

nonutility companies by, among other things, facilitating the making of proposals in respect of investments in nonutility companies, and helping to reduce the cost of necessary bonds, sureties, and other credit support. The terms and conditions of Guarantees would continue to be established at arm's length, based upon market conditions.

Any Guarantees provided by Entergy to Exempt Projects would be subject to the limitation on aggregate investment in EWGs and FUCOs set forth in Rule 53(a), as modified by the Commission's authorization in File No. 70-9049. Specifically, in the absence of further authorization, Entergy would only issue Guarantees to Exempt Projects to the extent that the amount of any the Guarantee, when added to Entergy's aggregate investment in Exempt Projects, would not exceed 100% of Entergy's consolidated retained earnings. Any Guarantees provided to Energy-related Companies would be subject to the limitation on "aggregate investment" in energy-related companies set forth in Rule 58.

Entergy and any Nonutility Company issuing Guarantees pursuant to the authorization requested in this filing may elect to charge each Nonutility Company a fee for any Guarantee provided on its behalf, provided that the fee does not exceed the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or letter of credit fees) for the period of time the Guarantee remains outstanding. Guarantees may, in some cases, be provided to support obligations of Nonutility Companies that are not capable of exact quantification or are subject to varying quantification. In that event, Entergy or the Nonutility Company issuing the Guarantee would determine the exposure under the Guarantee for purposes of measuring compliance with the Aggregate Authorization limit by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. Any estimates would be made in accordance with generally accepted accounting principles, and would be reevaluated periodically.

#### Other Authorization Parameters

##### 1. Common Equity Ratio

Entergy represents that it will at all times during the Authorization Period maintain common equity (as reflected in the most recent Quarterly Report on Form 10-Q or Annual Report on Form 10-K filed with the Commission adjusted to reflect changes in

capitalization since the applicable balance sheet date) of at least 30% of its consolidated capitalization. The term "consolidated capitalization" is defined to include, where applicable, all common stock equity (comprised of common stock, additional paid in capital, retained earnings, accumulated other comprehensive income or loss, and/or treasury stock), minority interests, preferred stock, preferred securities, equity linked securities, long-term debt, short-term debt and current maturities.

##### 2. Investment Grade Rating

With respect to the securities issuance authority proposed in this Declaration: (a) Within four business days after the occurrence of a Ratings Event,<sup>5</sup> Entergy would notify the Commission of its occurrence (by means of a letter, via fax, e-mail or overnight mail to the Office of Public Utility Regulation); and (b) within 30 days after the occurrence of a Ratings Event, Entergy would submit a post-effective amendment to this Declaration explaining the material facts and circumstances relating to that Ratings Event (including the basis on which, taking into account the interests of investors, consumers and the public as well as other applicable criteria under the Act, it remains appropriate for Entergy and/or the other Applicants to issue such securities, so long as Applicants continues to comply with the other applicable terms and conditions specified in the Commission's order authorizing the transactions requested in this Declaration). Furthermore, no securities authorized as a result of this Declaration will be issued any Applicant following the 60th day after a Ratings Event if the downgraded rating(s) has or have not been upgraded to investment grade. Applicants request that the Commission reserve jurisdiction through the remainder of the Authorization Period over the issuance of any such security that Applicants are prohibited from issuing as a result of the occurrence of a Ratings Event if no revised rating reflecting an investment grade rating has been issued.

<sup>5</sup> A "Ratings Event" will occur if, during the Authorization Period, (i) an security issued by Entergy upon original issuance, if rated, is rated below investment grade; or (ii) any outstanding security of Entergy, that is rated is downgraded below investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3-1 under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-4687 Filed 8-25-05; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52312; File No. SR-Amex-2005-063]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options

August 22, 2005.

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 June 9, 2005, the American Stock Exchange LLC ("Amex" 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 Amex. 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 eliminate position and exercise limits for options on the Nasdaq-100 Index ("NDX"). The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the Amex's Office of the Secretary, 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 Amex 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 Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

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

1. Purpose

The Exchange proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index.<sup>3</sup> In August 2002, the Commission granted permanent approval to an Amex pilot program that eliminated position and exercise limits for options on the Major Market Index (the "XMI") and the Institutional Index (the "XII").<sup>4</sup> For similar reasons, the Exchange believes that position and exercise limits for NDX options should equally be eliminated.

In the XMI/XII Permanent Approval Order, the Commission cited several reasons for allowing the Exchange to eliminate position and exercise limits for XMI and XII options. First, the Commission expressed its belief that the enormous capitalization of these indexes and the deep liquid markets for the securities underlying each of these indexes significantly reduced concerns of market manipulation or disruption in the underlying markets. The Amex believes that the NDX is similarly capitalized. As of June 1, 2005, the market capitalization of XMI and XII was \$2.20 trillion and \$6.65 trillion, respectively, while NDX had a market capitalization of \$1.86 trillion. In addition, the average daily trading volume ("ADTV"), in aggregate, for the component securities of the XMI, XII, and NDX from January 1, 2005 through May 31, 2005 was 113.9, 524.8, and 425.8 million shares, respectively. During the same time period, the ADTV for an average single component security of the XMI, XII, and NDX was 5.87, 7.014, and 4.25 million shares, respectively. The ADTV for options on

the XMI<sup>5</sup> and NDX was 948 and 45,820 contracts, respectively.

Second, the Commission noted in the XMI/XII Permanent Approval Order that the financial requirements imposed by both the Exchange and the Commission help to address concerns that an Exchange member or its customer(s) may try to maintain an inordinately large unhedged position in options on these indexes. These financial requirements equally apply to NDX options. Under Amex rules, the Exchange also has the authority to impose additional margin upon accounts maintaining underhedged positions, and is further able to monitor accounts to determine when such action is warranted. As noted in the Exchange's rules, the clearing firm carrying such an account would be subject to capital charges under Rule 15c3-1 under the Act<sup>6</sup> to the extent of any resulting margin deficiency.<sup>7</sup>

The Amex believes that the Commission in the XMI/XII Permanent Approval Order relied substantially on the Exchange's ability to provide surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits on XMI and XII options. The Exchange represents that it monitors the trading in NDX options in the same manner as trading in XMI options and that the current Amex surveillance procedures are adequate to continue monitoring NDX options. In addition, the Exchange proposes to impose a reporting requirement on Amex members (other than Amex specialists and registered options traders) and member organizations that trade NDX options. This reporting requirement, which is currently imposed on members and member organizations that trade XMI options, would require each member or member organization that maintains in excess of 100,000 NDX option contracts on the same side of the market, for its own accounts or for the account of customer, to report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in a manner and form required by the Exchange.<sup>8</sup> The Exchange may also specify other

reporting requirements, as well as the limit at which the reporting requirement may be triggered.<sup>9</sup>

For consistency, the Exchange also proposes to amend its rules relating to the trading of FLEX broad-based index options to reflect that there shall be no position or exercise limits on NDX options and to adopt the 100,000 contract reporting requirement for NDX FLEX options.<sup>10</sup> Thus, the provisions in Amex Rule 906G(b) applicable to XMI FLEX options shall also apply to NDX FLEX options.<sup>11</sup>

The Exchange believes that eliminating position and exercise limits for NDX options and FLEX options is consistent with Amex rules relating to similar broad-based indexes and also allows Amex members and their customers greater hedging and investment opportunities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>3</sup> As described by Amex, the Nasdaq-100 Index is a modified capitalization-weighted index of the 100 largest and most active non-financial domestic and international issues listed on the Nasdaq Stock Market, Inc. A single component security is prohibited from representing more than 24% of the weight of the Index. The Index was developed with a base value of 125 as of February 1, 1985. See Securities Act Exchange Release No. 51884 (June 20, 2005), 70 FR 36973 (June 27, 2005) (File No. SR-Amex-2005-038) (options on the Nasdaq-100 Indexes). See also Securities Exchange Act Release Nos. 51121 (February 1, 2005), 70 FR 6476 (February 7, 2005) (File No. SR-ISE-2005-01); 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994) (SR-CBOE-93-42); and 37659 (September 6, 1996), 61 FR 48722 (September 16, 1996) (SR-CBOE-96-40).

<sup>4</sup> See Securities Exchange Act Release No. 46393 (August 21, 2002), 67 FR 55289 (August 28, 2002) ("XMI/XII Permanent Approval Order").

<sup>5</sup> Options on the XII are no longer listed and traded on the Exchange.

<sup>6</sup> 17 CFR 240.15c3-1.

<sup>7</sup> See Commentary .03 to Amex Rule 904C. Clarified as per telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 16, 2005 ("Telephone Conversation of August 16, 2005").

<sup>8</sup> See Amex Rule 906C.

<sup>9</sup> Pursuant to Amex Rule 906, as referenced in Amex Rule 906C(a). Telephone conversation between Ira Brandriss, Special Counsel, and Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Jeffery P. Burns, Associate General Counsel, Amex, on August 18, 2005.

<sup>10</sup> See Amex Rules 906G and 907G. The text of Rule 907G is not amended by this proposed rule change.

<sup>11</sup> This would include the authority of the Exchange to impose additional margin on accounts maintaining underhedged positions in these options. Telephone Conversation of August 16, 2005, *supra* note 7.

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

*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 Amex 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-Amex-2005-063 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-Amex-2005-063. 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 Amex. 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 publicly available. All submissions should refer to File Number SR-Amex-2005-063 and should be submitted on or before September 16, 2005.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-4658 Filed 8-25-05; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52313; File No. SR-CBOE-2005-41]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to the Elimination of Position and Exercise Limits on NDX Options**

August 22, 2005.

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 May 23, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. 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 amend its rules to eliminate position and exercise limits for options on the Nasdaq 100 Index ("NDX"). The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at the

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

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

<sup>27</sup> 17 CFR 240.19b-4.

CBOE's Office of the Secretary, 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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 CBOE proposes to eliminate position and exercise limits for options on the NDX, a broad-based securities index. In November 2001, the Commission granted permanent approval to a CBOE pilot program that eliminated position and exercise limits for options on the S&P 500 Index ("SPX"), the S&P 100 Index ("OEX"), and the Dow Jones Industrial Average ("DJX").<sup>3</sup> The Exchange believes that the circumstances and considerations relied upon in approving the elimination of position and exercise limits for options on those broad-based indexes equally apply to this proposal relating to NDX position and exercise limits.

In the Permanent Approval Order relating to SPX, OEX, and DJX options, the Commission cited several reasons for allowing the Exchange to eliminate position and exercise limits for these options. First, the Commission expressed its belief that the enormous capitalization of each index and the deep liquid markets for the securities underlying each index significantly reduced concerns of market manipulation or disruptions in the underlying markets.<sup>4</sup> The Commission previously had also noted the active trading volume for options on the

<sup>3</sup> See Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (order granting permanent approval to the elimination of position and exercise limits on the SPX, OEX, and DJX) ("Permanent Approval Order"). See also Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (order approving the original pilot program) ("Pilot Approval Order").

<sup>4</sup> See Permanent Approval Order, *supra* note 3.