

Under Rule 19b-4(f)(6) of the Act,<sup>11</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 Amex has requested that the Commission waive the five-day pre-filing requirement<sup>12</sup> and the 30-day operative delay to allow for the expeditious and accurate publication of Amex rules. The Commission believes that the Amex's proposal raises no new issues or regulatory concerns as it is simply a proposal to reformat rule text changes that have already been approved by the Commission. Therefore, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing requirement and the 30-day operative date so that the proposal may take effect upon filing.<sup>13</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-Amex-2006-52 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Amex-2006-52. 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 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 available publicly. All submissions should refer to File Number SR-Amex-2006-52 and should be submitted on or before June 23, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34-53872; File No. SR-CBOE-2006-45]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Its Board Review Authority

May 25, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2006, 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 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 clarify the authority of its Board

of Directors ("Board") with respect to actions or inactions of committees of CBOE and CBOE staff. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Chicago Board Options Exchange, Incorporated

Rules

\* \* \* \* \*

#### Chapter II Organization and Administration (Rules 2.1-2.40)

Part A—Committees (Rule 2.1)

Rule 2.1. Committees of the Exchange

(a)–(c) No change.  
(d) General Duties and Powers of Committees. Each committee shall administer the provisions of the Constitution and the rules of the Exchange pertaining to matters within its jurisdiction. *In addition to any powers and duties specifically granted in the Constitution or Rules, e[ach] committee shall have only such other powers and duties as may be delegated to it by the Board of Directors. Each committee is subject to the control and supervision of the Board of Directors.*

Part B—Board Review (Rule 2.2)

Rule 2.2. Power of the Board to Review Exchange Decisions

*In connection with any delegation to a committee or committees pursuant to Article EIGHTH of the Certificate of Incorporation, the Board retains the power and authority to review, affirm, modify, suspend or overrule any and all actions or inactions of committees and of all officers, representatives or designees of the Exchange; provided, however, that such power and authority shall not apply to (a) actions taken (or inactions) pursuant to Chapters XVII, XVIII and XIX of the Rules, unless specifically provided for in those Rules, or (b) actions taken by (or inactions of) the Nominating Committee or Executive Committee pursuant to Article IV of the Constitution.*

Part [B]C—Departments (Rule 2.15)

No change.

Part [C]D—Dues, Fees and Other Charges (Rules 2.20-2.40)

\* \* \* \* \*

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

In its filing with the Commission, CBOE included statements concerning

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

<sup>12</sup> Amex provided the Commission with written notice of its intent to file the proposed rule change one day prior to the filing date.

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<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.

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. 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

CBOE's Certificate of Incorporation provides that the Board shall manage the business and affairs of the Exchange except to the extent that the authority, powers, and duties of such management shall be delegated to a committee or committees of the Exchange that are established pursuant to the Exchange's Constitution. The Certificate of Incorporation and Constitution of CBOE also provide that the Board may establish one or more committees, each of which shall have the authority, power, and duties as may be prescribed in the Exchange's Constitution or Rules, or by resolution of the Board.<sup>3</sup>

Over time the Board has established various committees, several of which have specific authorities described in the Exchange's Constitution or Rules. Though CBOE Rule 2.1, *Committees of the Exchange*, currently provides that each committee "is subject to the control and supervision of the Board," this supervisory power alone does not make explicit the power of the Board to directly modify or overrule the action (or inaction) of a committee when the decisionmaking authority with respect to the action has been delegated to the committee in the Exchange's Rules. The proposed rule change will address this by explicitly reserving the Board's review authority over all actions taken by (or inactions of) committees of CBOE, as well as CBOE staff. Specifically, this proposed rule change seeks to adopt CBOE Rule 2.2, *Power of the Board to Review Exchange Decisions*, which clarifies that the Board retains the power and authority to review, affirm, modify, suspend, or overrule any and all actions or inactions of committees of CBOE and of CBOE officers, representatives, or designees. Proposed CBOE Rule 2.2 would not apply to actions taken (or inactions) pursuant to Chapters XVII (*Discipline*), XVIII (*Arbitration*), and XIX (*Hearings and Review*) of the Exchange's Rules, unless

specifically provided for in those Rules, or to actions taken by (or inactions of) the Nominating Committee or Executive Committee relating to the nominating process pursuant to Article IV of the Exchange's Constitution. The proposed rule change also seeks to amend CBOE Rule 2.1 to make clear that committees will only have such powers and duties as are specifically granted in the Exchange's Constitution or Rules and only such other powers and duties as may be delegated to them by the Board.

2. Statutory Basis

The Exchange believes that, because it clarifies the Board's authority, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act<sup>4</sup> which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is consistent with the requirements of Section 6(b)(1) of the Act,<sup>5</sup> which requires that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)<sup>6</sup> or 19(g)(2)<sup>7</sup> of the Act) 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.

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

CBOE 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*

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 shall:

(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 No. SR-CBOE-2006-45 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2006-45. 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 CBOE. All

<sup>3</sup> See Article EIGHTH of the CBOE Certificate of Incorporation and Section 7.6 of the CBOE Constitution.

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78f(b)(1).

<sup>6</sup> 15 U.S.C. 78q(d).

<sup>7</sup> 15 U.S.C. 78s(g)(2).

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-2006-45 and should be submitted on or before June 23, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53876; File No. SR-NYSE-2006-16]

### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Relating to the Listing and Trading of Index-Linked Securities of Barclays Bank PLC Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return

May 25, 2006.

#### I. Introduction

On March 6, 2006, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 <sup>2</sup> thereunder, a proposed rule change to list and trade Index-Linked Securities of Barclays Bank PLC (“Barclays”) linked to the performance of the Dow Jones—AIG Commodity Index Total Return (the “Index”). On March 27, 2006, NYSE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on April 21, 2006 for a 15-day comment period.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

The NYSE proposes to list and trade the Index-Linked Securities (“Notes”) that will track the performance of the Index pursuant to Section 703.19 (“Other Securities”) of the NYSE Listed Company Manual (the “Manual”). Barclays intends to issue the Notes under the name “iPath<sup>SM</sup> Exchange-Traded Notes.” The Exchange believes that the Notes will conform to the initial listing standards for equity securities under Section 703.19 of the Manual because Barclays is an affiliate of Barclays PLC,<sup>4</sup> an Exchange-listed company in good standing. Under Section 703.19 of the Manual, the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.<sup>5</sup> The Notes will have a minimum life of one year, the minimum public market value of the Notes at the time of issuance will exceed \$4 million, there will be at least one million Notes outstanding, and there will be at least 400 holders at the time of issuance.

The Notes are a series of medium-term debt securities of Barclays that provide for a cash payment at maturity or upon earlier exchange at the holder’s option, based on the performance of the Index. The principal amount of each Note is \$50. The Notes will trade on the Exchange’s equity trading floor, and the Exchange’s existing equity trading rules will apply to trading the Notes. The Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the \$50 principal amount per Note at maturity or upon exchange or redemption. If the value of the Index decreases or does not increase sufficiently to offset the investor fee (described below), the investor will

receive less, and possibly significantly less, than the \$50 principal amount per Note. In addition, holders of the Notes will not receive any interest payments from the Notes. The Notes will have a term of 30 years. The Notes are not callable.<sup>6</sup>

Holders who have not previously redeemed their Notes will receive a cash payment at maturity equal to the principal amount of their Notes times the index factor on the Final Valuation Date (as defined below) minus the investor fee on the Final Valuation Date. The “index factor” on any given day will be equal to the closing value of the Index on that day divided by the initial index level. The “initial index level” is the closing value of the Index on the date of issuance of the Notes (the “Trade Date”), and the “final index level” is the closing value of the Index on the Final Valuation Date. The investor fee is equal to 0.75% per year times the principal amount of a holder’s Notes times the index factor, calculated on a daily basis in the following manner: The investor fee on the Trade Date will equal zero. On each subsequent calendar day until maturity or early redemption, the investor fee will increase by an amount equal to 0.75% times the principal amount of a holder’s Notes times the index factor on that day (or, if such day is not a trading day, the index factor on the immediately preceding trading day) divided by 365. The investor fee is the only fee holders will be charged in connection with their ownership of the Notes.

Prior to maturity, holders may redeem their Notes on any Redemption Date (defined below) during the term of the Notes, provided that they present at least 50,000 Notes for redemption, or they act through a broker or other financial intermediaries (such as a bank or other financial institution not required to register as a broker-dealer to engage in securities transactions) that are willing to bundle their Notes for redemption with other investors’ Notes. If a holder chooses to redeem his Notes, the holder will receive a cash payment on the applicable Redemption Date equal to the principal amount of his Notes times the index factor on the applicable Valuation Date (defined below) minus the investor fee on the applicable Valuation Date. A “Redemption Date” is the third business day following a Valuation Date (other than the Final Valuation Date (defined below)). A “Valuation Date” is each Thursday from the first Thursday after issuance of the Notes until the last Thursday before maturity of the Notes

<sup>4</sup> The issuer of the Notes, Barclays, is an affiliate of an Exchange-listed company (Barclays PLC) and not an Exchange-listed company itself. However, Barclays, though an affiliate of Barclays PLC, would exceed the Exchange’s earnings and minimum tangible net worth requirements in Section 102 of the Manual. Additionally, the Exchange states that the Notes, when combined with the original issue price of all other Note offerings of the issuer that are listed on a national securities exchange (or association), does not exceed 25% of the issuer’s net worth. Telephone conference between Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, and John Carey, Assistant General Counsel, Exchange, on April 11, 2006 (“April 11 Telephone Conference”).

<sup>5</sup> See Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990).

<sup>6</sup> April 11 Telephone Conference.

<sup>8</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> See Securities Exchange Act Release No. 53639 (April 12, 2006), 71 FR 20741 (the “Notice”).