

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 the Exchange. 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-2006-32 and should be submitted on or before May 5, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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.<sup>15</sup> In particular, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,<sup>16</sup> which requires that an exchange have rules designed, among other things, 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.

The listing of the Fund Options does not satisfy CBOE Rule 5.3.06(A), which requires that: "any non-U.S. component securities of the index or portfolio on which the Units are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio." Although the Commission has been willing to allow an exchange to rely on a memorandum of understanding entered into between regulators where the listing SRO finds it impossible to enter into an information

sharing agreement, it is not clear that that CBOE has exhausted all avenues of discussion with foreign markets, including Bolsa, in order to obtain such an agreement. Indeed, with regard to Bolsa, conditions may have changed in the time period since CBOE last raised the issue with Bolsa in 1995 such that Bolsa now would be able to enter a comprehensive surveillance agreement with CBOE.

Consequently, the Commission has determined to approve CBOE's listing and trading of Fund Options for a sixty-day pilot period during which time CBOE may rely on the MOU with respect to Fund components trading on Bolsa. During this period, the Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with Bolsa, which shall reflect the following: (i) Express language addressing market trading activity, clearing activity, and customer identity; (ii) Bolsa's reasonable ability to obtain access to and produce requested information; and (iii) based on the comprehensive surveillance agreement and other information provided by Bolsa, the absence of existing rules, laws, or practices that would impede the Exchange from obtaining foreign information relating to market activity, clearing activity, or customer identity, or, in the event such rules, laws, or practices exist, they would not materially impede the production of customer or other information. The Exchange also represents that it will regularly update the Commission on the status of its negotiations with Bolsa. In approving the proposed rule change, the Commission notes that CBOE currently has in place surveillance agreements with foreign exchanges that cover 49.76% of the securities in the Fund and that the Index upon which the Fund is based appears to be a broad-based index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>17</sup> for approving this proposed rule change before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Exchange has agreed to use its best efforts to obtain a comprehensive surveillance agreement with the Bolsa during a sixty-day pilot period in which the Exchange will rely on the MOU.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>18</sup> that the

proposed rule change (SR-CBOE-2006-32), as amended, is approved on an accelerated basis for a sixty-day pilot period ending on June 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53616; File No. SR-MSRB-2006-02]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Restated Articles of Incorporation and By-Laws

April 7, 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 March 20, 2006, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of the MSRB's Restated Articles of Incorporation and By-Laws. The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal 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 MSRB 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

<sup>15</sup> In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 18 *Id.*

<sup>19</sup> 19 CFR 200.30-3(a)(12).

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

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

in Item IV below. The MSRB 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

The MSRB is a Virginia nonstock corporation. Currently, MSRB Rule A-11 (and By-Law Article 11) contains an indemnification provision for Board members and employees. The Board is filing Restated Articles of Incorporation to include an expanded indemnification provision and to make other technical revisions. New Article 8 will permit the MSRB to indemnify directors, officers and employees or any person serving at the request of the Board as a director, trustee, officer, employee or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to an employee benefit plan, to the fullest extent authorized under Virginia law. This provision also requires the advancement of expenses under certain circumstances. This indemnification provision must be included in the Articles of Incorporation to be effective. Once the proposed rule change is approved and the MSRB files and obtains approval for the Restated Articles of Incorporation by the State of Virginia, the MSRB will file with the SEC to delete Rule A-11 (and By-Law Article 11), for immediate effectiveness.

The technical revisions to the Articles also include deleting reference to the initial directors of the Board, moving language from Article 5(c) to 5(a), updating the Board's Registered Agent and Registered Office, and clarifying that the limitation on liability of officers and directors will be to the fullest extent permitted by Virginia law, which prohibits limitation on liability of an officer or director if he engaged in willful misconduct or a knowing violation of criminal law.

The MSRB is also filing revisions to its By-Laws. In Article 2, Powers of Board, the MSRB is adding that the Board has powers granted by Virginia law, as well as by the Act. In addition, the article clarifies that no delegation of authority lessens Board power. In Article 6, Committees of the Board, the MSRB is clarifying that: (i) No Board committees shall have the authority to exercise any power specifically required to be exercised by the entire Board under Virginia law, as well as under the Act or any Board rule; and (ii) the last two sentences refer to any of the Board's

committees. The revisions to the By-Laws also clarify in Article 14 the responsibilities of the Secretary, Treasurer, Assistant Secretary and Assistant Treasurer.

The first 11 By-Laws are Administrative Rules of the MSRB previously filed with and approved by the Commission. With this proposed rule change, the revisions to Articles 2 and 6 of the By-Laws include conforming changes to MSRB Rules A-2 and A-6.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,<sup>3</sup> which provides that the MSRB's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB also believes that the proposed rule change is consistent with the requirements of section 15B(b)(2)(I) of the Act,<sup>4</sup> which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB.

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

The MSRB does not believe that the proposed rule change will result in 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*

Written comments were neither solicited nor received.

**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 self-regulatory organization 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](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2006-02 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-MSRB-2006-02. 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 MSRB's offices. 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-MSRB-2006-02 and should be submitted on or before May 5, 2006.

<sup>3</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>4</sup> 15 U.S.C. 78o-4(b)(2)(I).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53583; File No. SR-NASDAQ-2006-001]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Market Center

March 31, 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 February 7, 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. On March 29, 2006, Nasdaq submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The

<sup>5</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Amendment No. 1 makes the following substantive and technical changes to the original proposal: (1) Eliminates from the original filing Nasdaq Rule 4611(d), Nasdaq’s proposal to prohibit members from charging access fees triggered by the execution of a quotation within the System; (2) clarifies in Nasdaq Rules 4751(f)(6), 4755(a)(4) and 4757(a) that members must designate orders as Intermarket Sweep Orders (“ISOs”) rather than have the system automatically default to treat orders as ISOs absent other designation and enumerates in Nasdaq Rule 4751(f)(6) members’ obligations when entering ISOs into the system; (3) amends Nasdaq Rule 4613(e), Nasdaq’s rule for implementing the locked and crossed markets provisions of Rule 610 of Regulation NMS under the Act, to track more closely the language developed by the Commission staff in consultation with other exchanges; (4) modifies several examples of system processing throughout the filing; (5) groups within Nasdaq Rule 4751(d) all definitions related to system quotation functionality; (6) modifies Nasdaq Rule 4756(c) to clarify the display and non-display of trading interest within the system and adds language in Nasdaq Rule 4756(c)(4) to the effect that Nasdaq has procedures in place to identify its quotes as manual or automated and to notify its members of the status of its quotations; (7) modifies Nasdaq Rule 4751(h)(5) to clarify the processing of MIOC Orders; (8) states that the Nasdaq Board has approved the submission of this proposed rule change; (9) eliminates the requirement in Nasdaq Rule 4612(d) that Participants append a geographic identifier for their separate trading locations; (10) inserts Nasdaq Rule 4620(b)(4) to clarify that Nasdaq will reveal contra party information at the end of the day when a member trades change, with its own quote or

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

Nasdaq is proposing to integrate the operations of the existing Nasdaq Market Center, along with Nasdaq’s Brut Facility and Nasdaq’s INET Facility to create the fairest, fastest, most efficient and most transparent system in Nasdaq’s 35-year history. This integration will benefit investors by creating a single pool of liquidity from three, thereby increasing order interaction, and execution speed and fill rates. Integration will enable Nasdaq to further reduce the cost to investors of executing trades on Nasdaq by, for example, reducing the cost for subscriber connectivity and increasing the efficiency of the resulting facility.

Nasdaq is currently on schedule to launch the proposed integrated system timely to comply with the requirements of the Fair Access and Order Protection rules, Rules 610 and 611 of Regulation NMS under the Act (“Regulation NMS”). The integrated system will be designed to enable Nasdaq to operate its execution system as that of a national securities exchange rather than as an association, pursuant to the Commission order, dated January 13, 2006, approving Nasdaq’s application to register as a national securities exchange.<sup>4</sup> Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

\* \* \* \* \*

#### 4120. Trading Halts

##### (a) Authority To Initiate Trading Halts

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq may, pursuant to the procedures set forth in paragraph (b):

- (1) Halt trading on Nasdaq of a Nasdaq-listed security to permit the dissemination of material news; or
- (2) Halt trading on Nasdaq of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or
- (3) Halt trading [by] *on Nasdaq*: (i) [ITS/CAES Market Makers] in a security

order, unless the member requests not to receive that information; and (11) makes various grammatical and syntactic modifications.

<sup>4</sup> See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (“January 13, 2006 Order”).

listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx (“operational trading halt”); or (ii) [Nasdaq market makers] in a security listed on Nasdaq, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. [ITS/CAES Market Makers and] *In the event that Nasdaq halts trading*, Nasdaq *Participants* [Market Makers] may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (b); or

(4) Halt trading in an American Depository Receipt (“ADR”) or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) Halt trading in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to:

(A) Material news;  
(B) The issuer’s ability to meet Nasdaq listing qualification requirements, as set forth in the Rule 4300, 4400, and 4800 Series; or

(C) Any other information which is necessary to protect investors and the public interest.

(6) Halt trading in a security listed on Nasdaq when

(A) Extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and

(B) Nasdaq determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C)(i) Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq;

(ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, Nasdaq believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated