

facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

In accordance with Subsection 10(d) Public Law 92-463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect national security information as well as unclassified safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at [pdr@nrc.gov](mailto:pdr@nrc.gov), or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html> or <http://www.nrc.gov/reading-rm/doc-collections/> (ACRS & ACNW Mtg schedules/agendas).

Video teleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (Telephone (301) 415-8066), between 7:30 a.m. and 3:45 p.m. e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 11, 2004.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49679; File No. SR-CBOE-2004-27]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend the Modified Rapid Opening Procedure Pilot Program

May 11, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 6,

2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "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 CBOE. CBOE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> 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

CBOE proposes to amend the modified ROS opening procedure that was approved by the Commission in SR-CBOE-2004-11 on a pilot basis.<sup>5</sup> The text of the proposed rule change is set forth below. Proposed new language is in *italics*. Proposed deletions are in [brackets].

\* \* \* \* \*

##### Rule 6.2A. Rapid Opening System

This rule has no applicability to series trading on the CBOE Hybrid Opening System. Such series will be governed by Rule 6.2B.

(a)-(d) No change.

\* \* \* Interpretation and Policies:

.01-.02 No change.

.03 Modified ROS Opening Procedure For Calculation of Settlement Prices of Volatility Indexes.

All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified ROS opening procedure for any index option series with respect to which a volatility index is calculated (including any index option series opened under Rule 6.2A.01). This modified ROS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.

The following provisions shall be applicable when the modified ROS opening procedure set forth in this Rule 6.2A.03 is in effect for an index option with respect to which a volatility index

is calculated: (i) All orders (including public customer, broker-dealer, Exchange market-maker and away market-maker and specialist orders), other than contingency orders, will be eligible to be placed on the Electronic Book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series; (ii) all market-makers, including any LMMs and SMMs, if applicable, who are required to log on to ROS or RAES for the current expiration cycle shall be required to log on to ROS during the modified ROS opening procedure if the market-maker is physically present in the trading crowd for that index option class; (iii) if the ROS system is implemented in an option contract for which LMMs have been appointed, the LMMs will collectively set the Autoquote values that will be used by ROS; (iv) ROS contracts to trade for that index option series will be assigned equally, to the greatest extent possible, to all logged-on market-makers, including any LMMs and SMMs if applicable; (v) all orders for participation in the modified ROS opening procedure, and any change to or cancellation of any such order, must be received prior to 8:2[5]8 a.m. (CST) in order to participate at the ROS opening price for that index option series; (vi) all orders for participation in the modified ROS opening procedure must be submitted electronically, except that market-makers on the Exchange's trading floor may submit paper tickets for market orders only; and (vii) until the Exchange implements a ROS system change that automatically generates cancellation orders for Exchange market-maker, away market-maker, specialist, and broker dealer orders which remain on the Electronic Book following the modified ROS opening procedure, any such orders that were entered in the Electronic Book but were not executed in the modified ROS opening procedure must be cancelled immediately following the opening of the applicable option series.

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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, CBOE included statements concerning the purpose of and basis for the

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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, the Proposed Rule Change*

1. Purpose

On March 24, 2004, the Commission approved the implementation of a modified ROS opening procedure on a pilot basis through November 17, 2004. The modified ROS opening procedure pilot program facilitates the trading of options and futures on volatility indexes intended to be traded on CBOE or on CBOE Futures Exchange, LLC ("CFE") by modifying certain of the rules that govern ROS for index option series whose prices are used to derive the volatility indexes on which options and futures are traded. The modified ROS opening procedure pilot program also expands the types of orders for these index options that may be placed on the electronic book for participation in ROS at the time when settlement values for volatility index options and futures are being determined. Specifically, the modified ROS opening procedure pilot program allows all orders (including public customer, broker-dealer, Exchange market-maker and away market-maker and specialist orders), other than contingency orders, to be eligible to be placed on the electronic book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series. The modified ROS opening procedure pilot program is only used on the settlement days of options and futures on volatility indexes traded on CBOE or CFE. Currently, the modified ROS opening procedure pilot program is in use with respect to S&P 500 Composite Stock Price Index ("SPX") options whose prices are used to derive the settlement value of futures on the CBOE Volatility Index traded on CFE.

For purposes of establishing a cut-off time for the placement of orders on the electronic book for participation in the modified ROS opening procedure, CBOE Rule 6.2A.03(v) under the modified ROS opening procedure pilot program requires these orders to be received by 8:25 a.m. The proposed rule

change extends this cut-off time to 8:28 a.m. This extended cut-off time will provide market participants with additional time to monitor potential changes in the market that may occur up until the 8:28 a.m. cut-off time and to respond to those changes through the placement of orders, or cancellations or changes to orders previously placed on the electronic book, up until 8:28 a.m.

In addition, since the approval of the modified ROS opening procedure pilot program, CBOE has further discussed the cut-off time with Lead Market-Makers who will review the order imbalances and collectively set the Autoquote values that will be used by ROS in calculating the opening prices for the SPX option series pursuant to CBOE Rule 6.2A.03(iii). They have indicated to CBOE their belief that a two-minute interval (from 8:28 a.m. to 8:30 a.m.) rather than the current five-minute interval (from 8:25 a.m. to 8:30 a.m.) is sufficient for them to review the order imbalances on the electronic book and collectively set the Autoquote values. For these reasons, CBOE believes the extended cut-off time will improve the operation of the modified ROS opening procedure pilot program.

2. Statutory Basis

The proposed rule change will provide additional time for market participants to place orders (including public customer, broker-dealer, Exchange market-maker and away market-maker and specialist orders), other than contingency orders, on the electronic book on days that the modified ROS opening procedure pilot program is implemented, which will further enable market participants to respond to potential changes in the market and therefore better fulfill their investment objectives. The Exchange has also filed with the Commission a proposed rule change that seeks permanent approval of the modified ROS opening procedure pilot program.<sup>6</sup> Accordingly, 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 should promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

<sup>6</sup> See Securities Exchange Act Release No. 49614 (April 26, 2004), 69 FR 23837 (April 30, 2004) (SR-CBOE-2004-23).

*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 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) of the Act<sup>7</sup> and subparagraph (f)(6) of Rule 19b-4<sup>8</sup> thereunder because the Exchange has designated the proposed rule change as one that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing, or such shorter time as designated by the Commission. 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.

CBOE has requested a waiver of the 30-day operative delay. The Commission believes, consistent with the protection of investors and the public interest, that such waiver will permit CBOE to put the proposed rule change into effect prior to May 19, 2004, which is the first settlement date of the CBOE Volatility Index futures contract, and will also permit CBOE to provide advance notice of this change to market participants prior to that date. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>9</sup>

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> For 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).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-27 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-27. 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, 450 Fifth Street, NW., Washington, DC 20549-0609. 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-2004-27 and should be submitted on or before June 7, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49670; File No. SR-NASD-2004-068]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Accelerated Return Notes Linked to the Nikkei 225 Index

May 7, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 22, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on May 7, 2004.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving 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 list and trade Accelerated Return Notes Linked to the Nikkei 225® Index ("Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch"). This proposed rule change pertains to the Notes described and due as indicated in Merrill Lynch's Prospectus Supplements dated February 26, 2004 and April 28, 2004.

#### 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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 7, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq provided certain details about the Nikkei 225 Index.

may be examined at the places specified in Item III 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

Nasdaq proposes to list and trade notes, the return on which is based upon the Nikkei 225 Index ("Index").

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading securities which cannot be readily categorized under traditional listing guidelines.<sup>4</sup> Nasdaq proposes to list for trading notes based on the Index under NASD Rule 4420(f). The Notes, which will be registered under section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million.<sup>5</sup> In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1), Nasdaq generally will require the issuer to have the following: (i) Assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;

(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders;

(C) For equity securities designated pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units;

(D) The aggregate market value/principal amount of the security will be at least \$4 million.

In addition, Merrill Lynch satisfies the listed marketplace requirement set forth in NASD Rule 4420(f)(2).<sup>6</sup> Lastly, pursuant to NASD Rule 4420(f)(3), prior to the commencement of trading of the Notes, Nasdaq will distribute a circular

<sup>4</sup> See Securities Exchange Act Release No. 32988 (September 29, 1993), 58 FR 52124 (October 6, 1993).

<sup>5</sup> Merrill Lynch satisfies this listing criterion.

<sup>6</sup> NASD Rule 4420(f)(2) requires issuers of securities designated pursuant to this paragraph to be listed on The Nasdaq National Market or the New York Stock Exchange, Inc. ("NYSE") or be an affiliate of a company listed on The Nasdaq National Market or the NYSE; provided, however, that the provisions of NASD Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.