

under Delaware's General Corporation Law, which provides that "the business and affairs of every corporation shall be managed by or under the direction of a board of directors, except as may be otherwise * * * provided in its certificate of incorporation * * *"¹³ CBOE stated that its Certificate provides that the Board is CBOE's governing body and is vested with all powers necessary for the management of the Exchange's business and affairs, except to the extent that the authority, powers, and duties of such management are delegated to a committee or committees established pursuant to CBOE's Constitution or Rules. According to CBOE, its Certificate and Constitution provide that the Board may establish one or more committees, each of which has the authority, powers, and duties as may be prescribed in the Constitution, Exchange Rules, or by resolution of the Board.¹⁴ CBOE advised that, under these provisions, it has established various committees and has delegated to those committees specific authority, powers, and duties.

CBOE further noted that its Rules provide that each committee "is subject to the control and supervision of the Board."¹⁵ CBOE stated, however, that such supervisory power alone does not make explicit the power of the Board to directly modify or overrule the action (or inaction) of a committee when the decision-making authority with respect to the action has been delegated to the committee. CBOE pointed out that the specific delegations contained in its Constitution, Rules, and resolutions vary in scope: Some involve a complete delegation and others involve a limited delegation where the Board has explicitly or implicitly reserved certain authorities. CBOE noted that, although the specific delegations contained in its Constitution, Rules, and Board resolutions vary in describing the scope of the authority delegated, its Board retains the power to revoke, limit, or change a committee delegation, either by rule change or by resolution as appropriate.

The purpose of the proposed rule change, CBOE asserted, is to apply an explicit, uniform standard of review by the Board to the general organizational and administrative structure of CBOE's committees and to resolve any ambiguity that may exist. Thus, CBOE contended that the proposed rule change would clarify that the Board retains the power and authority to review, affirm, modify, suspend or

overrule any and all actions or inactions of CBOE committees and officers, representatives, or designees, except as otherwise specified. In CBOE's view, the proposal is consistent with its Certificate and Constitution.

CBOE also advised that the proposed rule change is consistent with the provisions of its Constitution pertaining to the Executive Committee. CBOE stated that the Executive Committee is a committee of the Board that performs the functions of the Board when the Board is not in session or it is not practicable to arrange a meeting of the Board within the time reasonably available. Thus, to the extent that the Executive Committee would take any action pursuant to Article VII, Section 7.2 of its Constitution, CBOE asserted that the Board retains jurisdiction over those matters and may later determine to review, affirm, modify, suspend or overrule any and all actions of the Executive Committee.

In the Commission's view, the Exchange has provided a sufficient basis on which the Commission can find that, as a federal matter under the Act, the Exchange is complying with its own Certificate and Constitution. Further, in approving this proposal, the Commission is relying on CBOE's representation that the proposed rule change is appropriate under Delaware state law.¹⁶ Thus, the Commission believes that the proposed rule change clarifies the Board's review authority by providing an explicit, uniform standard to be applied to any delegation of Board authority, powers, and duties and is consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(1) of the Act.¹⁷

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (File No. SR-CBOE-2006-45) is hereby approved.

¹⁶ Telephone conference among Jennifer M. Lamie, Managing Senior Attorney, Legal Division, CBOE; Leah Mesfin, Special Counsel, Division, Commission; and Jan Woo, Attorney, Division, Commission, on July 18, 2006.

¹⁷ 15 U.S.C. 78f(b)(1).

¹⁸ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54164; File No. SR-CBOE-2006-60]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Duration of CBOE Rule 6.45A(b) Pertaining to Orders Represented in Open Outcry

July 17, 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 July 12, 2006, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") 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 CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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 CBOE proposes to extend the duration of CBOE Rule 6.45A(b) (the "Rule"), which relates to the allocation of orders represented in open outcry in equity option classes designated by the Exchange to be traded on the CBOE Hybrid Trading System ("Hybrid") through October 31, 2006. No other substantive changes are being made to the Rule. The text of the proposed rule change is available on the CBOE's Internet Web site (<http://www.cboe.com>), at the CBOE's principal

¹⁹ 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. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

¹³ See CBOE Response Letter, *supra* note 5, at 1.

¹⁴ *Id.*

¹⁵ CBOE Rule 2.1(d).

office, 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 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

In March 2005, the Commission approved revisions to CBOE Rule 6.45A related to the introduction of Remote Market-Makers.⁶ Among other things, the Rule, pertaining to the allocation of orders represented in open outcry in equity options classes traded on Hybrid, was amended to clarify that only in-crowd market participants would be eligible to participate in open outcry trade allocations. In addition, the Rule was amended to limit the duration of the Rule until September 14, 2005. The duration of the Rule was thereafter extended through July 14, 2006.⁷ As the duration period expired on July 14, 2006, the Exchange proposes to extend the effectiveness of the Rule through October 31, 2006.⁸

⁶ See Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005) (SR-CBOE-2004-75).

⁷ See Securities Exchange Act Release Nos. 52423 (September 14, 2005), 70 FR 55194 (September 20, 2005) (extending the duration of the Rule through December 14, 2005) and 52957 (December 15, 2005), 70 FR 76085 (December 22, 2005) (extending the Rule through March 14, 2006), and 53524 (March 21, 2006), 71 FR 15235 (March 27, 2006) (extending the duration of the Rule through July 14, 2006).

⁸ In order to effect proprietary transactions on the floor of the Exchange, in addition to complying with the requirements of the Rule, members are also required to comply with the requirements of Section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1), or qualify for an exemption. Section 11(a)(1) restricts securities transactions of a member of any national securities exchange effected on that exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. The Exchange issued a regulatory circular to members informing them of the applicability of these Section 11(a)(1) requirements when the duration of the Rule was extended until December 14, 2005, March 14,

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

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

The CBOE 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 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 proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.¹³

A proposed rule change filed under Commission Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to thirty days after the date of

2006 and again on July 14, 2006. See CBOE Regulatory Circulars RG05-103 (November 2, 2005), RG06-001 (January 3, 2006) and RG06-34 (April 7, 2006). The Exchange represents that it expects to issue a similar regulatory circular to members reminding them of the applicability of the Section 11(a)(1) requirements with respect to the proposed rule change.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Pursuant to Rule 19b-4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed rule change to become operative immediately to allow the Exchange to continue to operate under the existing allocation parameters for orders represented in open outcry in Hybrid on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the Rule without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.¹⁵

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 the 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 No. SR-CBOE-2006-60 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-2006-60. 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

¹⁵ For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-60 and should be submitted on or before August 15, 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. 34-54167; File No. SR-NASDAQ-2006-002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto To Add Generic Listing Standards for Index-Linked Securities

July 18, 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 March 29, 2006, The NASDAQ Stock Market, LLC ("Nasdaq"), 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 Nasdaq. On May 5, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit

comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reflect in the Nasdaq rules the generic listing standards for index-linked notes ("ILNs") previously approved for NASD pursuant to Rule 19b-4(e) under the Act.⁴ These "generic" listing standards were recently approved by the Commission for The Nasdaq Stock Market, Inc. ("Nasdaq Market") as part of the NASD, Inc. rule book,⁵ but because their approval came several days after the approval of Nasdaq's registration as a national securities exchange,⁶ they were not a part of the Nasdaq rule set included in the Exchange Approval Order.

The text of the proposed rule change is available on Nasdaq's Web site (<http://www.nasdaq.com>), at Nasdaq's principal office, and at the Commission's Public Reference Room. The text of the proposed rule change is also set forth below. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

4420. Quantitative Designation Criteria

In order to be listed on the Nasdaq National Market, an issuer shall be required to substantially meet the criteria set forth in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), [or] (m) or (n) below.

(a)-(l) No change.

(m) Index-Linked Securities

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. Nasdaq may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (1) through (9). Nasdaq will consider for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 index-linked securities, provided:

⁴ 17 CFR 240.19b-4(e).

⁵ See Securities Exchange Act Release No. 53142 (Jan. 19, 2006), 71 FR 4180 (Jan. 25, 2006).

⁶ See Securities Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006 "Exchange Approval Order").

(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that the minimum public distribution of the security shall be 1,000,000 units with a minimum of 400 public holders, unless the security is traded in \$1,000 denominations, in which case there is no minimum number of holders.

(2) The issue has a term of not less than one (1) year and not greater than ten (10) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(5) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Initial Listing Criteria-Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1 Nasdaq made minor revisions to the proposed rule text.