

*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**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4<sup>9</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such 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.

Under Rule 19b-4(f)(6) of the Act,<sup>10</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative date, so that the proposal may take effect upon filing. The Exchange believes that the proposal to lower the appointment costs for the DIA and DJX option classes does not raise any new regulatory issues and promotes competition by reducing the access costs of trading in multiple options classes as an RMM. The Exchange believes that the proposal to add VIX options to a new AA Tier also does not raise any new, unique, or substantive issues from those raised in previous CBOE rule changes relating to these Tiers. The Commission agrees and, consistent with the protection of investors and the public interest, has determined to waive the 30-day

operative date so that the proposal may take effect upon filing.<sup>11</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:

*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-2006-50 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-2006-50. 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 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-2006-50 and should be submitted on or before June 14, 2006.

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

Nancy M. Morris,  
Secretary.

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-53832; File No. SR-CBOE-2006-46]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 15.9, Regulatory Cooperation**

May 18, 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 May 8, 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 proposed rule change as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which rendered the proposal 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**

The Exchange proposes to amend CBOE Rule 15.9, Regulatory Cooperation, to clarify that the Exchange may contract with another self-regulatory organization ("SRO") for the performance of certain of CBOE's regulatory functions. The text of the proposed rule change is available on the Exchange's Web site, <http://www.cboe.com>, at the Exchange'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 Exchange included statements

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

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> *Id.*

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**

CBOE Rule 15.9(a) allows the Exchange to enter into agreements with domestic and foreign SROs, associations and contract markets and the regulators of such markets for the exchange of information and other regulatory purposes.<sup>4</sup>

The Exchange proposes to amend CBOE Rule 15.9 to expressly allow the Exchange to contract with another SRO for the performance of certain of CBOE's regulatory functions. The proposed rule change would enhance CBOE's ability to carry out its regulatory obligations under the Act by providing CBOE the ability to contract with another SRO for regulatory services.

Under any agreement for regulatory services with another SRO, CBOE would remain an SRO registered under section 6 of Act<sup>5</sup> and, therefore, would continue to have statutory authority and responsibility for enforcing compliance by its members, and persons associated with its members, with the Act, the rules thereunder, and the rules of the Exchange.

The proposed rule change specifically states that any action taken by another SRO, or its employees or authorized agents, operating on behalf of CBOE pursuant to a regulatory services agreement with CBOE, would be deemed an action taken by CBOE. Under any agreement for regulatory services with another SRO, CBOE would retain ultimate responsibility for performance of its SRO duties, and the proposed rule change states that CBOE shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

<sup>4</sup> The Exchange has entered into a Regulatory Services Agreement ("RSA") with other options markets participating in the proposed Options Regulatory Surveillance Authority ("ORSA") national market system plan. Under the ORSA RSA, CBOE will provide certain regulatory services to the other options markets.

<sup>5</sup> 15 U.S.C. 78f.

**2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and furthers the objectives of sections 6(b)(1), 6(b)(6) and 6(b)(7) of the Act<sup>7</sup> in particular, in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

*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 has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the 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) by its terms, does not become operative for 30 days after the date of filing, 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<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> The Exchange has requested that the Commission waive the 30-day operative delay period for "non-controversial" proposals and make the proposed rule change effective and operative upon filing. The Commission hereby grants the request. The Commission believes that waiver of

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(1); 15 U.S.C. 78f(b)(6); and 15 U.S.C. 78f(b)(7).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

the 30-day operative delay is consistent with the protection of investors and the public interest. In this regard, the Commission believes that the proposal should be implemented without delay because of its immediate applicability with respect to the proposed ORSA plan.<sup>10</sup> For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</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 the 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 Number SR-CBOE-2006-46 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-2006-46. 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

<sup>10</sup> The Commission notes that the proposed rule change is based on a similar rule of the Boston Stock Exchange, Inc. See Securities Exchange Act Release No. 53436 (March 7, 2006), 71 FR 13194 (March 14, 2006) (SR-BSE-2006-08).

<sup>11</sup> For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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-CBOE-2006-46 and should be submitted on or before June 14, 2006.

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

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53825; File No. SR-NYSE-2006-38]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Financial Listing Criteria

May 17, 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 May 16, 2006, the New York Stock Exchange LLC ("NYSE" 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. NYSE has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal 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

The NYSE proposes to amend its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Listed Company Manual (the "Manual") to allow domestic companies to qualify for listing, under certain limited circumstances, on the basis of their earnings, cash flows or revenues, as applicable, in the most recent completed nine-month period. However the Exchange must conclude that the company can reasonably be expected to qualify under the regular standard upon completion of its then current fiscal year.

The text of the proposed rule change is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange'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 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. NYSE 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

NYSE proposes to amend its domestic financial listing standards for companies proposing to list on the Exchange contained in Section 102.01C of the Exchange's Listed Company Manual (the "Manual") to allow companies seeking to list under the Exchange's domestic standards to qualify for listing, under certain limited circumstances, on the basis of their earnings, cash flows or revenues, as applicable, in the most recent completed nine-month period.

Section 102.01C of the Manual allows companies to list under the Exchange's domestic listing criteria by meeting one of the following three standards:

- *Earnings Test* (1) Pre-tax earnings from continuing operations and after minority interest, amortization and

equity in the earnings or losses of investees, adjusted for certain specified items, must total at least \$10,000,000 in the aggregate for the last three fiscal years together with a minimum of \$2,000,000 in each of the two most recent fiscal years, and positive amounts in all three years.

- *Valuation/Revenue with Cash Flow Test*—

- (1) At least \$500,000,000 in global market capitalization,

- (2) At least \$100,000,000 in revenues during the most recent 12 month period, and

- (3) At least \$25,000,000 aggregate cash flows for the last three fiscal years with positive amounts in all three years, subject to certain adjustments.

- *Pure Valuation/Revenue Test*—

- (1) At least \$750,000,000 in global market capitalization, and

- (2) At least \$75,000,000 in revenues during the most recent fiscal year.

Over the years, the Exchange states that it has been unable to list a number of financially healthy companies because those companies had insufficient earnings, cash flows, or revenues in the earliest fiscal year required by the applicable standard. In many cases, such a company is very different at the time of its listing application from the company that had existed in such earlier period. Such company may have undergone a recapitalization transaction in which it substantially reduced its debt burden. Alternatively, the company may have undergone a significant change in its operations, including, but not limited to:

- A divestiture or discontinuation of a loss-making business line,
- A change in management,
- An acquisition or series of acquisitions,
- Economies of scale and increased revenues as the company emerges from its start-up phase,
- The effect of foreign currency valuation,
- Entering a new geographic region or market or exiting a geographic region or market, or
- The launch of a new product or service.

Therefore, the Exchange proposes to amend Section 102.01C(I) and (II) (the "Earnings" and "Valuation/Revenue with Cash Flow" Tests) to enable it to qualify a company based on the most recent completed nine months in lieu of the earliest fiscal year otherwise required by the applicable standard, in circumstances where a recapitalization transaction or significant change in operations has rendered irrelevant the financial position of the company in

<sup>12</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).

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