

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54383; File No. SR-CBOE-2006-75]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Extension of Its Dividend, Merger, and Short Stock Interest Strategies Fee Cap Pilot Program

August 30, 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 August 29, 2006, 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 CBOE. CBOE has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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 its Fees Schedule to extend until March 1, 2007, the dividend, merger and short stock interest strategies fee cap program. The text of the proposed rule change is available on CBOE’s Web site at <http://www.cboe.com>, at the Office of the Secretary at CBOE, 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 proposal. 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 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 currently caps market-maker, firm, and broker-dealer transaction fees associated with dividend, merger and short stock interest strategies, as described in Footnote 13 of the CBOE Fees Schedule (“Strategy Fee Cap”). The Strategy Fee Cap is in effect as a pilot program that is due to expire on September 1, 2006.

The Exchange proposes to extend the Strategy Fee Cap program until March 1, 2007. No other changes are proposed. The Exchange believes that extension of the Strategy Fee Cap program should attract additional liquidity and permit the Exchange to remain competitive for these types of strategies.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

##### 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 on 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)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>8</sup> because it establishes or changes a due, fee, or other charge. 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2006-75 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-2006-75. 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

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

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

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

<sup>6</sup> 15 U.S.C. 78f(b)(4).

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

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2006-75 and should be submitted on or before September 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E6-14805 Filed 9-6-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54391; File No. SR-NSX-2006-08]

### Self-Regulatory Organizations; National Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Thereto to Amend Its Trading Rules to Provide for a Price-Time Priority Market and Other Related Changes

August 31, 2006.

#### I. Introduction

On June 6, 2006, the National Stock Exchange, Inc. (“NSX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend its rules in order to incorporate a price-time priority automatic execution trading system (“System”) to replace the Exchange’s current system, the National Securities Trading System (“NSTS”). On June 22, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on July 6, 2006.<sup>3</sup> The Commission received one comment letter on the proposal.<sup>4</sup>

On August 11, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> On August 18, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change, as amended by Amendment No. 1. Simultaneously, the Commission is providing notice of filing of Amendment Nos. 2 and 3 and granting accelerated approval of Amendment Nos. 2 and 3.

#### II. Description

The Exchange proposes to amend its rules in order to implement a new trading System to replace the Exchange’s current NSTS. Specifically, the proposed System would provide a new trading platform and structure for the Exchange with price-time priority execution without any priority of execution distinction made for principal or agency orders.<sup>7</sup> The Exchange proposes to substantially revise Chapter XI (Trading Rules) of its rules in order to incorporate new priority rules and other features within the System. These rules relate to: hours of trading; units of trading; price variations; securities eligible for trading; registration of market makers; obligations of market maker authorized traders; registration of market makers in a security; obligations of market makers; access; authorized traders; orders and modifiers; cross messages; proprietary and agency orders, and modes of order interaction; priority of orders; order execution; trade execution and reporting; clearance and settlement; limitation of liability; clearly erroneous executions; trading halts due to extraordinary market volatility; short sales; locking or crossing quotations in NMS stocks; and riskless principal transactions.<sup>8</sup>

Under proposed NSX Rule 11.11, the System would include a number of new order types, including different types of sweep orders (e.g., Protected Sweep Orders, Full Sweep Orders, Destination Sweep Orders)<sup>9</sup> that direct the Exchange to route an order, or a relevant portion thereof, to away trading centers. In addition, once the relevant

compliance date for Regulation NMS under the Act (“Regulation NMS”)<sup>10</sup> has been reached, the System would permit orders to be marked as intermarket sweep orders (“ISOs”) pursuant to Regulation NMS and also permit incoming ISOs from other trading centers.<sup>11</sup> Proposed NSX Rule 11.12 sets forth restrictions for cross messages (“Crosses”) generally, as well as additional requirements for Midpoint Crosses,<sup>12</sup> Clean Crosses,<sup>13</sup> and Cross/Sweeps.<sup>14</sup>

Proposed NSX Rule 11.13 would permit participation in the System via automatic execution or order delivery. To be eligible for the order delivery functionality, a participant would have to demonstrate to the Exchange that it could automatically process an inbound order and respond immediately. Proposed Interpretation and Policy .01 to Rule 11.13 would define “immediately” as having system response times “that generally meet or exceed industry standards,” which NSX believes currently to be 100 milliseconds.<sup>15</sup>

In its proposed revisions to Chapter XI of its rules, the Exchange also incorporated a number of provisions relating to Regulation NMS—in addition to ISOs—including proposed NSX Rule 11.22 relating to locking or crossing quotations in NMS stocks. Also, proposed NSX Rule 11.15(d) provides that the System would be operated as an “automated market center” (as defined by Regulation NMS) and would display “automated quotations” (as defined by Regulation NMS) at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. In such a case, the Exchange would communicate to ETP Holders its procedures concerning a change from automated to manual quotations.

In addition to substantially revising Chapter XI, the Exchange also made revisions and proposed new rules in other chapters of its rules. Proposed NSX Rule 1.4 details the effective time for certain rules while proposed NSX Rule 1.5 includes new definitions for a number of terms including, among others, “Authorized Trader,” “Protected NBBO,” “protected quotation,” “Sponsored Participants,” and “Sponsoring ETP Holder.”

Execution Services Holdings, Inc. (“OES”), to Nancy M. Morris, Secretary, Commission, dated July 19, 2006 (“OES Letter”).

<sup>5</sup> The text of Amendment No. 2 is available on NSX’s Web site (<http://www.nsx.com>), at the principal office of NSX, and at the Commission’s Public Reference Room. See Section II, *infra*, for a discussion of Amendment No. 2.

<sup>6</sup> The text of Amendment No. 3 is available on NSX’s Web site (<http://www.nsx.com>), at the principal office of NSX, and at the Commission’s Public Reference Room. See Section II, *infra*, for a discussion of Amendment No. 3.

<sup>7</sup> See proposed NSX Rules 11.13 and 11.14.

<sup>8</sup> See proposed NSX Rules 11.1–11.23.

<sup>9</sup> See proposed NSX Rule 11.11(c)(7).

<sup>10</sup> 17 CFR 242.600 *et seq.* See 17 CFR 242.610 and 17 CFR 242.611.

<sup>11</sup> See proposed NSX Rule 11.11(c)(7)(iv) and (c)(8).

<sup>12</sup> See proposed NSX Rule 11.12(c).

<sup>13</sup> See proposed NSX Rule 11.12(d).

<sup>14</sup> See proposed NSX Rule 11.12(f).

<sup>15</sup> See Amendment No. 2, *supra*, note 5.

<sup>9</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> See Securities Exchange Act Release No. 54044 (June 26, 2006), 71 FR 38452 (“Trading Rules Notice”).

<sup>4</sup> See letter from Michael A. Barth, Senior Vice President, Exchanges and Market Centers, Order