

declined Directed Order only when no one else wishes to interact with the order.

The BSE's original proposal addressed this unfair competitive situation by enabling EPs to limit Directed Orders from hostile competitors and to provide price improvement to the customers for whom the Directed Order process was intended. Without this protection, the BSE believes that EPs will have to modify their risk assessment and therefore give less price improvement to everyone—or perhaps stop giving price improvement at all. This would significantly harm the retail investors who have benefited from the BOX price improvement system since its inception.¹³

The BSE's amended proposal seeks to maintain these very significant investor benefits of the original proposal by allowing EPs to provide the Exchange a list of firms to which the EP will provide Directed Order services. At the same time the BSE also believes that it is appropriate to modify the original proposal to prohibit Directed Orders delivered to EPs from identifying the firm from which the order comes. This would protect the anonymity of individual orders of Options Participants and their Directed Orders entered into the Trading Host. An EP has no need to know the identity of the Options Participant sending a Directed Order on an order-by-order basis once the threat from competitors has been mitigated. The BSE believes that the decision to price improve, or not, an anonymous Directed Order would be based only on objective factors.

2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with the requirements of section 6(b) of the Act,¹⁴ in general, and section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange has neither solicited nor received comments on the proposed rule change, as amended.

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 Exchange consents, the Commission will:

- (A) By order approve such 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 Amendment No. 4 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-BSE-2005-52 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2005-52. 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. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. 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-BSE-2005-52 and should be submitted on or before March 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53355; File No. SR-CBOE-2005-105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Membership Rules for Foreign Member Organizations

February 23, 2006.

I. Introduction

On December 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "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 amend CBOE Rule 3.4, "Qualifications of Foreign Member Organizations," to provide that a member organization that is not organized under the laws of one of the states of the United States (a "foreign member organization"), and that is approved by the Exchange to act solely as a lessor, need not register as a broker or dealer pursuant to section 15 of the Act.³ The proposed rule change was published for comment in the

¹³ Over half of marketable public customer orders sent to BOX in 2005 received price improvement—slightly under 3,000 public customer orders each day, with an average price improvement per contract of over \$2.50. Price improvement particularly benefited small customer orders, as over 85% of all price improvement was for orders of 20 contracts or fewer.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78o.

Federal Register on January 18, 2006.⁴ The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

An organization that is not organized under the laws of one of the states of the United States ("foreign member organization"), among other things, must satisfy the requirements in CBOE Rule 3.4 in order to become a CBOE member. Under CBOE Rule 3.4, a foreign member organization that is approved by the Exchange to act solely as a lessor must be registered as a broker-dealer pursuant to section 15 of the Act⁵ and must maintain in English at a location in the United States any books and records that an organization registered as a broker-dealer is required to maintain at a location in the United States.⁶ In contrast, CBOE Rule 3.3(a)(ii) exempts a U.S. member organization, if it is approved to act solely as a lessor, from the requirement in CBOE Rule 3.3 that such an organization be registered as a broker-dealer under section 15 of the Act.

The Exchange proposes to amend CBOE Rule 3.4 to exempt a foreign member organization that is approved by the Exchange to act solely as a lessor from certain requirements set forth in the rule. In particular, the Exchange proposes to exempt such a foreign member organization from: (i) CBOE Rule 3.4(a)(xii), which requires a foreign member organization to be registered as a broker or dealer pursuant to section 15 of the Act; and (ii) CBOE Rule 3.4(a)(iii)(B), which requires a foreign member organization to maintain, in English and at a location in the United States, any books and records of the foreign member organization that an organization registered as a broker or dealer pursuant to section 15 of the Act is required to maintain.

According to CBOE, a member organization approved to act solely as a lessor has no trading functions on the Exchange, and the sole business function of such a member is to lease its CBOE membership to another CBOE member. CBOE represents that, since a foreign member organization approved to act solely as a lessor conducts no activities on the Exchange that otherwise would require it to register as

a broker-dealer, it is appropriate not to require such registration. The Exchange also asserts that, if the only activities conducted by the foreign member organization on the Exchange relate to its lease activities, the provisions set forth in Rule 3.4(a)(iii)(A), which require the foreign member organization to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange, should ensure that the Exchange will have the ability to have access to adequate information with respect to the foreign member organization.

The Exchange notes that a foreign member organization approved to act solely as a lessor would remain subject to CBOE qualification and application rules for member organizations. In this regard, CBOE notes the additional application requirements set forth in CBOE Rule 3.4 for foreign member organizations would provide it with both access to the information it would need to review the foreign member organization's application for membership and, if necessary, the requisite jurisdiction to litigate matters related to the foreign member organization's business on the Exchange. In addition, CBOE states that it would investigate a foreign organization applying for membership in a lessor-only capacity in accordance with the requirements of CBOE Rule 3.9, "Application Procedures and Approval or Disapproval." CBOE further notes that, through the associated person application process set forth in CBOE Rule 3.6, "Persons Associated with Member Organizations," the Exchange would have the ability to examine the direct owners and executive officers of a foreign member organization to ensure that those persons who are not qualified under CBOE rules and the Act to be associated with a CBOE member are not associated with the foreign member organization.⁷

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the

Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with section 6(b)(5) of the Act,⁸ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.⁹

Under CBOE Rule 3.3(a)(ii), a CBOE member organization organized under the laws of one of the states of the United States and approved by CBOE to act solely as a lessor need not register as a broker or dealer pursuant to section 15 of the Act. The proposal amends CBOE Rule 3.4 to provide the same treatment under the Exchange's rules for foreign member organizations that are approved by the Exchange to act solely as lessors. The Commission believes that it is reasonable for the Exchange to extend the same treatment to a foreign member organization approved to act solely as a lessor that is accorded to such lessor U.S. member organizations with respect to the broker-dealer registration requirement.

Further, under the proposal, although foreign member organizations approved to act solely as lessors no longer would be required to maintain the books and records that an organization registered as a broker or dealer pursuant to section 15 of the Act would be required to keep, such foreign member organizations would continue to be required to comply with CBOE Rule 3.4(a)(iii)(A), which requires foreign member organizations to maintain in English and at a location in the United States the books and records of the organization that relate to its business on the Exchange. The Commission believes that the recordkeeping requirement of CBOE Rule 3.4(a)(iii)(A) should help to ensure that the Exchange will have access to adequate information with respect to a foreign member organization approved to act solely as a lessor. The Commission notes that the proposal does not alter the remaining provisions of CBOE Rule 3.4 or any other CBOE application, qualification and membership rules that a foreign member organization that intends to act solely as a lessor must satisfy to be

⁴ Securities Exchange Act Release No. 53092 (January 10, 2006), 71 FR 2963 ("Notice"). The Commission published an amended Notice to indicate that the correct date of the Notice is January 10, 2006, rather than January 10, 2005. See Securities Exchange Act Release No. 53092A (January 19, 2006), 71 FR 4391 (January 26, 2006).

⁵ See CBOE Rule 3.4(a)(xii).

⁶ See CBOE Rule 3.4(a)(iii)(B).

⁷ For an entity not required to register as a broker-dealer, CBOE Rule 3.6(b) provides that each associated person of the organization that would be required to be disclosed on Form BD as a direct owner or executive officer must submit to CBOE's Membership Department, pursuant to CBOE Rule 3.9, an application for approval to become associated with the member organization in that capacity. Under CBOE Rule 3.6(b), no person may become associated with a member organization in the capacity of a direct owner or executive officer that would be required to be disclosed on Form BD unless and until CBOE's Membership Committee approves that association.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 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).

approved as a CBOE member organization.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CBOE-2005-105) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris,
Secretary.

[FR Doc. E6-2930 Filed 3-1-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53362; File No. SR-NASD-2006-028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Allow Nasdaq To Take Certain Actions on Behalf of Its Issuers in Connection With Nasdaq's Transition to a National Securities Exchange

February 24, 2006.

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 February 23, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. 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

Nasdaq proposes to adopt NASD Rule 4130 to allow Nasdaq to file an application with the Commission or another appropriate regulator on behalf of its issuers to register their listed securities under Section 12(b) of the Act, or seek a temporary exemption from Section 12, in connection with Nasdaq's transition to one of its subsidiaries operating as a national securities exchange. Nasdaq will implement the proposed rule upon

approval. The text of the proposed rule change is below. Proposed new language is in *italics*.³

4130. Permission to Act on Behalf of Issuer

In connection with The NASDAQ Stock Market LLC (the "Nasdaq Exchange") commencing operations as a national securities exchange, each issuer authorizes Nasdaq and the Nasdaq Exchange to file an application to register under Section 12(b) of the Act any class of the issuer's securities that is listed on Nasdaq on the day immediately preceding the day the Nasdaq Exchange commences such operations; provided, however, that this provision shall not be applicable to any security that the issuer informs Nasdaq, pursuant to procedures set forth by Nasdaq, should not be so registered. The application to register under Section 12(b) of the Act will be filed with the Commission or, for those securities subject to Section 12(i) of the Act, with the appropriate banking regulator specified in Section 12(i). The authorization in this paragraph includes allowing Nasdaq and the Nasdaq Exchange to request any appropriate regulatory relief from the provisions of Section 12.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On January 13, 2006, the Commission approved Nasdaq's application to register one of its subsidiaries, The Nasdaq Stock Market LLC ("Nasdaq

Exchange"), as a national securities exchange.⁴ Once the Nasdaq Exchange begins operation, securities listed on Nasdaq will need to have been registered under Section 12(b) of the Act so that brokers and dealers may effect transactions in these securities on the Nasdaq Exchange consistent with Section 12(a) of the Act.⁵ Accordingly, absent relief from the Commission and other regulators, Nasdaq's transition to the Nasdaq Exchange beginning operations as a national securities exchange would require approximately 3,200 Nasdaq National Market and Capital Market issuers to register their Nasdaq-listed securities under Section 12(b) of the Act. This process would require each issuer to file a registration statement with the Commission or other appropriate regulator.⁶ The Nasdaq Exchange would then be required to certify to the Commission and the Banking Regulators that each issuer's securities are approved for listing and registration.

Nasdaq believes that this registration process would be confusing and would place an unnecessary cost and administrative burden on issuers, on the Commission and Banking Regulators, and on Nasdaq, and would not be in the public interest. For the great majority of issuers whose securities are currently listed on Nasdaq, this additional registration process would not result in any significant benefit to the marketplace or investors because they would not receive any additional information regarding the security. Nasdaq issuers whose securities are registered under Sections 12(b) or 12(g) of the Act would have already filed a registration statement pursuant to the Act to register those securities. Similarly, issuers registered under the Investment Company Act of 1940 (the "1940 Act") will have filed detailed information with the Commission.⁷ There are also no material differences in

⁴ Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

⁵ Section 12(a) of the Act, 15 U.S.C. 78l(a). As discussed in footnote 10, Nasdaq anticipates that it will seek relief from the Section 12(b) registration requirement during a limited transition period for certain securities that are currently exempt from registration under Section 12(g).

⁶ Section 12(i) of the Act requires filings relating to certain financial institutions to be made with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision (collectively, the "Banking Regulators"). 15 U.S.C. 78l(i).

⁷ In particular, each registered investment company has filed a registration statement with the Commission under the 1940 Act and has made periodic filings under the 1940 Act identical in form to those required of investment companies that have registered their securities under Section 12(b) of the Act.

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 Changes are marked to the rule text that appears in the electronic NASD Manual found at <http://www.nasdaq.com>. No pending rule filings would affect the text of this rule. Because of the nature of this rule, no conforming change will be made to the rules of The NASDAQ Stock Market LLC. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).