotes responsive to a FLEX Request for Quotes) in any FLEX Equity Option series in which there is no open interest at the time the Request for Quotes is submitted. Prior to the initiation of the Pilot Program, the minimum opening transaction value size in the case of a FLEX Equity Options series was the lesser of (i) 250 contracts or (ii) the number of contracts overlying $1 million in the underlying securities.[7] The Pilot Program modifies the minimum opening size formula by reducing the ''250 contracts'' component to ''150 contracts'' (the $1 million underlying value component continues to apply unchanged).[8]

The Pilot Program is set to expire on September 4, 2009. CBOE believes the Pilot Program has been successful and well received by its members and the investing public. Thus, the purpose of this proposed rule change is to extend the Pilot Program through February 28, 2010. This is merely an extension. The Exchange is not seeking any other changes to the Pilot Program at this time.

In support of the proposed rule change, the Exchange is submitting to the Commission a Pilot Program report (the ''Report'') detailing the Exchange's experience with the Pilot Program. Specifically, the Report contains (i) data and analysis on the open interest and trading volume in FLEX Equity Options for which series were opened with a minimum opening size of 150 to 249 contracts and less than $1 million in underlying value; and (ii) analysis on the types of investors that initiated opening FLEX Equity Options transactions (i.e., institutional, high net worth, or retail, if any). The Exchange is submitting the Report under separate cover and seeking confidential treatment under the Freedom of Information Act.

If the Exchange were to propose another extension or an expansion of the Pilot Program, or should the Exchange propose to make the Pilot Program permanent, the Exchange would submit, along with any filing proposing such amendments to the Pilot Program, another Report that would provide an analysis of the program covering the extended period during which the Pilot Program is in effect. The Report would include the same data and analysis as described in the paragraph above for the extended Pilot Program period. The Report, along with any filing to extend or permanently implement the Pilot Program, would be submitted to the Commission at least forty-five (45) days prior to the new expiration date of the Pilot Program.

The Exchange believes there is sufficient investor interest and demand to extend the Pilot Program. The Exchange believes that the Pilot Program has provided investors with additional means of managing their risk exposures and carrying out their investment objectives.

2. Statutory Basis

In providing FLEX-participating members and their customers greater flexibility to trade FLEX Equity Options by lowering from 250 to 150 the minimum number of contracts required to open a series, the Exchange believes the proposed rule change is consistent with the Act[9] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that extension of the Pilot Program will result in a continuing benefit to investors, by allowing them additional means to manage their risk exposures and carry out their investment objectives, and will allow the Exchange to further study investor interest in the Pilot Program.

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.

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

The Exchange neither solicited nor received comments on the proposal.

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

Because the foregoing rule 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, 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,[12] the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

Under Rule 19b–4(f)(6) of the Act,[15] a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date so that the pilot may continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the original pilot program was published for notice and comment and no comments were

[6] *See* Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (SR–CBOE–2006–36).

[7] Under this prior formula, an opening transaction in a FLEX Equity series in a stock priced at $40 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.,* 250 contracts times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $40, the 250 contract size limit applies.

[8] Under the Pilot Program formula, an opening transaction in a FLEX Equity series in a stock priced at approximately $66.67 or more would reach the $1 million limit before it would reach the contract size limit, *i.e.,* 150 contracts times the multiplier (100) times the stock price ($66.67) equals just over $1 million in underlying value. For a FLEX Equity series in a stock priced at less than $66.67, the 150 contract size limit would apply.

[9] 15 U.S.C. 78s(b)(1).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] The Exchange fulfilled this five day requirement.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *Id.*

received.[16] In addition, extending the pilot through February 28, 2010 does not raise any new or novel regulatory issues that were not previously considered in approving the original pilot. Based on the above, the Commission designates the proposal as operative upon filing.[17]

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 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–2009–064 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–2009–064. 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 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–2009–064 and should be submitted on or before October 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

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[16] Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008).

[17] For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See also* 17 CFR 200.30–3(a)(59).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60649; File No. SR–NYSE–2009–93]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Extending Until September 15, 2009, the Operation of Interim NYSE Rule 128 Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Arise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

September 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. NYSE has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] 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

The Exchange proposes to extend until September 15, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction. 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 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 extend until September 15, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[4] the

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

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).