

verify all CME pricing information used to calculate the Index.

Likewise, information about the Shares will also be widely available. The Indicative Fund Value will be disseminated every 15 seconds during Amex regular trading hours through the facilities of the CT and will be displayed on the Exchange's Internet Web site (<http://www.amex.com>).<sup>38</sup> The Commission believes that dissemination of the Indicative Fund Value based on the cash amount required for a Basket provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or the creation or redemption of the Shares.

In addition, the Internet Web sites for the Fund and/or the Exchange will disseminate the NAV, Basket Amount, trading volume of the Shares, and other quantitative information related to the operation of the Fund and trading of the Shares. The Exchange has represented that the NAV and Basket Amount will be disseminated shortly after 4 p.m. ET each business day. The NAV will be made available to all market participants at the same time. The Commission notes that, if the NAV is not disseminated to all market participants at the same time, the Exchange has agreed to halt trading of the Shares.

In sum, the Commission believes that the availability of information about the underlying futures contracts, the Index, and the Shares should facilitate transparency with respect to the proposed Shares.

### C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to Amex rules including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities,<sup>39</sup> and account opening

<sup>38</sup> The Commission notes that the Indicative Fund Value will not reflect price changes of an underlying currency between the close of trading of the relevant futures contract at the futures exchange and the close of trading on the Amex at 4:15 p.m. ET, and should not be viewed as a real-time update of the Fund's NAV.

<sup>39</sup> For example, Commentary .07(e) to Amex Rule 1202 prohibits the specialist in the Shares from being affiliated with a market maker in the Index commodities, related futures or options on futures, or any other related derivatives, unless information barriers are in place that satisfy the requirements of Amex Rule 193. Commentary .07(g)(3) to Amex Rule 1202 also prohibits the specialist in the Shares from using any material nonpublic information received from any person associated with a

and customer suitability requirements. Finally, the Commission notes that the Information Circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares, including their prospectus delivery obligations.

### D. Accelerated Approval of the Proposed Rule Change, as Amended by Amendments No. 1 and 2 Thereto

The Commission finds good cause for approving the proposed rule change, as amended by Amendments No. 1 and 2, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested the Commission to approve the proposal, as amended, on an accelerated basis, after a 15-day comment period, to enable investors to begin trading the Shares promptly. The Commission notes that the proposed rule change, as amended, was noticed for a 15-day comment period and no comments were received. Therefore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>40</sup> to approve the proposal, as amended, on an accelerated basis.

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act that the proposed rule change (SR-Amex-2006-44), as amended by Amendments No. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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member, member organization or employee of such person regarding trading by such person or employee in the Index commodities, related futures or options on futures, or any other related derivatives.

<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54443; File No. SR-CBOE-2006-77]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending Pilot Programs for Remote Market-Makers and e-DPMs

September 14, 2006.

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 September 11, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 extend the pilots allowing Remote Market-Makers ("RMMs") and e-DPMs to have up to one affiliated Market-Maker trade in classes assigned to the RMM and e-DPM, respectively. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange's Office of the Secretary 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 Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

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

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

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

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

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

The Exchange proposes to amend CBOE Rules 8.4(c)(i) and 8.93(vii) to extend the pilot programs allowing an RMM and e-DPM the option to have up to one separate affiliated Market-Maker physically present in the trading crowds where it operates as an RMM or e-DPM, respectively (such Market-Makers would be required to trade on a separate membership). The pilots would be extended from September 14, 2006 until March 14, 2007.

In July of 2003, the SEC approved the e-DPM program, including the pilot program.<sup>5</sup> The pilot allows e-DPM firms to maintain a physical presence in the trading crowd through an affiliated Market-Maker who would also be able to stream a quote. The pilot, however, limits the number of separate affiliates per trading crowd to one.

In March of 2005, the SEC approved the RMM program, including the pilot program.<sup>6</sup> The pilot allows RMM firms to maintain a physical presence in the trading crowd through an affiliated Market-Maker who would also be able to stream a quote. This pilot also limits the number of separate affiliates per trading crowd to one.

CBOE will be sending the Commission, under separate cover, data relating to: (1) The size of the orders that RMMs and affiliated Market-Makers both trade with remotely; (2) the price and size of the RMM's and the affiliated Market-Maker's respective quotes; (3) the price and size of quotes of other participants in the classes where an RMM and an affiliate are quoting; and (4) a breakdown of how orders are allocated to the RMM, the affiliated Market-Maker, and any other participants.

In addition, CBOE will be sending the Commission, under separate cover, data relating to: (1) The size of the orders that e-DPMs and affiliated Market-Makers both trade with electronically; (2) the price and size of the e-DPM's and the affiliated Market-Maker's respective quotes; (3) the price and size of quotes of other participants in the classes where an e-DPM and an affiliate are

quoting; and (4) a breakdown of how orders are allocated to the e-DPM, the affiliated Market-Maker, and any other participants.

The date chosen to extend the pilot programs for RMMs and e-DPMs is the same, which will allow the Commission to evaluate both pilot programs simultaneously.

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.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5)<sup>8</sup> 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*

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 received nor solicited written comments on the proposal.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 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, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

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.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>11</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission accelerate the 30-day operative date. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to allow the pilots to continue without interruption.<sup>12</sup>

**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-2006-77 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-2006-77. 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

<sup>5</sup> See Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (SR-CBOE-2004-24).

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

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-77 and should be submitted on or before October 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54457; File Nos. SR-FICC-2006-03 and SR-NSCC-2006-03]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation and National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes to Institute a Clearing Fund Premium Based Upon a Member's Clearing Fund Requirement to Excess Regulatory Capital Ratio

September 15, 2006.

On February 22, 2006, the Fixed Income Clearing Corporation ("FICC") and the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes SR-FICC-2006-03 and SR-NSCC-2006-03 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on April 24, 2006.<sup>2</sup> Seven comment letters were received.<sup>3</sup> FICC and NSCC

amended the proposed rule changes on July 28, 2006, to address certain concerns raised by the commenters and others.

The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposals.

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

FICC and NSCC are each seeking to institute a clearing fund premium based on a member's clearing fund requirement to excess regulatory capital ratio.

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

In their filings with the Commission, FICC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item VI below. FICC and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

FICC and NSCC are each seeking to institute a clearing fund premium based on a member's clearing fund requirement to excess regulatory capital ratio.

##### 1. FICC Clearing Fund Premium

The degree to which the collateral requirement of a clearing agency member compares to the member's excess regulatory capital is an important indicator of the potential risk that the member presents to a clearing agency. In 2002, the Government Securities

and Kathleen M. Toner, Chief Regulatory Officer, LaBranche & Co. Inc. ("LaBranche") (May 18, 2006); Peter Chepucavage, International Association of Small Broker-Dealers and Advisers ("IASBDA") (May 19, 2006); Gregory A. Teeter, Howrey LLC, representing Wilson-Davis & Co., Inc. ("Wilson-Davis"), Alpine Securities Corporation ("Alpine"), and IASBDA (June 1, 2006); Cheryl T. Lambert, Managing Director, Risk Management, The Depository Trust and Clearing Corporation ("DTCC") (July 28, 2006); and Peter Chepucavage, IASBDA (August 9, 2006).

Schonfeld, Wilson-Davis, Alpine, and LaBranche are members of NSCC. Man is a member of FICC. IASBDA is an organization created for the purpose of protecting the interests of small and midsize broker-dealers and micro-cap issuers.

<sup>4</sup> The Commission has modified the text of the summaries prepared by FICC and NSCC.

Clearing Corporation ("GSCC"), the predecessor to the Government Securities Division ("GSD") of FICC, received Commission approval to impose a collateral premium on netting members whose clearing fund requirements exceed their excess regulatory capital.<sup>5</sup> Specifically, the GSD implemented a 25 percent collateral premium when a member's ratio of clearing fund requirement to its excess regulatory capital is greater than 1.0. The 25 percent premium is applied to the amount by which the member's clearing fund requirement exceeds the member's excess regulatory capital.

In order to more effectively manage the risk posed by a GSD member whose activity causes it to have a clearing fund requirement that is greater than its excess regulatory capital, FICC now proposes to strengthen the above-mentioned risk management tool by applying a clearing fund premium that is based on a member's ratio of clearing fund requirement to excess regulatory capital in place of the current flat premium of 25 percent.<sup>6</sup> The premium would be determined by multiplying the amount by which a member's clearing fund requirement exceeds its excess regulatory capital by the member's ratio of required clearing fund to excess regulatory capital expressed as a percent. This formula would allow the premium to increase or decrease in proportion to changes in the ratio and should allow for risk management that is measured in proportion to the risk presented. For example, if a member has a clearing fund requirement of \$11.4 million and excess net capital of \$10 million, its clearing fund requirement would exceed its excess net capital by \$1.4 million, its ratio of clearing fund requirement to excess net capital is 1.14 (or 114 percent), and the applicable collateral premium would be 114 percent of \$1.4 million or \$1,596,000. If the same member had a clearing fund requirement of \$20 million, its clearing fund requirement would exceed its excess net capital by \$10 million, its ratio of clearing fund requirement to excess net capital would be 2.0 (or 200 percent), and the applicable collateral premium would be 200 percent of \$10 million or \$20 million.

<sup>5</sup> Securities Exchange Act Release No. 45647 (March 26, 2002), 67 FR 15438 (April 1, 2002) [File No. SR-GSCC-2001-15]. "Excess regulatory capital" for purposes of GSD's collateral premium included excess net capital, excess liquid capital, or excess adjusted capital.

<sup>6</sup> If FICC imposes this premium on a netting member, then it shall be considered included as part of the netting member's "required fund deposit" as defined in the GSD's rules.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 53671 (April 18, 2006), 71 FR 21060.

<sup>3</sup> Jim Nardone, Schonfeld Securities, LLC ("Schonfeld") (May 5, 2006); Richard Gill, Senior Vice President, and Donald Galante, Senior Vice President, Man Securities Inc. ("Man") (May 15, 2006); L. Thomas Patterson, Chief Executive Officer,