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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,

Secretary.

[FR Doc. E6-15793 Filed 9-26-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-54475; File No. SR-CBOE-2005-103)]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend CBOE Rules Relating to the Electronic Designated Primary Market Maker Program

September 20, 2006.

I. Introduction

On December 5, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to amend CBOE rules relating to the Electronic Designated Primary Market Maker Program ("e-DPM Program"). On August 11, 2006, CBOE amended the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 18, 2006.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange's e-DPM Program allows e-DPMs to operate remotely as competing DPMs by entering bids and offers electronically from locations other than the trading floor. Exchange rules provide that the Exchange will

determine which option classes to include in the e-DPM Program and, accordingly, which classes to allocate to each respective e-DPM. The proposed rule change would give the Exchange the corresponding authority to remove any e-DPM option class from the e-DPM Program if certain factors no longer warranted the continued inclusion of that option class in the e-DPM Program. The factors used in making this determination would relate to the option class itself and would include only the following: (i) Market share; (ii) number of exchanges trading the product; (iii) average daily trading volume; and (iv) liquidity in the product. The Exchange would consider any one or all of these factors in determining whether to remove an option class from the e-DPM Program. Persons who are aggrieved by the removal of an option class from the e-DPM Program would be permitted to appeal the decision in accordance with the Exchange's standard procedures on review of Exchange actions, as set forth in Chapter XIX of the Exchange's rules.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁶ in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. The Commission also finds that the proposal is consistent with Section 6(b)(7) of the Act,⁷ in that it provides a fair procedure for the limitation by the Exchange of any person with respect to access to services offered by the Exchange.

The proposed rule change permits the Exchange to remove option classes from the e-DPM Program only if certain factors no longer warrant the continued inclusion of that class in the program. The Commission notes that the factors to be considered by the Exchange (*i.e.*, market share, number of exchanges trading the product, trading volume, and liquidity) are objective and would limit the Exchange's ability to act in this area. The proposed factors to be considered by the Exchange in

determining whether to remove an option class from the e-DPM Program, coupled with the right to appeal the Exchange's determination, should help to protect persons from an unfair limitation of access to services offered by the Exchange, while permitting the Exchange to further the competitive goals of the e-DPM Program. Accordingly, the Commission believes that the amended proposal is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CBOE-2005-103), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Nancy M. Morris,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-54477; File No. SR-NASDAQ-2006-034)]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Practice of Using a Fifth Character Identifier With the Symbol of Foreign Securities

September 20, 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 August 28, 2006, The NASDAQ Stock Market LLC ("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. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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.

¹² 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 replaced and superseded the original proposal in its entirety.

⁴ See Securities Exchange Act Release No. 54311 (August 11, 2006), 71 FR 47834.

⁵ In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78f(b)(7).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 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).

⁴ 17 CFR 240.19b-4(f)(1).

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

Nasdaq is filing with the Commission a proposed rule change to clarify the non-applicability of the record-keeping fee in Nasdaq Rule 4510(e) and Nasdaq Rule 4520(d) when a non-U.S. issuer requests to eliminate the fifth character identifier affixed to the symbol of its securities.⁵

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to 1999, Nasdaq required an "F" or "Y" be affixed to the symbol of all non-U.S. securities and American Depositary Receipts that traded on the Nasdaq Stock Market. In 1999, Nasdaq ceased this practice for new listings and allowed existing non-U.S. listed companies to remove the fifth character identifier upon request.⁶ For those non-U.S. issuers that have not so requested, Nasdaq continues to include the fifth character identifier on the symbol of their securities. Nasdaq is making this filing to clarify that the record-keeping fee in Rule 4510(e) and Rule 4520(d) is not applicable to a non-U.S. issuer that requests that Nasdaq eliminate the fifth character identifier.

The \$2,500 record-keeping fee set forth in Nasdaq Rule 4510(e) and Nasdaq Rule 4520(d) is used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a voluntary change in trading symbol. However, Nasdaq notes that these non-U.S. issuers did not choose to have the fifth

character identifier, as before 1999 it was mandatory. Further, these issuers are not requesting any change to their "root" four letter symbol. Accordingly, Nasdaq believes that these changes should not be treated as a voluntary symbol change and, therefore, it is inappropriate to charge the \$2,500 record-keeping fee when a non-U.S. issuer drops the fifth character identifier.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act⁷ in general and furthers the objectives of Section 6(b)(5)⁸ in particular, in that it is 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.

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

Nasdaq does not believe that the proposed rule change will result in 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and subparagraph (f)(1) of Rule 19b-4 thereunder¹⁰ in that it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule. As such, this proposed rule change is effective upon filing.

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 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-NASDAQ-2006-034 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-NASDAQ-2006-034. 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 offices of Nasdaq. 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-NASDAQ-2006-034 and should be submitted on or before October 18, 2006.

⁵ This proposal does not require changes to Nasdaq's rule text. Telephone conversation between Jonathan F. Cayne, Associate General Counsel, The Nasdaq Stock Market, Inc., and Nataliya Cowen, Special Counsel, Division of Market Regulation, Commission, on September 19, 2006.

⁶ See Securities Exchange Act Release No. 41076 (Feb. 19, 1999); 64 FR 9552 (Feb. 26, 1999).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

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

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54479; File No. SR-NASD-2006-108]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction With the National Stock Exchange

September 21, 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 September 14, 2006, the National Association of Securities Dealers, Inc. ("NASD") 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 NASD. 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

NASD is proposing to adopt rules relating to a new Trade Reporting Facility (the "NASD/NSX TRF") to be established by NASD, in conjunction with the National Stock Exchange ("NSX"), that would provide members another mechanism for reporting trades in Nasdaq-listed equity securities effected otherwise than on an exchange. The proposed NASD/NSX TRF structure and rules are substantially similar to the Trade Reporting Facility ("TRF") established by NASD and Nasdaq Stock Market, Inc. (the "NASD/Nasdaq TRF") and rules relating thereto, which were approved by the Commission pursuant to proposed rule change SR-NASD-2005-087.³ Pursuant to the proposed

rule change, NASD is also proposing: (1) Amendments to certain NASD rules to reflect the operation of more than one Trade Reporting Facility established by NASD; and (2) new NASD Rule 5140 relating to the use of multiple Market Participant Symbols by members reporting trades to a Trade Reporting Facility established by NASD.

The text of the proposed rule change is available on NASD's Web site at (<http://www.nasd.com>), at the principal office of the NASD, at the Commission's Public Reference Room, and the Commission's Web site at (<http://www.sec.gov>).

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

In its filing with the Commission, NASD 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. NASD 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 June 30, 2006, the Commission approved SR-NASD-2005-087.⁴ Among other things, the Approval Order proposed: (1) Amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting trades effected otherwise than on an exchange to the NASD/Nasdaq TRF. Pursuant to SR-NASD-2005-087, NASD proposed the NASD Rule 4000 Series (The Trade Reporting Facility) and the NASD Rule 6100 Series (Clearing and Comparison Rules), which generally apply to trade reporting and clearing and comparison services via the NASD/Nasdaq TRF.

NASD/NSX Trade Reporting Facility

The NASD proposes to establish a new NASD/NSX TRF on substantially the same terms as the NASD/Nasdaq TRF.⁵ The NASD/NSX TRF will provide

members another mechanism, which has been developed by NSX, for reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange.⁶ Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/NSX TRF with the appropriate information and modifiers. The NASD/NSX TRF will report the trades to the appropriate exclusive securities information processor ("SIP").⁷ As with trades reported to the NASD/Nasdaq TRF, NASD/NSX TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the NSX. In addition, the NASD/NSX TRF will provide NASD with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the NASD/NSX TRF may also provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation ("NSCC").

Like the NASD/Nasdaq TRF, the NASD/NSX TRF will be a facility of NASD, subject to regulation by NASD and NASD's registration as a national securities association. It will not be a service "for the purpose of effecting or reporting a transaction" on the NSX; rather, it will be a service for the purpose of reporting over-the-counter transactions in Nasdaq-listed equity securities to NASD.⁸ Thus, members that meet all applicable requirements will now have the option of reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange to the NASD/NSX TRF,

Order, NASD indicated that it was prepared to implement a TRF with any exchange based on whatever technology the exchange has available to it. See Letter to Honorable Christopher Cox, Chairman, Commission, dated May 2, 2006 from Robert Glauber, Chairman and Chief Executive Officer, NASD.

As the Commission noted in its Approval Order, the Act does not prohibit NASD from establishing different facilities for purposes of fulfilling its regulatory obligations. See Approval Order.

⁶ NASD will submit a second proposed rule change relating to reporting to the NASD/NSX TRF of transactions in all exchange-listed securities executed otherwise than on an exchange.

⁷ The NASD/NSX TRF will have controls in place to ensure that transactions that are reported to the NASD/NSX TRF, but are priced significantly away from the current market, will not be submitted to the SIP. This is consistent with current practice, which is designed to preserve the integrity of the tape; today, such trades are not submitted to the SIP by the ADF or the NASD/Nasdaq TRF.

⁸ See Approval Order.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR-NASD-2005-087) ("Approval Order"). SR-NASD-2005-087 became effective upon the date on which The NASDAQ Stock Market LLC (the "Nasdaq Exchange") commenced operation as a national securities exchange for Nasdaq-listed securities, which was August 1, 2006.

⁴ *Id.*

⁵ In response to comments submitted to the Commission in connection with the Approval