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,[33] to approve the proposed rule change, as amended, on an accelerated basis.

BSE also proposes to amend its rules to provide for the listing of the NDX and MNX (one tenth value of the NDX), including long term index options based upon the full value of the Nasdaq 100 Index (''NDX Leaps'') and one-tenth value (''MNX Leaps''). These indexes are cash settled, European style options based on the full and one-tenth value of the Nasdaq 100, a stock calculated and maintained by the Nasdaq stock market. The BSE is also amending its rules to provide for the listing of the RUT and RUT LEAPS.

The Commission notes that it previously approved the listing and trading of options on the NDX and MNX on other exchanges.[34] The Commission also notes that it has previously approved the listing and trading of the RUT on other exchanges.[35] The Commission is presently not aware of any regulatory issues that should cause it to revisit that earlier finding or preclude the trading of such options on the BSE.

In approving the proposal, the Commission has specifically relied on the following representations made by the BSE:

1. The BSE will notify the Commission's Division of Market Regulation immediately if Nasdaq ceases to maintain or calculate the Nasdaq 100 Index (or one-tenth Nasdaq 100 value), or if these Nasdaq 100 Index values are not disseminated every 15 seconds by a widely available source during the time the index options trade on BOX. The BSE will notify the Commission's Division of Market Regulation immediately if the Frank Russell Company ceases to maintain or calculate the Russell 2000 Index, or if the Russell 2000 Index value is not disseminated every 15 seconds by a widely available source during the time the index options trade on BOX. If such Indexes cease to be maintained or calculated, or if the Index values are not disseminated every 15 seconds by a widely available source, the BSE will not list any additional series for trading and will limit all transactions in such option to closing transactions for the purpose of maintaining a fair and orderly market and protecting investors.

2. The BSE has an adequate surveillance program in place for index options traded on the Nasdaq 100 Index and the Russell 2000 Index.

3. The additional quote and message traffic that will be generated by listing and trading the NDX, MNX, NDX LEAPS, MNX LEAPS, the RUT and the RUT LEAPS will not exceed the BSE's current message capacity allocated by the Independent System Capacity Advisor.

The Commission further notes that in approving this proposal, it relied on the BSE's discussion of how Nasdaq and the Frank Russell Company currently calculates the respective indexes. If the manner in which Nasdaq or the Frank Russell Company calculates the indexes were to change substantially, the approval might no longer be consistent with the Act and might no longer be effective.

With respect to the NDX, the MNX, and the RUT, the Commission believes that the position limits for these index options and the hedge exemption for such position limits are reasonable and consistent with the Act. The Commission previously has found identical provisions for NDX and MNX options to be consistent with the Act.[36]

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of the notice thereof in the **Federal Register**. Because options on the NDX, MNX, and the RUT already trade on other exchanges, accelerating approval of the BSE's proposal should benefit investors by creating, without due delay, additional competition in the market for these options.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–BSE–2005–11), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14878 Filed 9–7–06; 8:45 am]

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[33] 15 U.S.C. 78s(b)(2).

[34] Options on the MNX and NDX are currently listed and trading on the Amex, the CBOE and the ISE. *See* Securities Exchange Act Release Nos. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (SR–Amex–2005–038); 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993) (SR–CBOE–93–42); and 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (SR–ISE–2005–01).

[35] *See* Securities Exchange Act Release Nos. 51619 (April 27, 2005), 70 FR 22947 (May 3, 2005) (SR–ISE–2005–09) and 31382 (October 30, 1992), 57 FR 52802 (November 5, 1992) (SR–CBOE–92–02).

[36] *See e.g.*, Securities Exchange Act Release No. 44156 (April 6, 2001), 66 FR 19261 (April 13, 2001) (SR–CBOE–00–14) (order approving a proposed rule change by CBOE to increase position limits and exercise limits for Nasdaq 100 Index options, expand the Index hedge exemption, and eliminate the near-term position limits).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54395; File No. SR–CBOE–2006–58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto Regarding DPM and e-DPM Membership Ownership Requirements and the Ultimate Matching Algorithm

August 31, 2006.

I. Introduction

On June 14, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to change membership ownership requirements. The CBOE filed Amendment No. 1 to the proposed rule change on July 18, 2006,[3] which proposed to change certain aspects of the Ultimate Matching Algorithm (''UMA''). The proposed rule change was published for comment in the **Federal Register** on August 1, 2006.[4] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

II. Description of the Proposal

CBOE Rules 8.85 and 8.92 require that a DPM organization and e-DPM organization, respectively, own a certain number of Exchange memberships. Specifically, with respect to DPM organizations, CBOE Rule 8.85 requires that each DPM organization own one Exchange membership for each trading location at which the organization serves as a DPM. CBOE Rule 8.92 requires that until July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54216 (July 26, 2006), 71 FR 35471.

lease one Exchange membership for every 20 products allocated to the e-DPM.[5]

CBOE proposes to modify these membership ownership requirements in connection with the Exchange's determination to apply a specific ''appointment cost'' to each options class allocated to a DPM organization or an e-DPM organization. With respect to DPM organizations, CBOE Rule 8.85, as proposed to be amended, would require that each DPM organization own one Exchange membership, and own or lease such additional Exchange memberships as may be necessary based on the aggregate ''appointment cost'' for the classes allocated to the DPM organization. Each membership owned or leased by the DPM organization would have an appointment credit of 1.0. The appointment costs for the Hybrid 2.0 Option Classes and the Non-Hybrid Classes allocated to the DPM organization would be the same as the appointment costs set forth in CBOE Rule 8.3. The appointment cost for Hybrid Option Classes would be .01 per class.

For example, if the DPM organization has been allocated such number of options classes that its aggregate appointment cost is 1.6, the DPM organization would be required to own at least one Exchange membership, and own or lease one additional Exchange membership. As it currently does for purposes of Remote Market Maker (''RMMs'') and Market-Maker appointments, the Exchange would rebalance the ''tiers'' set forth in proposed CBOE Rule 8.3(c)(i), excluding the ''AA'' and ''A+'' tiers, once each calendar quarter, which could result in additions or deletions to their composition. When a class changes ''tiers'' it would be assigned the ''appointment cost'' of that tier. Upon rebalancing, each DPM organization would be required to own or lease the appropriate number of Exchange memberships reflecting the revised ''appointment costs'' of the classes that have been allocated to it. CBOE Rule 8.85 also would provide that a DPM organization is required to own or lease the appropriate number of Exchange memberships at the time a new options class allocated to it pursuant to CBOE Rule 8.95 begins trading.

Additionally, because member organizations may be approved and function in a number of capacities at CBOE, including as a DPM organization, e-DPM organization, and as an RMM, CBOE proposes to allow the DPM organization to use any excess membership capacity in its capacity as an RMM or e-DPM. Specifically, in the event the member organization approved as the DPM organization is also approved to act as an RMM and/or e-DPM, and has excess membership capacity above the aggregate appointment cost for the classes allocated to it as the DPM, the member organization would be permitted to utilize the excess membership capacity to quote electronically in an appropriate number of Hybrid 2.0 Classes in the capacity of an RMM and not trade in open outcry, or to quote electronically in the Hybrid 2.0 Classes in which it is appointed an e-DPM. For example, if the DPM organization has been allocated such number of option classes that its aggregate appointment cost is 1.6, the member organization could request an appointment as an RMM in any combination of Hybrid 2.0 Classes whose aggregate ''appointment cost'' does not exceed .40. The member organization would not function as a DPM in any of these additional classes. In the event the member organization utilizes any excess membership capacity to quote electronically in some additional Hybrid 2.0 Classes as an RMM or e-DPM, it would be required to comply with the provisions of CBOE Rules 8.4(c) and Rule 8.93(vii), respectively. CBOE is also proposing similar changes to CBOE Rule 8.92, to apply to e-DPM organizations.

Finally, CBOE proposes to amend the provisions of CBOE Rules 6.45A for DPMs and 6.45B for DPMs and LMMs, which provide that a DPM or LMM utilizing more than one membership in the trading crowd where a class is traded would count as two market participants for purposes of Component A of UMA. Under the proposal, a DPM (or LMM) would be required to exclusively use the portion of a membership(s) representing one-half the total appointment cost of the classes allocated to the DPM (or, in which the LMM has been appointed) at a particular trading station in order to count as two market participants, and not for any other purpose.

For example, if a DPM's appointment cost is 2.2 for the classes allocated to it at a particular trading station, pursuant to proposed amendments to CBOE Rule 8.85(e), the DPM would be required to own one membership and own or lease two additional memberships. In addition, the DPM would be permitted to choose to count as two market participants for purposes of Component A of the Algorithm if the DPM exclusively utilizes 1.1 (one-half of 2.2) of the membership(s) it owns or leases in order to count as two market participants, and not utilize the 1.1 of the memberships for any other purpose. In this example, to comply with the membership ownership requirements and to count as two market participants for purposes of Component A, the DPM would be required to own one membership, and own or lease three additional memberships to satisfy its total cost of 3.3 (2.2 + 1.1).

In amending CBOE Rules 6.45A and 6.45B, CBOE proposes to make it optional for a DPM (or LMM) to choose whether to exclusively use the portion of its membership(s) representing one-half the total appointment cost of the classes allocated to the DPM at a particular trading station in order to count as two market participants, or, instead, to use the excess membership capacity to quote electronically in Hybrid 2.0 Classes.

III. Discussion

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 and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder.[7] The Commission specifically finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission believes that the proposal to apply the appointment cost structure that currently governs RMMs and Market Makers to DPMs and e-DPMs is reasonable. The Commission notes that there will continue to be a DPM allocated to each equity options class. Moreover, permitting DPMs and e-DPMs to use any excess membership capacity to trade options classes as RMM or DPM/e-DPM should enable them to more efficiently use their seats. Finally, the Commission believes that in light of the proposed changes to the appointment cost structure, the proposed changes to UMA, and the circumstances under which a DPM or

[5] After July 12, 2007, each e-DPM organization is required to own one Exchange membership for every 30 products allocated to the e-DPM.

[6] 15 U.S.C. 78f.

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

[8] 15 U.S.C. 78f(b)(5).

LMM may count as two market participants, are consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–2006–58), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–14855 Filed 9–7–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54385; File No. SR–NYSEArca–2006–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Exchange's Standard Position and Exercise Limit Pilot Program

August 30, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2006, the NYSE Arca, Inc. (''NYSE Arca'' 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 the Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it 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

NYSE Arca proposes to amend its rules to extend the time period in NYSE Arca Rule 6.8(a), which covers the position limit and exercise limits pilot program for equity option contracts and options on the Nasdaq-100 Tracking Stock (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the NYSE Arca's Web site (*http://www.nysearca.com*), at NYSE Arca'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, NYSE Arca 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. NYSE Arca 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 purpose of this proposal is to extend the period for the Exchange's Pilot Program relating to standard position and exercise limits for equity option contracts and for options on QQQQs until March 1, 2007.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ in accordance with the following levels:

Current equity option contract limit[6]	Pilot Program equity option contract limit
13,500	25,000
22,500	50,000
31,500	75,000
60,000	200,000
75,000	250,000
Current QQQQ Option Contract Limit	**Pilot Program QQQQ Option Contract Limit**
300,000	900,000

The Exchange believes that extending the Pilot Program until March 1, 2007 is warranted due to the positive feedback from OTP Holders and for the reasons cited in the original rule filing that proposed the Pilot Program.[7] The Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program until March 1, 2007.

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.[8] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act[9] that requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for 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

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.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program, which was effective upon filing on February 25, 2005 and subsequently extended twice, is set to expire on September 1, 2006. *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2003–55, as amended) (''Pilot Program Notice''). *See also* Securities Exchange Act Release Nos. 53350 (February 22, 2006), 71 FR 10582 (March 1, 2006) (notice of filing and immediate effectiveness of File No. SR–PCX–2006–08); and 52263 (August 15, 2005), 70 FR 49003 (August 22, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2005–95).

[6] Except when the Pilot Program is in effect.

[7] See Pilot Program Notice, *supra* note 5.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).