

consistent with the Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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 Exchange Act.

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

The Exchange neither received nor solicited written comments on the proposal.

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 Act¹¹ and subparagraph (f)(6) of Rule 19b-4¹² 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,¹³ 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 proposed changes to CBOE Rule 8.3 that facilitate CBOE's

determination to trade RUT options on the Hybrid Trading System and OEF options on the Hybrid 2.0 Platform raise no new or unique issues. CBOE has also noted that the proposed changes would lower the appointment costs for these options. 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.¹⁴

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. Please include File Number SR-CBOE-2006-97 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-2006-97. 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 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-2006-97 and should be submitted on or before December 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54780; File No. SR-CBOE-2006-87]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Program Relating to CBOE's Retail Automatic Execution System

November 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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

CBOE proposes to extend a pilot program relating to the operation of CBOE's Retail Automatic Execution

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The Exchange has asked the Commission to waive the 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). See discussion *infra* Section III.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78fs(b)(3)(A)(III).

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

¹⁴ 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).

System ("RAES"). The text of the proposed rule change is available on the CBOE's Internet Web site (<http://www.cboe.com>), at the CBOE's principal office, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend a pilot program until November 30, 2007 to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on CBOE's book in classes designated by the appropriate Procedure Committee. The pilot was originally approved on May 13, 2004, with an expiration date of November 30, 2004.⁶ The pilot was extended for one year to November 30, 2005 pursuant to SR-CBOE-2004-78⁷ and again extended an additional year to November 30, 2006 pursuant to SR-CBOE-2005-96.⁸

The Exchange's RAES system was created to allow for the automatic execution of retail customer options orders against CBOE market makers at their disseminated prices. In 1999, the Exchange expanded the RAES system to allow incoming RAES orders to execute against customer limit orders on the CBOE book when such booked orders constitute CBOE's best bid/offer.⁹ The Exchange has allowed broker-dealer orders to be executed on RAES in

classes designated by the appropriate Procedure Committee.¹⁰ The pilot program allows these broker-dealer orders to automatically execute against the book.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act, in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

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

Because the foregoing proposed rule change does not (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder.¹³

A proposed rule change filed under Commission Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to thirty days after the date of filing. The CBOE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii), and designate the proposed

rule change to become operative immediately to allow the Exchange to continue to operate the pilot program which affords automatic execution to a greater number of market participants on an uninterrupted basis. The Commission hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will allow the CBOE to continue to operate under the pilot program without interruption. For these reasons, the Commission designates the proposed rule change as effective and operative upon filing.¹⁵

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.

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. Please include File No. SR-CBOE-2006-87 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-2006-87. 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

¹⁵ For the purposes only of waiving 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).

⁶ Securities Exchange Act Release No. 49699 (May 13, 2004), 69 FR 28958 (May 19, 2004) (approving SR-CBOE-2003-42).

⁷ Securities Exchange Act Release No. 50779 (December 1, 2004), 69 FR 71087 (December 8, 2004).

⁸ Securities Exchange Act Release No. 52855 (November 30, 2005), 70 FR 73317 (December 9, 2005).

⁹ Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (approving SR-CBOE-1999-29).

¹⁰ See SR-CBOE-2002-22, 35, and 56.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ Pursuant to Rule 19b-4(f)(6)(iii), the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change. See 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

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 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-2006-87 and should be submitted on or before December 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54797; File No. SR-NASDAQ-2006-041]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify an Aspect of the Definition of Independent Director

November 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 3, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), 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 substantially prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to amend its Rules 4200(a)(15)(B) and IM-4200 to modify an aspect of Nasdaq's definition of

"independent director." Nasdaq will implement the proposed rule upon approval by the Commission.

The text of the proposed rule change is available on Nasdaq's Web site at <http://www.nasdaq.com>, at Nasdaq's principal office, 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, Nasdaq 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. Nasdaq 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 the proposed rule change is to modify the definition of an "independent director" in Nasdaq's rules to reflect recent changes made to Commission rules. The definition of "independent director" is relevant to Nasdaq's corporate governance standards for listed companies.³

Current Nasdaq Rule 4200(a)(15) and IM-4200 generally preclude a director of a listed company from being considered independent if the director has received more than \$60,000 in compensation from the issuer. Nasdaq states that this threshold was originally based on the disclosure threshold set by the Commission in Regulation S-K, Item 404.⁴ Since the Commission recently adopted a proposal to raise this threshold to \$120,000,⁵ Nasdaq believes that it would be appropriate to raise its independence threshold to the same amount.

When the \$60,000 threshold in the definition of independent director was first adopted in 1999, the proposal to implement the rule stated that "* * * Nasdaq believes that a compensation threshold of \$60,000 is appropriate as it corresponds to the *de minimis* threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S-

K, Item 404."⁶ Nasdaq states that the disclosure amount from Item 404 was chosen for the independence test in Nasdaq's rules because it was transparent and straightforward for issuers to understand and apply.⁷ Moreover, Nasdaq believes that using this disclosure threshold greatly simplifies its proxy review process for assessing compliance with the independent director requirements. In that regard, with the Commission's disclosure threshold set at \$120,000, issuers will not be required to disclose lower amounts between \$60,000 and \$120,000, and therefore, in the absence of the proposed rule change, it would be difficult for Nasdaq to monitor the independent director requirement.⁸

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁹ in general and with Section 6(b)(5) of the Act,¹⁰ in particular. Section 6(b)(5) requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Nasdaq states that the proposed change is consistent with these requirements because it will conform Nasdaq rules to Commission rules and provide a standard that is clear, straightforward and uniform for issuers to understand and apply.

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

Nasdaq does not believe that the proposed rule change will result in any

⁶ See Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

⁷ Telephone conference among Ira Brandriss and Kristie Diemer, Special Counsels, Commission, and Erika Moore, Assistant General Counsel, Nasdaq, on November 8, 2006 ("Telephone conference with Nasdaq").

⁸ Nasdaq also notes that while the existing Nasdaq rule prohibits an independent director from receiving payments in excess of \$60,000, the comparable rule of the New York Stock Exchange LLC ("NYSE") prohibits compensation in excess of \$100,000. See Section 303A.02(b)(ii) of the NYSE Listed Company Manual.

It should be noted that even when an individual has passed the "bright line" test of independence amended by this proposal, a board of directors could still determine on its own that the individual should not be considered independent, depending upon the amount of the compensation and the surrounding circumstances. See Nasdaq Rule 4200(a)(15) and IM-4200. Telephone conference with Nasdaq.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

³ See Nasdaq Rule 4350(c)-(d).

⁴ 17 CFR 229.404.

⁵ See Securities Exchange Act Release No. 54302A (August 29, 2006), 71 FR 53158 (September 8, 2006).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.