an owner to keep his or her bonus credits upon his or her exercise of the Contract's ''free look'' provision. Because no CDSC applies to the exercise of the ''free look'' provision, the owner could obtain a quick profit in the amount of the bonus credit at a Life Company's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at a Life Company's expense.

16. In the event of such profits to an owner or beneficiary, a Life Company could not recover the cost of granting the bonus credits. This is because a Life Company intends to recoup the costs of providing the bonus credits through the charges under the bonus credit rider and the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, an owner could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that a Life Company must provide. Therefore, the recapture provisions are a price of offering the bonus credits. A Life Company simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

17. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, the Life Companies' successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder with respect to the Contracts. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

18. Applicants represent that any contracts in the future will be substantially similar in all material respects to the Contracts, but particularly with respect to the bonus credits and recapture of bonus credits, and that each factual statement and representation about the bonus credit rider will be equally true of any Contracts in the future. Applicants also represent that each material representation made by them about the Account and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this Application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be an NASD member.

19. For the reasons above, Applicants submit that the bonus credit rider involves none of the abuses to which provision of the Act and rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit and will retain the principal amount in all cases except under the circumstances described herein. Further, a Life Company should be able to recapture such bonus credits to limit potential losses associated with such bonus credits.

Conclusion

Applicants submit that the exemptions requested are necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent. Applicants also submit, based on the analysis listed above, that the provisions for recapture of any bonus credit under the Contracts does not violate Section 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The Applicants hereby request that the Commission issue an order pursuant to Section 6(c) of the Act to exempt the Applicants with respect to: (a) The Contracts; (b) Future Accounts that support the Contracts; and (c) Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture of all or a portion of the bonus credits (previously applied to premium payments) in the circumstances described above.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–9607 Filed 6–19–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53975; File No. SR–CBOE–2006–51]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Market-Maker Appointments

June 12, 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 May 19, 2006, the Chicago Board Options Exchange, Incorporated (''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 Exchange. 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 CBOE Rule 8.3 relating to Market-Maker appointments. The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission.

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

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

[2] 17 CFR 240.19b–4.

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 purpose of the proposed rule change is to amend CBOE Rule 8.3 relating to Market-Maker appointments. Currently, CBOE Rule 8.3(c) provides that a Market-Maker can quote: (i) Electronically in all Hybrid and Hybrid 2.0 Classes that are located in one designated trading station (''appointed trading station''); (ii) in open outcry in all classes traded on the Exchange; and (iii) electronically in either two additional Hybrid 2.0 Classes in Tier A or Tier B that are not located in the Market-Maker's appointed trading station, or five additional Hybrid 2.0 Classes in Tiers C, D, or E that are not located in the Market-Maker's appointed trading station.

CBOE now proposes to modify the above provisions as follows which would allow Market-Makers additional flexibility in choosing their appointed classes and make the Market-Maker appointment process similar to the process applicable to Remote Market-Maker (''RMM'') appointments.

First, like RMMs, CBOE proposes to allow a Market-Maker to create a Virtual Trading Crowd (''VTC'') appointment, which would confer the right to quote electronically in an appropriate number of Hybrid 2.0 Classes (as defined in CBOE Rule 1.1(aaa)) selected from ''tiers'' that have been structured according to trading volume statistics. All classes within a specific tier would be assigned an ''appointment cost'' depending upon its tier location. The following table sets forth the tiers and related appointment costs, which are identical to the tiers and appointment costs set forth in CBOE Rule 8.4(d) that have been structured for purposes of RMMs appointments.

Tier	Hybrid 2.0 option classes	Appointment cost
AA	Options on the CBOE Volatility Index (VIX)	.50
A+	• Options on Standard & Poor's Depositary Receipts	.25
	• Options on the Nasdaq-100 Index Tracking Stock	
A*	Hybrid 2.0 Classes 1—60	.10
B*	Hybrid 2.0 Classes 61—120	.05
C*	Hybrid 2.0 Classes 121—345	.04
D*	Hybrid 2.0 Classes 346—570	.02
E*	All Remaining Hybrid 2.0 Classes	.01

* Excludes Tier AA and A+ Classes.

CBOE believes that allowing Market-Makers the same flexibility as RMMs to choose and structure a VTC appointment composed of Hybrid 2.0 Classes is appropriate, and would provide Market-Makers with additional trading opportunities outside of their appointed trading station.

With respect to Hybrid Classes (as defined in CBOE Rule 1.1(aaa)), CBOE proposes to allow a Market-Maker to quote electronically in an appropriate number of Hybrid Classes that are located at one trading station, which is similar to the current manner in which Market-Makers request appointments, *i.e.*, by trading station. CBOE proposes to assign an appointment cost of .01 to each Hybrid Class.

With regard to trading in open outcry, CBOE Rule 8.3 currently provides that a Market-Maker has an appointment to trade in open outcry in all classes traded on the Exchange. Because CBOE is proposing to apply an appointment cost to each option class traded on the Exchange, including both Hybrid and non-Hybrid option classes, CBOE proposes to amend CBOE Rule 8.3 to provide that a Market-Maker has an appointment to trade in open outcry in all Hybrid and Hybrid 2.0 Classes traded on the Exchange. A Market-Maker would be required to be physically present in the trading crowd where an option class is located in order to trade in open outcry in that option class. A Market-Maker would be permitted to submit electronic quotations into any of his/her appointed Hybrid or Hybrid 2.0 Classes while the Market-Maker is trading in open outcry.

For non-Hybrid and non-Hybrid 2.0 Classes (collectively ''Non-Hybrid Classes''), CBOE proposes to allow a Market-Maker to select as his appointment one or more Non-Hybrid Classes traded on the Exchange, which would confer the right to trade in open outcry in an appropriate number of Non-Hybrid Classes. Each Non-Hybrid Class would be assigned an appointment cost, which are set forth below.

Non-Hybrid classes	Appointment cost
Options on the Standard & Poor's 500 (SPX)	*1.0*
• *Options on the S&P 100 (OEX)**	
• *Options on the S&P 100 (XEO)**	*1.0*
NASDAQ 100 Index Options (NDX)	*1.0*
Options on the iShares Russell 2000 Index Fund (IWM)	*.85*
Options on the Russell 2000 Index (RUT)	*.45*
Morgan Stanley Retail Index Options (MVR)	*.25*
Options based on 1/10th the Value of The Dow Jones Industrial Average (DXL)	*.01*
Options on the iShares S&P 100 (OEF)	*.01*

* The OEX and XEO options classes collectively have an appointment cost of 1.0.

As is the case for RMMs, each membership owned or leased by a Market-Maker would have an appointment credit of 1.0. A Market-Maker may select for each Exchange membership it owns or leases any combination of Hybrid 2.0 Classes, Hybrid Classes which are located at one trading station, and Non-Hybrid Classes, whose aggregate ''appointment cost'' does not exceed 1.0. The Exchange would rebalance the ''tiers'' (excluding the ''AA'' and ''A+'' tiers) set forth in paragraph (c)(i) of Rule 8.3 once each calendar quarter, which may result in additions or deletions to their composition. When a class changes tiers it would be assigned the appointment cost of that tier. Upon rebalancing, each Market-Maker with a VTC appointment would be required to own or lease the appropriate number of Exchange

memberships reflecting the revised appointment costs of the Hybrid and Hybrid 2.0 Classes constituting its appointment. These provisions relating to re-balancing are identical to the provisions contained in CBOE Rule 8.4(d) applicable to RMMs.

In new paragraph (c)(vi) of CBOE Rule 8.3, CBOE proposes to continue and modify slightly an existing Pilot Program in effect until March 24, 2007, which allows a Market-Maker to quote remotely. The existing Pilot Program provides that a Market-Maker may submit electronic quotations in his/her appointed Hybrid and Hybrid 2.0 Classes from outside of his/her appointed trading station.[3] Because CBOE is proposing to allow Market-Makers to create a VTC consisting of Hybrid 2.0 Classes, CBOE proposes to modify the Pilot Program such that it provides Market-Makers with the ability to quote remotely away from CBOE's trading floor in their appointed Hybrid and Hybrid 2.0 option classes. While on the trading floor, there would be no requirement that a Market-Maker must be present in a particular trading station in order to stream electronic quotations into his/her appointed classes.

CBOE also proposes to continue two existing Pilot Programs set forth in CBOE Rules 8.4(c)(i) and 8.93(vii), which are in effect until September 14, 2006, and which provide that an RMM or e-DPM in an option class can have one Market-Maker affiliated with the RMM or e-DPM trading in the option class. However, CBOE Rule 8.3(c) would continue to require that a Market-Maker affiliated with an e-DPM or RMM can submit electronic quotations in any class in which the affiliated e-DPM or RMM has an appointment only if the Market-Maker is present in the trading station where the class is located.[4] CBOE also notes in paragraph (c)(vii) to CBOE Rule 8.3 that a Market-Maker and an affiliated e-DPM or affiliated RMM can operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii) pursuant to a Pilot Program that expires on March 14, 2007.

In new paragraph (c)(viii) to CBOE Rule 8.3, CBOE notes that pursuant to a Pilot Program that expires on March 14, 2007, two affiliated Market-Makers can hold an appointment in the same class provided both Market-Makers operate as multiple aggregation units under the criteria set forth in CBOE Rule 8.4(c)(ii). This provision is consistent with current CBOE Rule 8.3(c)(iii).

As provided in new Interpretation .01 to CBOE Rule 8.3, in the event the total appointment cost for all of the Hybrid 2.0 Classes, Hybrid Classes, and/or Non-Hybrid Classes, constituting a Market-Maker's appointment on the approval date of this rule change exceeded 1.0, then CBOE proposes to grant the Market-Maker six months from the date of the approval of this rule change to comply with the provisions of CBOE Rule 8.3(c)(v) that provide a Market-Maker's appointed classes cannot have an total appointment cost in excess of 1.0. During these six months, any Market-Maker whose total appointment cost exceeds 1.0 would be ineligible to request an appointment in any other option class until the Market-Maker's total appointment cost is less than 1.0. The preceding limited exemption to CBOE Rule 8.3(c)(v) would be available only to those Market-Makers whose total appointment cost for all of the Hybrid 2.0 Classes, Hybrid Classes, and/or Non-Hybrid Classes, constituting a Market-Maker's appointment would have exceeded 1.0 on April 24, 2006, if the rule had been in effect on that date.

2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act[5] 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.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for 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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

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 CBOE 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–2006–51 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–2006–51. 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

[3] Prior to the Pilot Program, a Market-Maker could only stream electronic quotes into an option class when he/she was physically present in his/her appointed trading station.

[4] CBOE Rule 8.3(c) currently provides that for any class in which the affiliated RMM or e-DPM has an appointment, a Market-Maker is ineligible to submit electronic quotations from outside of its appointed trading station.

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 78(f)(b).

[7] 15 U.S.C. 78(f)(b)(5).

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, 100 F Street, NE., Washington, DC 20549–9303. 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–2006–51 and should be submitted on or before July 11, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–9578 Filed 6–19–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53978; File No. SR–NYSE–2006–42]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Relating to American Depositary Receipt Fees

June 13, 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 May 25, 2006, the New York Stock Exchange LLC (''NYSE'' or ''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 NYSE. NYSE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. On June 12, 2006, NYSE submitted Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NYSE proposes to amend Section 103.04 of the Exchange's Listed Company Manual relating to sponsored American Depositary Receipts (''ADRs'') to eliminate the requirement that certain services must be provided without charge. The text of the proposed rule change, as amended, is set forth below. Proposed new language is underlined; proposed deletions are [bracketed].

* * * * *

Listed Company Manual

* * * * *

103.00 Non-U.S. Companies

* * * * *

103.04 Sponsored American Depository Receipts or Shares (''ADR[']s'')

In order to list ADRs, the Exchange requires that such ADRs be sponsored. Foreign private issuers [Non-U.S. companies] sponsor their ADR[']s by entering into a[n] *deposit* agreement with an American depository bank to provide, [without charge to the ADR holders,] such services as cash and stock dividend payments, transfer of ownership, and distribution of company financial statements and notices, such as shareholder meeting material. This agreement is a required supplement to the basic Listing Agreement. (See [Para.] *Section* 901.00 for the text of the Listing Agreements.)

[Non-U.S. companies electing to sponsor their ADR's are often interested in putting their names and products prominently before the American public. This may result in a direct relationship with American investors, customers and suppliers. An Exchange listing requires that a company sponsor its ADR'S.]

* * * * *

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

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change, as amended, 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. NYSE 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 D

NYSE proposes to amend Section 103.04 of the Exchange's Listed Company Manual (the ''Manual''). Section 103.04 currently requires that the depositary agreement entered into between a non-U.S. company and an American depository bank must provide that services such as cash and stock dividend payments, transfer of ownership, and distribution of company financial statements and notices, such as shareholder meeting material, be provided to ADR holders free of charge. The Exchange proposes to eliminate this requirement.

The Exchange represents that Section 103.04 of the Manual dates from a time when companies listed ordinary shares in their home market and ADRs on NYSE. Historically, when an issuer listed a sponsored ADR security, trading would occur both in the underlying security in the home country and in the ADRs on the Exchange. As a result, the Exchange states, conversions between the underlying security and the ADR provided significant revenue for the depositary bank. In addition, at that time, the Exchange asserts, the market for depositary services was less competitive and institutional investors played a more limited role in influencing issuer and bank practices.

The Exchange asserts that today, however, depositary receipts have become a preferred method of equity financing and are listed on exchanges around the world. Moreover, the Exchange represents that it is now not unusual for issuers from developing markets, such as China and other Asian countries, to list ADRs in the United States without also listing the underlying securities in their home market. The Exchange represents that because no other U.S. or overseas market limits the fees that depositary banks can charge ADR holders, it believes that the practical effect of Section 103.04 of the Manual is to increasingly foreclose the Exchange as a listing market for Asian issuers. As a result of a lack of potential conversion revenue, the Exchange argues that the effect of Section 103.04 of the Manual is to place the depositary bank at an economic disadvantage if the issuer lists its ADRs on the Exchange. Thus, the Exchange believes that NYSE's limitation on the fees that can be

[8] 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] In Amendment No. 1, the Exchange eliminated proposed changes to the title of Section 103.00 of the Listed Company Manual and corrected typographical errors in the rule text.