unique issues.[11] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the continuation of this practice may enhance competition and liquidity.[12] For this reason, the Commission designates that the proposal has become effective and operative immediately upon filing with the Commission. 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.[13]

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–2006–25 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CBOE–2006–25. 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 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–2006–25 and should be submitted on or before April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3496 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53431; File No. SR–CBOE–2004–65]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Restrictions on Arbitrators Serving on CBOE's Arbitration Committee

March 7, 2006.

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 October 14, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 CBOE. On December 13, 2005 and February 15, 2006, CBOE filed Amendments Nos. 1 and 2, respectively, to the proposed rule change.[3] 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 Exchange rules relating to arbitrations. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Chapter XVIII

Rule 18.10—Designation of Number of Arbitrators

Rule 18.10. (a)–(b) No change.

(c) Arbitrator Restrictions. The following restrictions shall apply to persons who serve on the Arbitration Committee.

(i) No member of the Arbitration Committee shall represent a party as counsel in any dispute, claim or controversy submitted for CBOE arbitration (''CBOE Arbitration'') while that member is serving on the Arbitration Committee and for a period of six months after the date on which that member ceases being a member of the Arbitration Committee and,

(ii) if a Committee member is appointed as an arbitrator in a pending CBOE Arbitration (''Pending CBOE Arbitration'') and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending CBOE Arbitration, that person cannot represent a party as counsel in a separate CBOE Arbitration until he or she has ceased serving as an arbitrator in the Pending CBOE Arbitration.

* * * * *

Rule 18.13—Disclosures Required of Arbitrators

Rule 18.13. (a)–(c) No Change.

(d) *Removal by the Director.*

(1) The Director of Arbitration may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After [Prior to] the beginning *of (A)* the first *pre-hearing conference or (B) the first* hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator based on information *not known to the parties when the arbitrator was selected.* [disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section, if the arbitrator who disclosed the information is not removed.]

(3) The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is

---

[11] *See supra*, at n.7.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the original filing in its entirety. Amendment No. 2 replaces the rule text in the original filing and Amendment No. 1 in their entirety. Also, Amendment No. 2 supplements the ''Purpose'' section of Amendment No. 1 with additional explanation as to the bases for certain proposed rule amendments.

biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(4) The Director of Arbitration shall inform the parties to an arbitration proceeding of any information disclosed to the Director of Arbitration under this Rule unless either the arbitrator who disclosed the information withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described in paragraph (a) that might preclude the arbitrator from rendering an objective and impartial determination in the proceeding, or the Director of Arbitration removes the arbitrator.

* * * * *

Rule 18.14—Disqualification or Other Disability of Arbitrators

Rule 18.14*(a). Disqualification by Director of Arbitration Due to Conflict of Interest or Bias. After the appointment of an arbitrator and prior to the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, if the Director of Arbitration or a party objects, pursuant to Rule 18.12(b), to the continued service of an arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director of Arbitration determines that an arbitrator should be disqualified then the Director of Arbitration will notify both parties of the decision. The parties will have 5 days to retain the arbitrator, notwithstanding the Director of Arbitration's decision to disqualify the arbitrator. The parties must agree to retain the arbitrator unanimously and convey their decision to the Director of Arbitration in writing not later than 5 days after the Director of Arbitration's notice to disqualify.*

(b) Removal by Director. After the beginning of (A) the first pre-hearing conference or (B) the first hearing session, whichever is earlier, the Director of Arbitration may remove an arbitrator from an arbitration panel based on information that is required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.

(c) Standards for Deciding Challenges for Cause. The Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(d) Vacancies. In the event that any arbitrator, after the [commencement] *beginning* of the first hearing session and prior to the rendition of the award, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of such resignation, death, withdrawal, disqualification, or other inability. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill any vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator pursuant to Rule 18.11, as well as any other information disclosed pursuant to Rule 18.13. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 18.12, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 18.12.

* * * * *

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 these statements may be examined at the places specified in Item IV below. CBOE 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, Proposed Rule Change

1. Purpose

This proposed rule change would amend CBOE Rules 18.10, 18.13 and 18.14 relating to arbitrators who serve as members of the CBOE Arbitration Committee (''Committee'') and the removal of arbitrators.

Proposed Changes to CBOE Rule 18.10. The Exchange is proposing to amend CBOE Rule 18.10 to codify its unwritten policy that restricts members of the Committee from representing parties as counsel [4] in any arbitration dispute, claim or controversy that has been submitted to CBOE for resolution (''CBOE Arbitration''). This restriction would extend for six months after the date on which a Committee member ceases being a member of the Committee. Moreover, if a member of the Committee is an appointed arbitrator in a pending CBOE Arbitration (''Pending Arbitration'') when that person ceases to be a member of the Committee, that Committee member cannot represent a party as counsel in any other CBOE Arbitration until the Pending Arbitration is closed, regardless of whether six months have passed since the date on which the former member ceased being a Committee member.

Under CBOE rules, any CBOE Arbitration between parties who are members or persons associated with a member shall be resolved by an arbitration panel that consists of three members of the Committee.[5] The Committee is maintained primarily as a means for managing a pool of qualified industry arbitrators that is composed of a cross-section of Exchange members and/or former members or associated persons of members or other individuals who are knowledgeable about the securities industry.[6] All Committee members are appointed in accordance with Exchange governance rules and guidelines.[7]

The Exchange has long adhered to an unwritten policy that prohibits a Committee member who is an attorney from representing a party in a CBOE Arbitration while that person is serving on the Committee. This policy is

[4] CBOE Rule 18.17 provides: ''All parties shall have the right to representation by counsel at any stage of the proceedings.'' Since persons who are eligible to act as ''counsel'' in CBOE arbitration proceedings are not limited to licensed attorneys, the proposed rule change would apply to any person acting as ''counsel'' in a CBOE arbitration proceeding whether the person is a licensed attorney or not.

[5] *See* CBOE Rule 18.2(a). Rule 18.2(a) specifically provides that the arbitration panel appointed to resolve member-to-member arbitrations shall consist of ''not less than three members of the Arbitration Committee.'' However, as a matter of practice, arbitration panels typically consist only of three members of the Arbitration Committee.

[6] Unlike other Exchange committees, the Arbitration Committee does not meet as a whole except for training or to administer the annual Committee orientation. For a CBOE Arbitration involving customers or non-Exchange members and a member(s), CBOE rules require that the dispute be resolved by an arbitration panel that consists of no less than three arbitrators, the majority of which consists of arbitrators who are not from the securities industry (''Public Arbitrators''). (*See* CBOE Rule 18.10). In non-member CBOE Arbitrations, members of the Arbitration Committee may be appointed as industry arbitrators.

[7] *See* CBOE Rule 18.10.

consistent with the Exchange's belief that, while serving on the Arbitration Committee, arbitrators should be committed to the impartial resolution of any disputes that come before them and should avoid circumstances that could disqualify them from being appointed in future arbitrations or give rise to the appearance of partiality. The Exchange does not believe that a Committee member should act as an advocate in a CBOE Arbitration while serving as a member of the CBOE Arbitration Committee. Accordingly, the Exchange feels it would be prudent to codify its unwritten policy within the rules governing CBOE Arbitrations. Additionally, the Exchange notes that the proposed rule text relating to restricting an arbitrator from representing a party as counsel in any CBOE Arbitration (proposed Rule 18.10(c)) also would extend to restrict an arbitrator from representing a party as counsel in any capacity, not just acting as an attorney.

In addition, the Exchange believes that a sufficient period of time should pass after an arbitrator is no longer a member of the Committee before that individual may represent a party as counsel in a CBOE Arbitration. Without this required separation period, a former Committee member conceivably could appear as counsel to a party before other members of the Committee in a CBOE arbitration immediately after resigning from the Committee. Although CBOE does not believe that membership on the Arbitration Committee necessarily creates meaningful relationships with other Committee members, such that present Committee members could not be impartial in considering a case on which a recently retired Committee member serves as counsel, a prescribed waiting period is a sensible precaution against the appearance of partiality. The Exchange believes that a six-month waiting period would be appropriate and would help to eliminate the appearance of partiality that could otherwise exist.

Finally, the rule proposal provides that, if a Committee member is appointed as an arbitrator to a pending CBOE Arbitration and subsequently ceases to be a member of the Committee, but continues to serve as an arbitrator in the pending CBOE Arbitration, that person cannot represent a party in a separate CBOE Arbitration as counsel until the arbitrator ceases to be appointed as an arbitrator in the pending CBOE Arbitration. This provision of the proposed rule would address the unlikely, but possible, situation in which an arbitration proceeding remains pending more than six months after the date on which an appointed arbitrator to that case ceased being a member of the Committee.[8] The Exchange believes that this provision is consistent with the purpose of this rule change, which is the avoidance of the appearance of partiality on the part of a CBOE Arbitrator.

The proposed rules supplement existing policies and procedures that are in place to screen arbitrators for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment. Specifically, CBOE policies and procedures require any arbitrator, prior to or subsequent to appointment to a CBOE Arbitration, to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.[9] Arbitrators also are required to disclose any new information or circumstances that may arise after their appointment that would create a similar conflict or potential for conflict. Thus, if a former member of the Arbitration Committee were to serve as counsel to a party before a CBOE arbitration panel, the appointed arbitrators would be required to disclose any past relationships with the former Committee member regardless of how much time has passed since that former member resigned from the Committee.[10]

Proposed Changes to CBOE Rules 18.13 and 18.14. The Exchange also proposes to adopt new rules governing the process for removing or disqualifying arbitrators (1) when the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias or (2) for failing to comply with arbitrator disclosure requirements. Specifically, Exchange Rules 18.13 and 18.14 would be amended to provide greater safeguards against the possibility that a CBOE Arbitration could proceed with an appointed arbitrator who should, by rule, not be hearing and resolving the arbitration. These amendments would be substantially similar to those recently proposed by the NASD.[11]

Rule 18.13(a)–(c) currently outlines the disclosures that a CBOE arbitrator must make that help to assess whether the arbitrator would be precluded from rendering an objective and impartial decision in a CBOE Arbitration.[12] Proposed Rules 18.13(d)(1) and 18.13(d)(2) provide that the Director of Arbitration may remove an arbitrator based on the disclosures made under Rule 18.13(a)–(c) and information not known to the parties when the arbitrator was selected. The Exchange also proposes to amend Rule 18.13(d), in proposed Rule 18.13(d)(3), to clarify that the Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the CBOE Arbitration. Such interest or bias must be direct, definite, and capable of reasonable demonstration, rather than being remote or speculative. In addition, proposed Rule 18.13(d)(4) would help to ensure that parties to a CBOE Arbitration are informed of the disclosure of any new information that is required to be disclosed by an arbitrator under Rule 18.13 unless either the Director of Arbitration removes the arbitrator or the arbitrator withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described under Rule 18.13(a) that might preclude the arbitrator from rendering an objective and impartial determination in the CBOE Arbitration. These proposed changes are substantially similar to the standards proposed by the NASD.[13]

Also, this proposal would amend CBOE Rule 18.14, which currently provides the process by which the Exchange fills vacancies of an arbitrator, who for any reason, is unable to perform as an arbitrator.[14] The Exchange proposes to provide within Rule 18.14 a more detailed process by which the Director of Arbitration may remove or disqualify an arbitrator based on: (1) Conflicts of interest or bias involving an arbitrator; (2) challenges for cause; and (3) information required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.[15] These proposed changes are also substantially similar to

[8] Proposed CBOE Rule 18.10(c)(ii).

[9] *See* CBOE Rule 18.13.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Customer Disputes (''Proposed Customer Code'')); Securities Exchange Act Release No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Industry Disputes (''Proposed Industry Code'')).

[12] *See* CBOE Rule 18.13(a)–(c).

[13] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[14] Such reasons include the disqualification, resignation, death, disability, or withdrawal of the arbitrator.

[15] Proposed Rule 18.14(c) also would provide standards to be used in deciding challenges for cause, which standards are identical to those provided under proposed Rule 18.13(d).

proposed NASD arbitration rules governing the same subject matter.[16]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market by strengthening the integrity of the CBOE Arbitration program.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule amendments 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 amendments.

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 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 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–2004–65 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–CBOE–2004–65. 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 Section, Station Place, 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 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–2004–65 and should be submitted by April 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E6–3513 Filed 3–10–06; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53419; File No. SR–ISE–2005–50]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto, To Amend ISE Rule 803 To Provide for a Back-Up Primary Market Maker

March 6, 2006.

I. Introduction

On October 14, 2005, the International Securities Exchange, Inc. (''Exchange'' or ''ISE'') 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 ISE Rule 803 to provide for a Back-Up Market Maker. On January 12, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on January 30, 2006.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as amended.

II. Description of Proposed Rule

The Exchange proposes to amend ISE Rule 803 to provide for a Back-Up Primary Market Maker and to correct an inconsistency in the Exchange's Rules. Specifically, the Exchange proposes to enhance the ISE System to allow Competitive Market Makers that are also Primary Market Makers on the Exchange to voluntarily act as Back-Up Primary Market Makers when the appointed Primary Market Maker experiences technical difficulties that interrupt its participation in the market. Under the proposal, only Competitive Market Makers that are also Primary Market Makers on the Exchange would be eligible to be designated as a Back-Up Primary Market Maker because, according to the Exchange, these members are readily able to assume all of the responsibilities of a Primary Market Maker on the Exchange, such as handling customer orders when an away market has a better price.

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced the original filing in its entirety, made technical and clarifying changes to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 53164 (January 20, 2006), 71 FR 4949 (January 30, 2006) (''Notice'').