

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The BSE does not believe that the proposed rule change will impose any burden on competition 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 BSE has neither solicited nor received comments on 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 self-regulatory organization 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, as amended, 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-BSE-2006-55 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-BSE-2006-55. 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 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 information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2006-55 and should be submitted on or before January 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E6-22661 Filed 1-5-07; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-55025; File No. SR-CBOE-2006-96]**

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding Allocation of Stocks to CBSX DPMs**

December 29, 2006.

#### **I. Introduction**

On November 20, 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" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal relating to the allocation of stocks for the CBOE Stock Exchange ("CBSX"). The proposal was published for comment in the **Federal Register** on November 27, 2006.<sup>3</sup> The Commission received no comments on the proposal.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 54792 (November 20, 2006), 71 FR 68659.

This order approves the proposed rule change.

### **II. Description of the Proposal**

The purpose of this filing is to adopt rules that would allow for the allocation of stocks to CBSX DPMs.

The Exchange has represented that it intends to submit a proposal to modify Chapters 50-55 of its rules, which govern the trading of non-option securities on the Exchange,<sup>4</sup> in connection with the establishment of CBSX (the "CBSX Trading Rules Proposal"). In addition, the Exchange has proposed rules to establish CBSX as a facility of the Exchange (the "CBSX Facility Proposal").<sup>5</sup> If the Commission approves these proposals, CBSX would be a facility of the Exchange and would serve as the Exchange's vehicle for trading non-option securities. In addition, the Exchange has filed for immediate effectiveness a proposal to appoint CBSX DPMs (the "CBSX DPM Appointment Proposal").<sup>6</sup> Any appointments under the CBSX DPM Appointment Proposal and any allocations made to such DPMs under this proposal would be contingent on Commission approval of the CBSX Trading Rules Proposal—in particular, those rules governing DPM trading procedures and obligations on CBSX—and the CBSX Facility Proposal.

Initial CBSX DPM stock allocations would be handled pursuant to proposed CBOE Rule 53.54. For the initial launch, and potentially in instances where CBSX seeks to commence trading a number of new securities at one time, CBSX would conduct a "draft" for eligible CBSX DPMs to select available stocks. The draft order would be determined randomly. In connection with the initial launch, the draft would apply to the first 500 securities selected.<sup>7</sup> The remaining securities slated for trading on CBSX would be allocated randomly by CBSX to the CBSX DPMs equally.

CBSX would utilize proposed CBOE Rule 53.54 for future stock allocations as well. In those cases, a draft could be

<sup>4</sup> See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (approving SR-CBOE-2004-21). See also Securities Exchange Act Release No. 54526 (September 27, 2006), 71 FR 58646 (October 4, 2006) (approving SR-CBOE-2006-70).

<sup>5</sup> See SR-CBOE-2006-110 (filed December 26, 2006).

<sup>6</sup> See Securities Exchange Act Release No. 54831 (November 29, 2006), 71 FR 70814 (December 6, 2006) (notice of filing and immediate effectiveness of SR-CBOE-2006-100).

<sup>7</sup> Telephone conversation between Angelo Evangelou, Assistant General Counsel, CBOE, and Nathan Saunders, Special Counsel, Division of Market Regulation, Commission, November 20, 2006.

employed or CBSX could allocate the stocks based on any one or more of the following: Performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, expressed preferences of issuers, and the best interest of CBSX.

The Exchange is seeking to launch trading on CBSX on February 5, 2007. The Exchange has stated that allocating stocks to CBSX DPMs ahead of the launch date would allow it and the CBSX DPMs to be prepared to commence trading on CBSX immediately if and when the Commission approves the CBSX Trading Rules Proposal and the CBSX Facility Proposal.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,<sup>9</sup> in that it has been designed to promote just and equitable principles of trade, to protect investors and the public interest, and is not designed to permit unfair discrimination between CBSX DPMs.

The Commission believes that the CBOE's proposal to employ a randomly-set draft rotation for allocating non-option securities is reasonably designed to promote just and equitable principles of trade and to avoid unfair discrimination. Moreover, the Commission believes that the additional proposed criteria for allocating non-option securities to CBSX DPMs when a draft is not appropriate are reasonable and consistent with the Act. These additional criteria are similar to the options allocation criteria set forth in CBOE Rule 8.95(a) and (b), which the Commission has previously approved.<sup>10</sup>

<sup>8</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>10</sup> See Securities Exchange Act Release No. 39879 (April 16, 1998), 63 FR 20227 (April 23, 1998) (order approving SR-CBOE-98-03). Several of the factors that CBSX may consider in the allocation process are adopted from CBOE Rule 8.95: performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, and expressed preferences of issuers. The Commission believes that these criteria should be used by CBOE solely for the purpose of allocating non-option securities to CBSX DPMs. The Commission emphasizes that CBOE should not use the proposed criteria—especially the “market performance commitments” and “best interest of CBSX” criteria—to directly or indirectly attempt to

The Commission notes that all allocations of securities to CBSX DPMs under this proposal are contingent on Commission approval of the CBSX Trading Rules Proposal and the CBSX Facility Proposal. Moreover, in approving CBOE's proposal to establish rules for allocating stocks on CBSX, the Commission is not prejudging CBOE's other pending proposals relating to CBSX. If the Commission were not to approve the CBSX Trading Rules Proposal and the CBSX Facility Proposal, any allocations made pursuant to this proposal would be meaningless. Approving the CBSX allocation rules does, however, afford CBOE an opportunity to prepare for the possibility that the Commission will approve the CBSX Trading Rules Proposal and the CBSX Facility Proposal, and would reduce the time between any such approvals and the commencement of trading on CBSX.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-CBOE-2006-96) is approved.

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

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. E7-15 Filed 1-5-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54979; File No. SR-NFA-2006-05]

### Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Interpretive Notice Regarding Automated Order-Routing Systems

December 20, 2006.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on December 4, 2006, National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule

restrict a market participant that is appointed as a CBSX DPM from performing market-making or specialist activities on other markets.

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

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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

change described in Items I, II, and III below, which Items have been substantially prepared by NFA. On December 14, 2006, NFA submitted an amendment to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”).

NFA, on November 30, 2006, submitted the proposed rule change to the CFTC for approval and invoked the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”).<sup>4</sup> By letter dated December 12, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>5</sup>

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act<sup>6</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (“Members”) who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.<sup>7</sup> NFA's interpretive notice entitled “Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems” (“Interpretive Notice”) applies to all futures commission merchant and introducing broker Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).<sup>8</sup>

In 2002, NFA adopted the Interpretive Notice, which referred Members to an AICPA/CICA WebTrust<sup>SM/™</sup> Self-Assessment Questionnaire for Availability and stated that they could download the questionnaire from NFA's Web site. The questionnaire is not available on NFA's Web site. Therefore, the AORS Interpretive Notice is amended to delete the paragraph referencing the WebTrust<sup>SM/™</sup> Self-Assessment Questionnaire for Availability.

<sup>3</sup> See facsimile from Thomas W. Sexton, General Counsel, NFA, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated December 14, 2006 (“Amendment No. 1”). In Amendment No. 1, NFA replaced Exhibit 4, which was incomplete in the original filing.

<sup>4</sup> 7 U.S.C. 21(j).

<sup>5</sup> See Letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, General Counsel, NFA (December 12, 2006) (“Letter”).

<sup>6</sup> 15 U.S.C. 78o-3(k).

<sup>7</sup> 15 U.S.C. 78o(b)(11).

<sup>8</sup> *Id.*