

Number SR-CBOE-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-CBOE-2006-55. This file number should be included on the subject lien 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 20549-1090. 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-2006-55 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 06-5680 Filed 6-26-05; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54021; File No. SR-CHX-2005-06]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Relating to the Exchange's Disciplinary Process

June 20, 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 March 7, 2005, the Chicago Stock Exchange, inc. ("CHX" 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 CHX. On June 2, 2006, the Exchange filed Amendment No. 1 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.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to adopt, amend, and delete a number of rules relating to the Exchange's enforcement and disciplinary processes. This proposal, as

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

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

<sup>3</sup> Amendment No. 1 revises the proposal to: (i) Clarify the role of Exchange counsel in both disciplinary and delisting proceedings by providing that Exchange counsel—who are not part of the CHX's Market Regulation Department—can serve as counsel for the Hearing Officer, so long as these attorneys have not directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding; (ii) delete proposed changes to the Exchange's Minor Rule Violation Plan contained in the original filing, which have been filed separately with the Commission in File No. SR-CHX-2005-39; (iii) eliminate the proposed addition of new types of violations to the existing summary procedure for handling minor infractions; (iv) clarify that any person against whom a fine is imposed for minor infractions pursuant to CHX Art. XII, Rule 2(a) will be provided with notice of the violation and fines imposed; (v) provide dual authority to the Chief Executive Officer and Chief Regulatory Officer to impose restrictions on Participant Firm operations for failure to meet the requirements of CHX Art. XI, rule 3, "Net Capital and Aggregate Indebtedness;" (vi) modify the Exchange's delisting rule, CHX Art. XXVIII, Rule 4, to make the hearing and appeal process for delisting decisions similar to the hearings that might be held in other matters and to provide that the initial delisting decision-makers are not the same persons who would hear an appeal from that decision; and (vii) incorporate additional details that had not been included in the original version of the proposal, but which have been added to respond to comments from Commission staff. Amendment No. 1 replaces and supersedes the original filing in its entirety.

amended, would: (1) Modify the procedures by which formal disciplinary actions and certain other matters that require a hearing are instituted by removing the Chief Executive Officer ("CEO") from the authorization process and substituting the Exchange's Chief Regulatory Officer ("CRO"); (2) adopt a rule establishing the criteria by which Hearing Officers are selected and providing a procedure by which a respondent may move to replace a Hearing Officer based upon a showing of bias or conflict of interest; (3) delete the requirement that the CEO approve, modify, or reject the findings of a Hearing Officer in a formal disciplinary action and certain other matters that require a hearing; (4) modify the existing rules relating to appeals of Hearing Officer decisions to permit the Exchange to appeal an adverse decision; (5) amend the Exchange's rules relating to the non-payment of fines to provide for additional sanctions; and (6) make various language and organizational changes. The text of this proposed rule change is available on the Exchange's Web site [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm) 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 CHX 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 CHX 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

In light of the Commission's recent guidance that a self-regulatory organization ("SRO") should ensure that its "regulatory function is strong, vigorous, and sufficiently independent and insulated from improper influence from management or any regulatory entity,"<sup>4</sup> the CHX has reviewed its existing rules relating to its disciplinary

<sup>4</sup> Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (order approving File No. SR-NYSE-2003-34) (the "NYSE Governance Order").

<sup>19</sup> 17 CFR 200.30-3(a)(12).

process.<sup>5</sup> The Exchange is proposing a number of modifications, addition and deletions to the rules governing Exchange disciplinary proceedings. In general, these changes serve to eliminate any appearance of a conflict of interest by removing the CEO from the authorization and determination of disciplinary charges. The Exchange also proposes to enhance the ability of its regulatory staff to effectively prosecute disciplinary actions by endowing the Exchange with the right to appeal adverse decisions and providing for addition sanctions for the failure of an Exchange Participant to promptly pay a disciplinary fine. The Exchange is also proposing various language and organizational changes to the disciplinary rules.

#### a. Authorization of Formal Disciplinary Actions

The Exchange's current rules require that the CEO authorize the institution of all major disciplinary actions.<sup>6</sup> The Exchange believes that this requirement is outdated and somewhat inconsistent with recent Commission direction that SROs must possess "sufficient independence in the regulatory process to prevail against undue interference or influence from the persons or entities being regulated."<sup>7</sup> The CHX is of the belief, confirmed by the Independent Consultant appointed by the terms of the Order,<sup>8</sup> that there is no evidence of any actual conflict of interest having influenced the decision of the

<sup>5</sup> The CHX's review also is being conducted pursuant to the requirements of the Commission's September 30, 2003 Order Instituting Proceedings against the Exchange. Securities Exchange Act Release No. 48566 (September 30, 2003), Administrative Proceeding File No. 3-11282 (the "Order"). Certain aspects of this filing are also based upon the recommendations of the Independent Consultant appointed by the terms of the Order.

<sup>6</sup> These proceedings include: CHX Art. VII, Rule 2, "Emergency Suspensions;" CHX Art. XI, Rule 3(d), "Restrictions on Operations;" CHX Art. XI, Rule 8, "Operational Capability;" CHX Art. XII, Rule 1(b), "Disciplinary Actions;" CHX Art. XII, Rule 2, "Summary Procedure;" CHX Art. XXVIII, Rule 4, Interpretation .01, "Removal of Securities;" CHX Art. XXX, Rule 8, "Termination of Specialist Registration;" CHX Art. XXXI, Rule 14, "Termination of Specialist Registration;" CHX Art. XXXIV, Rule 15, "Suspension of Registered Market Makers." Authorization by the CEO is not required to institute an action pursuant to the Exchange's Minor Rule Violation Plan. Such actions are authorized by a Minor Rule Violation panel, which is appointed by the CEO. See CHX Art. XII, Rule 9, "Minor Rule Violations." The Exchange proposes to delete the procedures of CHX Articles XXX, XXXI and XXXIV regarding *ex parte* suspension of Participants since the process is both outdated and duplicative of the Emergency Suspension process detailed in CHX Art. VII, Rule 2, which is being updated in this filing.

<sup>7</sup> NYSE Governance Order, *supra* note 4.

<sup>8</sup> See Order, *supra* note 5.

Exchange's CEO regarding any disciplinary matters. Nevertheless, the Exchange proposes to remove the CEO from such decision-making processes to address any negative public perception of a possible conflict of interest. In place of the current structure, the Exchange proposes that disciplinary and related proceedings against Exchange Participants be authorized by the Exchange's CRO. In the case of proceedings based upon a Participant's failure to maintain operational capability under CHX Art. XI, Rule 8, the Exchange has determined to permit the institution of such proceedings at the direction of either the CEO or the CRO.<sup>9</sup> The Exchange believes that dual authority is appropriate in such proceedings since, unlike traditional disciplinary matters, they can involve a mixture of business and regulatory concerns.

Vesting the authority to initiate disciplinary actions in the Exchange's CRO serves to bolster the apparent and actual independence of the Exchange's regulatory processes. The CRO's primary mission is to ensure that the Exchange has an effective regulatory program reasonably designed to ensure compliance by its Participants with the Exchange's rules and the federal securities laws. The Exchange acknowledges that the CRO reports to the CEO and therefore could conceivably be influenced by the latter's views on a proposed disciplinary matter. However, the CRO is required to appear before, and report on the Exchange's regulatory programs not less than quarterly to, the Exchange's Regulatory Oversight Committee, a committee of the CHX's Board of Directors ("Board") predominately composed of independent directors, which is charged with oversight of the Exchange's regulatory function.<sup>10</sup> The Exchange believes that this review by the Regulatory Oversight Committee serves as a reasonable mechanism to prevent any conflict of interest from interfering with the Exchange's regulatory role. Moreover, the Exchange notes that the Commission has acknowledged that there is no "one size fits all" model for discharging an SRO's oversight function.<sup>11</sup> The Exchange believes that this proposed structure is

<sup>9</sup> The Exchange proposes to extend this same dual authority to the decision to impose restrictions on Participant Firm operations under CHX Art. XI Rule 3(d), relating to net capital and aggregate indebtedness requirements.

<sup>10</sup> The composition requirements and responsibilities of the Exchange's Regulatory Oversight Committee were set forth in the Order. See Order, *supra* note 5.

<sup>11</sup> See NYSE Governance Order, *supra* note 4, at n. 96 and accompanying text.

appropriate given the scope and nature of its regulatory unit and mission.

In addition, the Exchange proposes to delete paragraph (b) of CHX Art. XII, Rule 2 to eliminate the "summary hearing" process noted therein and to delete paragraph (c) regarding the "settlement procedure." To the extent that action under CHX Art. XII, Rule 2(a), "Minor Infraction," is not warranted under the circumstances involved, the CRO may refer the matter for a formal disciplinary action under CHX Art. XII, Rule 1, "Investigation and Written Report of Investigation Findings." Thus, the current hearing procedure noted in CHX Art. XII, Rule 2(b) is redundant and unnecessary. The CHX also proposes to delete the suspension and termination rules applicable to specialists, odd-lot dealers, and market makers in CHX Articles XXX, XXXI, and XXXIV, respectively, as obsolete and redundant of the Emergency Suspension provisions under CHX Art. VII, Rule 2. Finally, the Exchange also proposes to amend the process under current CHX Art. XII, Rule 2(d), "Collateral Proceedings," to provide for the appointment of a Hearing Officer to oversee proceedings to suspend or bar a Participant or associated person based upon the imposition of a comparable sanction by another SRO.<sup>12</sup> The current version of the rule provides for the CEO to conduct that hearing personally.

#### b. Criteria for the Section of Hearing Officers

The Exchange seeks to amend its disciplinary rules to provide for criteria to be followed in the selection and appointment of Hearing Officers in disciplinary proceedings. Currently, the rules of the Exchange provide only that the CEO shall select a Hearing Officer.<sup>13</sup> While the Exchange continues to believe that it is appropriate for the CEO to select the Hearing Officer, the Exchange would like to create requirements of professional competence and experience and the absence of bias or any conflict of interest that the CEO would be required to consider in selecting a Hearing Officer.<sup>14</sup> In fairness to the

<sup>12</sup> Current CHX Art. XII, Rule 2(d) would become proposed CHX Art. XII, Rule 2(b) because of the proposed deletion of other rule provisions.

<sup>13</sup> See CHX Art. XII, Rule 5(a), "Conduct of Hearing."

<sup>14</sup> See proposed CHX Art. XII, Rule 5(e), "Appointment of Hearing Officer." These provisions would require that the CEO give reasonable consideration to the prospective Hearing Officer's professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest and any other relevant factors.

respondent, the Exchange also proposes to create a process by which the respondent could object to a particular Hearing Officer on the grounds of bias or conflict of interest.<sup>15</sup>

#### c. Initial Decision by Hearing Officers

CHX rules currently require that the proposed decision of a Hearing Officer be reviewed by the CEO of the Exchange.<sup>16</sup> The CEO may take a number of different actions with respect to the proposed judgment. The CEO may approve or modify the proposed decision, remand the matter for further consideration, or even conduct additional proceedings himself. The Exchange's review of comparable provisions of the rules of other SROs has not revealed a similar requirement relating to disciplinary proceedings. In order to eliminate any appearance of a conflict of interest, the Exchange proposes to eliminate the requirement that the CEO review the proposed decision of the Hearing Officer and instead provide that the Hearing Officer issue a final, albeit appealable, decision.

#### d. Appeal of Disciplinary Proceedings

Under the current CHX rules, disciplinary orders may only be appealed by the respondent to the Judiciary Committee of the Exchange.<sup>17</sup> According to the CHX, the rules of most other exchanges and SROs permit appeals to be brought by either party. The Exchange believes that there may be instances when the Exchange's Market Regulation staff that prosecuted a particular matter may wish to appeal an adverse decision. For example, where the staff believes that a Hearing Officer applied an incorrect standard of law in making his or her decision, an appeal may be appropriate and desirable. Providing the staff of the Exchange with the authority to initiate an appellate review would put the staff in the same position as the respondent, and therefore appears to increase the fundamental fairness of the disciplinary process.

In addition, the Exchange proposes to streamline the appellate review process for disciplinary actions. Currently, appeals are heard first by a Judiciary Committee, then by the Executive Committee and finally, on a

discretionary basis, by the Board.<sup>18</sup> In place of this three-tiered structure, the Exchange proposes to eliminate appellate review by the Executive Committee. Appeals would be heard by a Judiciary Committee and, on a discretionary basis, by the full Board.<sup>19</sup> The removal of an unnecessary layer of review should reduce the time required to reach a final judgment, thus contributing to the fair and effective enforcement of the Exchange's rules.

#### e. Failure to Promptly Pay Fines

The Exchange has noticed a recent trend that some Minor Rule Violation Plan (MRVP) fines are not being paid in a timely manner. Under existing Exchange rules, Participants who fail to pay fines owing to the Exchange within 60 days of the date such amount became payable may be suspended, after due notice, until such payment is made.<sup>20</sup> While a suspension rule may be an effective deterrent in most circumstances, the Exchange would like the flexibility to assess additional fines or other sanctions, either in lieu of or in addition to a suspension, as added inducement to avoiding late payment. Moreover, the Exchange would like to explicitly include associated persons of Participants in the text of the rule.<sup>21</sup>

#### f. Procedural Changes

Although the Exchange's current rule set forth the general process to be followed in the course of a disciplinary proceeding, the rules contain few details about the time frames within which various tasks must be accomplished; do not provide for pre-hearing discovery; and do not set forth certain other details about the disciplinary process.

The Exchange's proposal would attempt to provide more clarity to these proceedings. As an initial matter, the proposed rules would set forth clear time frames in which various events must occur, e.g., responding to charges, filing of motions, and issuing of orders.<sup>22</sup> The proposed rules also would

confirm the information that should be included in certain notices;<sup>23</sup> create limited rights to prehearing discovery for all parties to a proceeding;<sup>24</sup> and set briefing schedules in various situations.<sup>25</sup>

Somewhat more substantively, the proposed rules would: (i) Confirm that the Board or the Executive Committee could direct the CRO to initiate a disciplinary proceeding;<sup>26</sup> (ii) confirm that a Hearing Officer must make specific findings as to each proffered charge and impose an appropriate sanction for violations that are found to have occurred;<sup>27</sup> (iii) confirm that the Exchange will serve a party fined under the summary procedure in CHX Art. XII, Rule 2 with a notice that provides specific information about the violation and the associated fine;<sup>28</sup> (iv) clarify that fines assessed under the summary procedure of CHX Art. XII, Rule 2 are not publicly reported, except as may be

5(d)); and (iii) that the Hearing Officer ordinarily issue an order within 90 days after the conclusion of a hearing (CHX Rule 5(f)). In CHX Art. XXVIII, the proposed rule changes similarly would require that the Hearing Officer schedule a hearing within 30 days after receipt of an issuer's demand for a hearing, and that the Hearing Officer issue an order within 90 days after the conclusion of a hearing (CHX Rule 4(d)).

<sup>23</sup> The proposed rules would confirm that, in any action taken by the Exchange pursuant to the summary procedure set forth in CHX Art. XII, rule 2(a), the person against whom a fine is imposed shall be served (as also provided in CHX Art. XII, Rule 1(c)) with a written statement (the "Notice of Fines"), signed by the CRO or his designee, setting forth: (i) The rule(s) or policy(ies) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; (iv) the date on which such action is taken; and (v) the date on which such determination becomes final and such fine becomes due and payable to the Exchange, or on which such action must be contested. The Exchange currently provides this notice to persons against whom a fine is imposed. This new provision would confirm that that practice should continue.

<sup>24</sup> Under the proposed rules, the parties must exchange a list of witnesses that they plan to call to testify at least 30 days before the hearing. See proposed CHX Art. XII, Rule 5(c)(1), "Prehearing Procedure." Any party may request production of some or all of the documents that an opposing party intends to introduce as evidence. This request must be made at least 45 days prior to the hearing, and the documents must be produced at least 30 days before the hearing. See proposed CHX Art. XII, Rule 5(c)(2). Under the proposed rules, a party that does not identify witnesses or produce requested documents would be barred from presenting those witnesses or documents at the hearing, unless the party seeking to introduce the evidence could show good cause for the failure to earlier identify the witnesses or documents and could establish that the failure to allow the presentation of the evidence would result in undue hardship to that party. See proposed Art. XII, Rules 5(c)(1) and 5(c)(2).

<sup>25</sup> See proposed CHX Art. XII, Rule 5(h) (regarding motions to disqualify the hearing examiner) and CHX Art. XII, Rule 6(a) (regarding appeals to the Judiciary Committee).

<sup>26</sup> See proposed CHX Art. XII, Rule 1(b)(2).

<sup>27</sup> See proposed CHX Art. XII, Rule 5(f).

<sup>28</sup> See *supra* note 23.

<sup>15</sup> See proposed CHX Art. XII, Rule 5(h), "Impartiality of Hearing Officer." Any motion seeking the disqualification of the Hearing Officer would need to be filed within 15 days of the Hearing Officer's appointment.

<sup>16</sup> See CHX Art. XII, Rule 5(b), "Decision." This provision currently is identified as Rule 5(b), but would be changed to Rule 5(f) because of the proposed addition of other rule provisions.

<sup>17</sup> See CHX Art. XII, Rule 6(a), *Judiciary Committee*.

<sup>18</sup> See CHX Art. XII, Rule 6.

<sup>19</sup> See proposed CHX Art. XII, Rule 6(a) and (b).

<sup>20</sup> See CHX Art. XIV, Rule 10, "Failure to Pay Debts." Suspension of a Participant for Non-payment operates as a termination of the Participant's registration with the Exchange.

<sup>21</sup> The Exchange believes that it already has the authority to suspend such persons for nonpayment of fines pursuant to CGX ART. XII, Rule 8, "Disciplinary Jurisdiction," but proposes to amend the language of CHX Art. XIV, Rule 10, to provide additional clarity to its Participants and their associated persons.

<sup>22</sup> For example, in CHX Art. XII, the proposed changes would require: (i) That a respondent file a written answer to charges within 30 days from the date of service of the charges (CHX Rule 5(b)); (ii) that the Hearing Officer schedule a hearing within 30 days after the filing of an answer (CHX Rule

required by Rule 19d-1 under the Act;<sup>29</sup> (v) extend the emergency suspension rules to associated persons of Participants;<sup>30</sup> and (vi) confirm that the three-person board panel that hears an appeal from an emergency suspension decision would consist of at least two public directors on the Board.<sup>31</sup> The Exchange also proposes to add provisions that set forth the required content of settlement agreements in disciplinary proceedings.<sup>32</sup> The Exchange believes that these proposed changes provide important clarifications that are consistent with the Exchange's obligation to provide a fair and vigorous procedure for the enforcement of its rules.

#### g. Removal of Securities

Other proposed changes can be found in CHX Art. XXVIII, which contains the Exchange's rules relating to the listing of securities. In this article, the Exchange proposes to add text that sets forth new requirements of professional competence and experience, and the absence of bias or any conflict of interest, that the CEO would be required to consider in selecting a Hearing Officer for a proposed delisting hearing.<sup>33</sup> The proposal would also incorporate a process by which an issuer could object to a particular Hearing Officer on the grounds of bias or conflict of interest.<sup>34</sup> In addition, the proposed changes in this article would confirm that a Hearing Officer's decision is final unless a review is specifically demanded and would set forth the process and standards that should be followed by the Executive Committee on any appeal of the Hearing Officer's decision.<sup>35</sup> Finally, the proposed changes would make clear that the final decision to delist a security, on appeal, would be made by the Executive Committee (not by the Exchange's Board) and would confirm that the initial delisting decision-makers are not

the same persons who would hear an appeal from that decision.<sup>36</sup>

#### h. Other Changes

The Exchange has made a number of other miscellaneous changes to its disciplinary rules in an effort to modernize the terms used in referring to the parties to proceedings. Some of the terminology changes include substituting "respondent" for "accused" and substituting "hearing" for "trial."<sup>37</sup>

The Exchange anticipates that these proposed rule changes, if and when approved by the Commission, would be implemented for any newly-commenced proceeding as soon as possible after such Commission approval occurs. Upon approval of the proposed rule changes, the Exchange will issue a notice to its Participants that describes the changes and that confirms that the changes will apply to any proceeding that is initiated by the Exchange on or after a date that immediately follows the date of the Commission's approval.<sup>38</sup>

#### 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>39</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>40</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to, 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.

<sup>29</sup> See proposed CHX Art. XII, Rule 2(a).  
<sup>30</sup> See proposed CHX Art. VII, Rule 2.  
<sup>31</sup> See proposed CHX Art. VII, Rule 2(b).  
<sup>32</sup> See proposed CHX Art. XII, Rule 1(d). This proposed provision would confirm that a respondent could settle a proceeding at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction (which must be admitted). Under the proposed rules, a settlement agreement must contain a waiver by the respondent of all rights to appeal and a proposed penalty to be imposed, which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations. The CRO would have the sole right to approve a proposed settlement agreement.

<sup>33</sup> See, e.g., proposed CHX Art. XII, Rule 1(b) (introducing the term "respondent") and CHX Art. XII, Rule 5 (introducing the term "hearing" instead of "trial").

<sup>34</sup> These changes would apply to the appeal of any MRVP fine that is imposed on or after the approval date, as well as to any formal disciplinary proceeding, suspension decision or delisting action that the Exchange initiates on or after the approval date.

<sup>35</sup> 15 U.S.C. 78f(b).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

#### 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 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 Number SR-CHX-2005-06 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-CHX-2005-06. 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

<sup>29</sup> See proposed CHX Art. XII, Rule 2(a).

<sup>30</sup> See proposed CHX Art. VII, Rule 2.

<sup>31</sup> See proposed CHX Art. VII, Rule 2(b).

<sup>32</sup> See proposed CHX Art. XII, Rule 1(d). This proposed provision would confirm that a respondent could settle a proceeding at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction (which must be admitted). Under the proposed rules, a settlement agreement must contain a waiver by the respondent of all rights to appeal and a proposed penalty to be imposed, which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations. The CRO would have the sole right to approve a proposed settlement agreement.

<sup>33</sup> See proposed CHX Art. XXVIII, Rule 4(d).

<sup>34</sup> *Id.*

<sup>35</sup> See proposed CHX Art. XXVIII, Rule 4(d)-(e).

Commission, and all written communications relating 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 the 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-CHX-2005-06 and should be submitted on or before July 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>41</sup>

J. Lynn Taylor,

Assistant Secretary

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54016; File No. SR-ISE-2006-32]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

June 19, 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 June 1, 2006, the International Securities Exchange, Inc. (ISE 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 ISE. On June 15, 2006, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The ISE has

designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>4</sup> and Rule 19b-4(f)(2) thereunder,<sup>5</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, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to increase the threshold average daily volume (ADV) levels for the reduction and waiver of execution fees and the waiver of comparison fees with respect to trading options on the Nasdaq 100 Index Tracking Stock® (QQQQ) and transactions executed in the Exchange's Facilitation Mechanism.

The text of the proposed rule change, as amended, is available on the ISE's Web site ([http://www.iseoptions.com/legal/proposed\\_rule\\_changes.asp](http://www.iseoptions.com/legal/proposed_rule_changes.asp)), at the principal office of the ISE, 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 ISE 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 ISE 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 proposed rule change is to increase the threshold ADV levels for the reduction and waiver of execution fees and the waiver of comparison fees in the Exchange's Schedule of Fees for (i) trading options in the QQQQ and (ii) transactions executed through the Exchange's Facilitation Mechanism. In November 2003, on a pilot basis, the Exchange

adopted a reduction and a waiver of execution fees and a waiver of comparison fees for QQQQ options.<sup>6</sup> In September 2004, again on a pilot basis, the Exchange adopted a similar reduction and a waiver of execution fees and a waiver of comparison fees on transactions executed through the Exchange's Facilitation Mechanism.<sup>7</sup>

##### Discount on QQQQ Execution and Comparison Fees

Under the current QQQQ pilot program, when a member's monthly ADV in QQQQ options reaches 8,000 contracts, the member's execution fee for the next 2,000 contracts is reduced by \$0.10 per contract.<sup>8</sup> Further, when a member's monthly ADV in QQQQ options reaches 10,000 contracts, the Exchange waives the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter. The Exchange states that its volume in QQQQ options traded has increased as a result of this pilot program. As a result, ISE now proposes to increase the threshold ADV levels at which the fee reduction and waiver for QQQQ options traded apply, such that the \$0.10 per contract fee reduction shall apply for the next 2,000 contracts when a member's monthly ADV in QQQQ options reaches 10,000 contracts. Further, when a member's monthly ADV reaches 12,000 contracts, the Exchange will waive the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter.

##### Discount on Facilitation Mechanism Fees

With respect to the Exchange's Facilitation Mechanism, the structure of

<sup>6</sup> See Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004). See also Securities Exchange Act Release Nos. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (extending the pilot program until November 30, 2004); 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004) (extending the pilot program until November 30, 2005); and 52934 (December 9, 2005), 70 FR 74859 (December 16, 2005) (extending the pilot program until November 30, 2006).

<sup>7</sup> See Securities Exchange Act Release Nos. 50658 (November 12, 2004), 69 FR 67768 (November 19, 2004); and 52934, *supra* note 6 (extending the pilot program until November 30, 2006). The Facilitation Mechanism is a process by which Electronic Access Members facilitate block-size orders. Options traded in the Facilitation Mechanism are treated as Firm Proprietary orders and, as such, are subject to an execution and comparison fee of \$0.15 and \$0.03 per contract per side, respectively.

<sup>8</sup> This execution fee and any reduction or waiver thereof is applicable to Firm Proprietary orders and ISE Market Maker orders. For ISE Market Maker orders, the execution fee is currently between \$0.21 and \$0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently \$0.03 per contract per side.

<sup>41</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> Amendment No. 1 deleted brackets included in the initial Exhibit 5. The brackets reflected a proposed rule change in SR-ISE-2006-30, which was originally submitted under Section 19(b)(3)(A) of the Act, rejected by the Commission, and subsequently re-filed by the Exchange under Section 19(b)(2) of the Act. The Exchange also made

clarifying changes to the purpose section of the filing. The correction to Exhibit 5 and the clarifications to the purpose section of the original filing do not affect the fees covered by this filing.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).