

interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2006-59), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54275; File No. SR-CBOE-2006-61]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Modified ROS Opening Procedure Cut-Off Times

August 4, 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 July 27, 2006, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") 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 Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,<sup>3</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

The Exchange proposes to modify certain cut-off times applicable to its modified Rapid Opening System ("ROS") opening procedure for the calculation of settlement prices of volatility indexes. Proposed new

language is *italicized*; 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)—(c) 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All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03.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)—(iv) No change.

(v) All index option orders for participation in the modified ROS opening procedure that are related to positions in, or a trading strategy involving, volatility index options or futures, and any change to or cancellation of any such order:

(A) must be received prior to 8 a.m. (CT), and

(B) may not be cancelled or changed after 8 a.m. (CT), unless the order is not executed in the modified ROS opening procedure and the cancellation or change is submitted after the modified ROS opening procedure is concluded (provided that any such order may be changed or cancelled after 8:00 a.m. (CT) and prior to [8:25 a.m. (CT)] *applicable cut-off time established in accordance with paragraph (vi)* in order to correct a legitimate error, in which case the member submitting the change or cancellation shall prepare and maintain a memorandum setting forth the circumstances that resulted in the change or cancellation and shall file a

copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange).

In general, the Exchange shall consider index option orders to be related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) if the orders possess the following three characteristics:

(i)—(iii) No change.

Whether index option orders are related to positions in, or a trading strategy involving, volatility index options or futures for purposes of this Rule 6.2A.03(v) depends upon specific facts and circumstances. Order types other than those provided above may also be deemed by the Exchange to fall within this category of orders if the Exchange determines that to be the case based upon the applicable facts and circumstances.

The provisions of this Rule 6.2A.03(v) may be suspended by two Floor Officials in the event of unusual market conditions.

(vi) All other index option orders for participation in the modified ROS opening procedure, and any change to or cancellation of any such order, must be received prior to [8:25 a.m. (CT)] the applicable cut-off time in order to participate at the ROS opening price for the applicable index option series. *The applicable cut-off time for the affected index option series will be established by the appropriate Procedure Committee on a class-by-class basis, provided the cut-off time will be no earlier than 8:25 a.m. (CT) and no later than 8:30 a.m. (CT). All pronouncements regarding changes to the applicable cut-off time will be announced to the membership via Regulatory Circular that is issued at least one day prior to implementation.*

(vii)—(ix) No change.

\* \* \* \* \*

#### 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 those 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 parts of such statements.

<sup>11</sup> *Id.*

<sup>12</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> 17 CFR 240.19b-4(f)(6).

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

1. Purpose

The modified ROS opening procedure 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 opening procedure is only utilized on the settlement days of options and futures contracts on the applicable volatility indexes in each expiration month.

In relevant part, the modified ROS opening procedure 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 procedure also provides that, if the ROS system is implemented in an option contract for which Lead Market-Makers ("LMMs") have been appointed, the LMMs will collectively set the AutoQuote values that will be used by ROS.

The procedure specifies certain cut-off times respecting the receipt of orders for participation in the opening. Currently, CBOE Rule 6.2A.03(v) provides that index option orders that are related to positions in, or a trading strategy involving, volatility index options or futures, and any change to or cancellation of any such order ("strategy orders"), must be received prior to 8:00 a.m. (all times noted herein are Central Time).<sup>4</sup> CBOE Rule 6.2A.03(vi) provides

<sup>4</sup> Certain exceptions to the 8:00 a.m. cut-off time apply with respect to strategy orders. For instance, under the current procedure, a strategy order may not be cancelled or changed after 8:00 a.m., unless the order is not executed in the modified ROS opening procedure and the cancellation or change is submitted after the modified ROS opening procedure is concluded (provided that any such

that all other index option orders, and any change to or cancellation of any such order ("non-strategy orders"), must be received prior to 8:25 a.m. These cut-off times have been revised over time based on the Exchange's experience in applying the procedure.<sup>5</sup>

The instant rule change amends the language in the rule text respecting the 8:25 a.m. cut-off time for non-strategy orders by eliminating the specific time and instead providing that the cut-off time may be established by the appropriate Exchange procedure committee on a class-by-class basis,<sup>6</sup> provided the established cut-off time cannot be set earlier than 8:25 a.m. or later than 8:30 a.m. The amended rule text also provides that pronouncements regarding changes to the established cut-

order may be changed or cancelled after 8:00 a.m. and prior to 8:25 a.m. in order to correct a legitimate error, in which case the member submitting the change or cancellation shall prepare and maintain a memorandum setting for the circumstances that resulted in the change or cancellation and shall file a copy of the memorandum with the Exchange no later than the next business day in a form and manner prescribed by the Exchange). CBOE Rule 6.2A.03(v)(B). The cut-off requirements may be suspended by two Floor Officials in the event of unusual market conditions. CBOE Rule 6.2A.03(v).

<sup>5</sup> See Securities Exchange Act Release Nos. 49468 (March 24, 2004), 69 FR 17000 (March 31, 2004) (SR-CBOE2004-11) (order approving the modified ROS opening procedure on a pilot basis which initially established the cut-off time for all orders at 8:25 a.m.); 49798 (June 3, 2004), 69 FR 32644 (June 10, 2004) (SR-CBOE-2004-23) (order permanently approving the modified ROS opening procedure pilot program); 49798A (July 6, 2004), 69 FR 41868 (July 12, 2004) (correction to approval order); 49679 (May 11, 2004), 69 FR 27957 (May 17, 2004) (SR-CBOE-2004-27) (notice of filing and immediately effectiveness which revised the cut-off time for all orders to 8:28 a.m.); and 52367 (August 31, 2005), 70 FR 53401 (September 8, 2005) (SR-CBOE-2004-86) (order approving an amendment to the permanent program that, in relevant part, revised the cut-off time to its current form, which is 8:00 a.m. for strategy orders and 8:25 a.m. for non-strategy orders).

<sup>6</sup> The modified ROS opening procedure is currently in use only 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. However, if the ROS system is implemented in an index option class, the Rule provides for the modified procedure to be used to facilitate the calculation of a settlement price for futures and options contracts on volatility indexes for any index option series with respect to which a volatility index is calculated. Because the modified procedure may be used for different index option classes, the proposed rule change seeks to provide the Exchange with the flexibility to establish the applicable cut-off time on a class-by-class basis.

off time will be announced to the membership via Regulatory Circular that is issued at least one day prior to implementation. Finally, the Exchange is proposing a cross-reference change to the rule text so that the applicable cut-off time for changing or canceling strategy orders to correct legitimate errors corresponds with the cut-off time for entering, changing or canceling non-strategy orders.<sup>7</sup>

According to the Exchange, amending the modified ROS opening procedure in this manner will give the Exchange additional flexibility to establish a cut-off time that, on the one hand, provides market participants with a reasonable amount of time to monitor potential changes in the market that may occur up until the cut-off time and to respond to those changes through the placement of orders, cancellations, or changes to orders previously placed on the electronic book, and, on the other hand, provides LMMs with a reasonable amount of time to review order imbalances on the electronic book and collectively set AutoQuote values that will be used by ROS in calculating the opening prices for the option series. Incorporating this flexibility into the rule text will also provide the Exchange with the means to more efficiently establish and implement modifications to the cut-off time within the defined interval, and will therefore serve to foster fair and orderly markets. For these reasons, the Exchange believes that building this flexibility into the procedure is reasonable and appropriate, and will improve the operation of the modified ROS opening procedure.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and

<sup>7</sup> See CBOE Rule 6.2A.03(v)(B).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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.

#### *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 solicited nor received 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 after the date of the filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

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 implement the proposed rule change for the August 16, 2006 settlement date and to provide advance notice of this change to members prior to that date. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</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.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>12</sup> For purposes 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-2006-61 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-2006-61. 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, 100 F Street, NE., Washington, DC 20549. 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-2006-61 and should be submitted on or before August 31, 2006.

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

**Nancy M. Morris,**

*Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54273; File No. SR-ISE-2006-45]

#### **Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Establishing ISE Stock Exchange as a Facility of International Securities Exchange, Inc.**

August 3, 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 July 31, 2006, the International Securities Exchange, Inc. ("ISE" 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 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**

The ISE proposes to establish ISE Stock Exchange ("ISE Stock") as a facility, as that term is defined in section 3(a)(2) of the Act,<sup>3</sup> of the ISE. ISE states that ISE Stock would administer a fully automated marketplace for the trading of equity securities by Electronic Access Members, or EAMs, of ISE under the rules of ISE. ISE Stock would be operated by ISE Stock Exchange, LLC ("ISE Stock, LLC"), a Delaware limited liability company. In this filing, the Exchange is submitting to the Commission: the Certificate of Formation (Exhibit 5(a)); the proposed Second Amended and Restated Limited Liability Company Agreement of ISE Stock ("LLC Agreement") (Exhibit 5(b)); a Description of Services under the Management Agreement Exhibit 5(c); Rule Changes of International Securities Exchange (Exhibit 5(d)); Constitutional

<sup>13</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. 78c(a)(2).