

*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 Exchange 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-CBOE-2005-111 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-2005-111. 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 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-2005-111 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6-20621 Filed 12-5-06; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54831; File No. SR-CBOE-2006-100]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Appointment of CBSX DPMs**

November 29, 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 November 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 substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>18</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).

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

CBOE proposes to adopt rules to appoint CBOE Stock Exchange DPMs. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Exchange'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 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 aspects of such statements.

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

1. Purpose

In September 2006, the Commission approved Exchange Chapters 50-55 governing the trading of non-option securities on the Exchange.<sup>5</sup> The Exchange, via a separate rule filing, will be proposing to further modify Chapters 50-55 in connection with the establishment of the CBOE Stock Exchange ("CBSX"). CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. CBSX is a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange separately has submitted a rule filing governing the allocation of securities to CBSX DPMs,<sup>6</sup> and will shortly submit a rule filing proposing to establish CBSX as a facility of the Exchange.

The purpose of this filing is to adopt rules that will allow for the appointment of CBSX DPMs. Any such appointments would be contingent on Commission approval of rules governing CBSX DPM trading procedures and obligations. The Exchange hopes to

<sup>5</sup> See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) ("STOC Approval Order") (approving SR-CBOE-2004-21).

<sup>6</sup> See Securities Exchange Act Release No. 54792 (November 20, 2006), 71 FR 68659 (November 27, 2006) (notice of filing of SR-CBOE-2006-96).

launch CBSX on February 5, 2007. Establishing rules to allow for appointment of CBSX DPMs ahead of the anticipated launch of CBSX will allow the CBSX DPM firms to immediately market CBSX as a destination marketplace.

The Exchange expects CBSX will appoint a limited number of CBSX DPMs. In accordance with the proposed revisions to Rule 53.53, CBSX will select the firms that would be designated as CBSX DPMs. Factors to be considered in making such a selection are essentially identical to the factors set forth in the current rule applicable to STOC DPMs. Such factors may include, but are not limited to, any one or more of the following: (1) Adequacy of capital; (2) operational capacity; (3) trading experience and observance of generally accepted standards of conduct by the applicant; (4) number and experience of support personnel of the applicant; (5) regulatory history of adherence to Exchange rules by the applicant; (6) willingness and ability of the applicant to promote CBSX as a marketplace; (7) performance evaluations conducted pursuant to Exchange/CBSX rules; and (8) in the event that one or more shareholders, directors, officers, partners, managers, members, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, or other principal in another CBSX DPM, adherence by such CBSX DPM to the requirements set forth in CBSX rules regarding CBSX DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the CBSX DPM.

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act 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.<sup>7</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>8</sup> requirements that the rules of an exchange be designed 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 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 would 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup> Because the foregoing proposed rule change (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.<sup>11</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to waive the operative delay if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the operative delay to permit the proposed rule change to become effective prior to the 30th day after filing.

The Commission has determined to waive the 30-day delay and allow the proposed rule change to become operative immediately.<sup>12</sup> The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> Rule 19b-4(f)(6)(iii) also requires the Exchange to give written notice to the Commission of its intent to file the proposed rule change at least five business days prior to filing. The Exchange complied with this requirement.

<sup>12</sup> For purposes only of waiving the operative delay of this proposal, 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).

public interest. The proposed rule is substantially similar to the previous version of the rule approved for the Exchange's STOC system.<sup>13</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.

## 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 No. SR-CBOE-2006-100 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-2006-100. 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 Commissions 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 office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying

<sup>13</sup> See STOC Approval Order, *supra* note 5.

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

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

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2006-100 and should be submitted on or before December 27, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54821; File No. SR-FICC-2006-13]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Federal Reserve's National Settlement System

November 28, 2006.

#### I. Introduction

On July 11, 2006, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") and on August 6, 2006 amended proposed rule change SR-FICC-2006-13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the *Federal Register* on October 26, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

The proposed rule change amends the rules of FICC's Mortgage-Backed Securities Division ("MBS") to require clearing participants to satisfy their cash settlement amounts ultimately through the Federal Reserve's National Settlement Service ("NSS").<sup>3</sup> The MBS

cash settlement process is set forth in Rule 8 of Article II of the MBS's rules. On a daily basis, FICC computes a cash balance, which is either a debit amount or a credit amount, per participant account and nets the cash balances across aggregated accounts. Unlike at GSD where cash settlement occurs on a daily basis, at MBS there are specific dates on which debits and credits are required to be made. Settlement dates at MBS are based upon the settlement dates of the different classes of MBS-eligible securities. There is a time deadline for the payment of debits to FICC as announced by the MBS from time to time. All payments of cash settlement amounts by a MBS clearing participant to FICC and all collections of cash settlement amounts by a MBS clearing participant from FICC are done through depository institutions that are designated by MBS participants and by FICC to act on their behalf with regard to such payments and collections. All payments are made by fund wires from one depository institution to the other.

Under the proposed rule change, the required payment mechanism for the satisfaction of cash settlement amounts will be the NSS. FICC will appoint DTC as its settlement agent for purposes of interfacing with the NSS.<sup>4</sup> In order to satisfy its cash settlement obligations through the NSS process, each MBS clearing participant will appoint a "cash settling bank." An MBS clearing participant that qualifies may act as its own cash settling bank.

The MBS will establish a limited membership category for cash settling banks. Banks or trust companies that are DTC settling banks (as defined in DTC's rules and procedures), GSD funds-only settling bank members (as defined in the GSD's rules), or clearing participants with direct access to a Federal Reserve Bank and NSS will be eligible to become MBS cash settling bank participants by executing the requisite membership agreements for this purpose. Banks or trust companies that do not fall into these categories and that desire to become MBS cash settling bank participants will need to apply to FICC. Such banks or trust companies will also need to have direct access to a Federal Reserve Bank and the NSS as well as satisfy the financial responsibility standards and operational capability imposed by FICC from time to time. Initially, these applicants will be

debits and credits of its cash settlement process through the NSS, as is the case for the GSD.

<sup>4</sup> DTC currently performs this service for the GSD and NSCC.

required to meet and to maintain a Tier 1 capital ratio of 6 percent.<sup>5</sup>

In addition to the membership agreement, each MBS clearing participant and the cash settling bank it has selected will be required to execute an agreement whereby the participant will appoint the bank to act on its behalf for cash settlement purposes. The bank will also be required to execute any agreements that may be required by the Federal Reserve Bank for participation in the NSS for FICC's cash settlement process. The cash settling banks will be required to follow the procedures for cash settlement payment processing set forth in the proposed rule change. This includes, for example, providing FICC or its settlement agent with the requisite acknowledgement of the bank's intention to settle the cash settlement amounts of the MBS clearing participants it represents on a timely basis and to participate in the NSS process. Cash settling banks will have the right to refuse to settle for a particular MBS clearing participant and will also be able to opt out of NSS for one business day if they are experiencing extenuating circumstances.<sup>6</sup> In such a situation, the clearing participant would be responsible for ensuring that its cash settlement debit was wired to the depository institution designated by FICC to receive such payments by the payment deadline. The proposed rule change makes clear that the obligation of a MBS clearing participant to fulfill its cash settlement would remain at all times with the MBS clearing participant.

As FICC's settlement agent, DTC will submit instructions to have the Federal Reserve Bank accounts of the cash settlement banks charged for the debit amounts and credited for the credit amounts. Utilization of NSS will eliminate the need for the initiation of wire transfers in satisfaction of MBS settlement amounts, and FICC believes that it will therefore reduce the risk that the MBS clearing participant that designated the bank would incur a late payment fine due to delay in wiring funds. The proposed rule change should also reduce operational burden for the operations staff of FICC and of the MBS clearing participants.

<sup>5</sup> This is the same financial requirement for GSD funds-only settling banks that fall into a similar category. As with the GSD, FICC would retain the authority and discretion to change this financial criterion by providing advanced notice to the settling banks and the netting members through an important notice.

<sup>6</sup> These procedures are consistent with the GSD, NSCC, and DTC procedures in this respect.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 54622, (October 18, 2006), 71 FR 62632.

<sup>3</sup> For a description of NSS, refer to <http://www.fbservices.org/Wholesale/natsettle.html>.

The Commission previously approved a proposed rule change filed by FICC to make a similar amendment to the rules of its Government Securities Division ("GSD"). Securities Exchange Act Release No. 52853 (November 29, 2005), 70 FR 72682 (December 6, 2005) [File No. SR-FICC-2005-14]. FICC's affiliates, The Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") also use NSS in their funds settlement processes. However, DTC and NSCC do not currently use NSS for the payment of credit. MBS will process both the