

options.<sup>33</sup> The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The CBOE represents that it has adequate surveillance procedures for broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to CBOE Rule 24.2(f). In addition, because CBOE Rule 24.2(f) requires that each component of an index be an "NMS stock," as defined in Rule 600 of Regulation NMS under the Act,<sup>34</sup> each index component must be listed on a registered national securities exchange or Nasdaq. Accordingly, the CBOE will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group ("ISG").<sup>35</sup> CBOE Rule 24.2(f) also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the CBOE and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.<sup>36</sup> The Commission believes that these requirements will help to ensure that the CBOE has the ability to monitor trading in broad-based index options listed pursuant to CBOE Rule 24.2(f) and in the component securities of the underlying indexes.

The Commission believes that the requirements in CBOE Rule 24.2(f) regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, CBOE Rule 24.2(f) requires that the underlying index be "broad-based," as defined in

CBOE Rule 24.1(i)(1).<sup>37</sup> The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in CBOE Rule 24.2(f) that the current index value be widely disseminated at least once every 15 seconds by OPRA, CTA/CQ, NIDS, or by one or more major market data vendors during the time an index option trades on the CBOE should provide transparency with respect to current index values and contribute to the transparency of the market for broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in CBOE Rule 24.2(f) that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.<sup>38</sup>

The Exchange has requested accelerated approval of the proposed rule change. The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially the same as those recently approved for the International Securities Exchange, which were subject to the full public comment period, with no comments received.<sup>39</sup> The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>40</sup> to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-CBOE-2005-

59), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>42</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53260; File No. SR-CBOE-2006-04]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend CBOE Membership Rules Relating to Membership Sale Process

February 9, 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 January 9, 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 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> which renders it effective upon filing with the Commission.<sup>5</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 revise Exchange membership rules related to the membership sale process. The text of the proposed rule change is available on CBOE's Web site, <http://www.cboe.com>, at CBOE's principal office, and at the Commission's Public Reference Room.

<sup>33</sup> See CBOE Rule 24.4(a). Under CBOE Rule 24.5, the exercise limits for index option contracts are equivalent to the position limits prescribed for option contracts with the nearest expiration date in CBOE Rule 24.4 or 24.4A.

<sup>34</sup> 17 CFR 242.600.

<sup>35</sup> The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and the National Association of Securities Dealers, Inc., are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

<sup>36</sup> However, such non-U.S. index components, as "NMS stocks," would be registered under Section 12 of the Act, 15 U.S.C. 78l, and listed and traded on a national securities exchange or Nasdaq, where there is last sale reporting.

<sup>37</sup> See *supra* note 6.

<sup>38</sup> See, e.g., Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a CBOE proposal to establish opening price settlement for S&P 500 Index options).

<sup>39</sup> See Securities Exchange Act Release No. 52578 (October 7, 2005), 70 FR 60590 (October 18, 2005). See also Securities Exchange Act Release No. 52781 (November 16, 2005), 70 FR 70898 (November 23, 2005) (order approving on an accelerated basis generic broad-based index option listing standards for the American Stock Exchange).

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

<sup>41</sup> *Id.*

<sup>42</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)(iii).

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

<sup>5</sup> The CBOE provided the Commission with written notice of its intent to file the proposed rule change on December 7, 2005. CBOE asked the Commission to waive the 30-day operative delay. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(1), 17 CFR 240.19b-4(f)(6)(iii).

## 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 the most significant parts 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 is revising CBOE Rules 3.13(b) and 3.14(a) to implement new provisions that would take effect in the event of a "crossed" membership market. Specifically, the proposed rule change would provide that (i) when a bid is submitted that exceeds the best offer posted on the Exchange, a seat sale transaction will occur at the best offer posted on the Exchange, and (ii) when an offer is submitted that is less than the best bid posted on the Exchange, a seat sale transaction will occur at the best bid posted on the Exchange. For example, if the seat market is a \$500,000 bid and a \$525,000 offer, and subsequently a properly submitted bid is received by the CBOE Membership Department for \$530,000, a seat sale transaction will occur at the posted offer of \$525,000. Likewise, if the seat market is a \$500,000 bid and a \$525,000 offer, and thereafter a properly submitted offer is received by the CBOE Membership Department for \$495,000, a seat sale transaction will occur at the posted bid of \$500,000. The Exchange expects this rule would be used rarely since the Exchange provides prompt updates of all properly submitted bids and offers on the Exchange Bulletin Board, the Exchange "seat market" telephone hotline, and the Exchange's Web site. However, it is possible for a bid or offer to be submitted that "crosses" the current membership market. Current CBOE Rules 3.13 and 3.14 only explicitly address what occurs in the event that the bid and offer are matched with the same price. The Exchange believes that this rule filing will improve those rules by explicitly addressing what shall occur when a bid is submitted that exceeds the best offer or an offer is submitted that is less than the best bid.

The proposed rule change also makes clear that bids and offers must be submitted in writing during seat market hours.<sup>6</sup> The purpose of this proposed rule change is to ensure that all bids and offers are received by the Membership Department and processed in an orderly manner. The Exchange will issue an information circular to the Exchange's membership to inform them of the hours that will constitute seat market hours.

The Exchange notes that the proposed rule change was reviewed and endorsed by the Exchange's Membership Committee, which is comprised of a cross-section of Exchange members and representatives of member organizations.

#### 2. Statutory Basis

The Exchange states that the proposed rule change is designed to improve the operation of the CBOE seat market thereby benefiting both the Exchange and its members. Therefore, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is 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

The Exchange 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 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

<sup>6</sup> Seat market hours, as specified on the forms for submitting a bid or offer for membership purchase, are currently 7 a.m. to 4 p.m. Central time.

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

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

Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission,<sup>9</sup> the proposed rule change 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>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>12</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the 30-day operative delay, which would make the rule change operative immediately. The Commission believes that such waiver is consistent with the protection of investors and the public interest, for it will allow the CBOE to clarify CBOE Rules 3.13 and 3.14 to address what shall occur with respect to trading in CBOE memberships in the event of a "crossed" membership market. In addition, the proposed rule change clarifies that bids and offers for CBOE memberships must be submitted in writing during CBOE's seat market hours. For these reasons, the Commission designates that the proposal become operative immediately.<sup>14</sup>

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.<sup>15</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:

<sup>9</sup> As required under Rule 19b-4(f)(6)(iii) under the Act, the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

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

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

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

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

*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-2006-04 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-2006-04. 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 the 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-2006-04 and should be submitted on or before March 9, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53269; File No. SR-NASD-2006-018]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Modify the Routing Sequence for Directed Cross Orders**

February 10, 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 2, 2006, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> which renders it effective upon filing with the Commission. On February 9, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>4</sup> 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**

The proposed rule change is intended to explicitly add INET to the routing sequence for Directed Cross Orders in exchange-listed securities directed to the NYSE and to allow subscribers to determine whether they wish to route to market centers in addition to Brut, Nasdaq, and INET prior to the NYSE when the NYSE is the final destination of the order.<sup>5</sup> The text of the proposed rule change is below. Proposed new language is in *italics*; deletions are in [brackets].<sup>6</sup>

\* \* \* \* \*

<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).

<sup>4</sup> Amendment No. 1 made clarifying changes to the rule text and Section I of this notice.

<sup>5</sup> See Amendment No. 1.

<sup>6</sup> Changes are marked to the rule text that appears in the electronic NASD Manual found at [www.nasd.com](http://www.nasd.com). Prior to the date when The NASDAQ Stock Market LLC ("NASDAQ LLC") commences operations, NASDAQ LLC will file a conforming change to the rules of NASDAQ LLC approved in Securities Exchange Act Release No. 53128 (January 13, 2006).

## 4903. Order Entry Parameters

(a) To Brut Orders—No Change

(b) Brut Cross Orders—

(1) No Change

(A)–(C) No Change

(D) A Brut Cross Order may also be designated as a Directed Cross Order. A Directed Cross Order is an order that is entered *into* the System during market hours and is executable against marketable contra-side orders in the System. The order also is eligible for routing to other market centers. After being processed in the Brut System and exhausting available liquidity in the Brut System, the order is automatically routed by Brut to the specific market center selected by the entering party for potential execution. Any portion of the Directed Cross Order that remains unfilled after being routed to the selected market center will be returned to the entering party. For Directed Cross Orders in exchange-listed securities directed to the New York Stock Exchange if, after being processed in the Brut System and exhausting available liquidity in the Brut System, such orders will be automatically routed to the Nasdaq Market Center *and INET* for potential execution and thereafter, *if instructed by the entering party*, to other market centers that provide automated electronic executions before being sent to the New York Stock Exchange. Directed Cross Orders in exchange-listed securities directed to the New York Stock Exchange shall remain at the *New York Stock Exchange*<sup>7</sup> until executed or cancelled by the entering party.

(1)(E)–(F) No Change

(c)–(f) 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, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>7</sup> See Amendment No. 1.

<sup>16</sup> 17 CFR 200.30-3(a)(12).