

employed or CBSX could allocate the stocks based on any one or more of the following: Performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, expressed preferences of issuers, and the best interest of CBSX.

The Exchange is seeking to launch trading on CBSX on February 5, 2007. The Exchange has stated that allocating stocks to CBSX DPMs ahead of the launch date would allow it and the CBSX DPMs to be prepared to commence trading on CBSX immediately if and when the Commission approves the CBSX Trading Rules Proposal and the CBSX Facility Proposal.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,<sup>9</sup> in that it has been designed to promote just and equitable principles of trade, to protect investors and the public interest, and is not designed to permit unfair discrimination between CBSX DPMs.

The Commission believes that the CBOE's proposal to employ a randomly-set draft rotation for allocating non-option securities is reasonably designed to promote just and equitable principles of trade and to avoid unfair discrimination. Moreover, the Commission believes that the additional proposed criteria for allocating non-option securities to CBSX DPMs when a draft is not appropriate are reasonable and consistent with the Act. These additional criteria are similar to the options allocation criteria set forth in CBOE Rule 8.95(a) and (b), which the Commission has previously approved.<sup>10</sup>

<sup>8</sup>In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> See Securities Exchange Act Release No. 39879 (April 16, 1998), 63 FR 20227 (April 23, 1998) (order approving SR-CBOE-98-03). Several of the factors that CBSX may consider in the allocation process are adopted from CBOE Rule 8.95: performance, volume, capacity, market performance commitments, operational factors, efficiency, competitiveness, and expressed preferences of issuers. The Commission believes that these criteria should be used by CBOE solely for the purpose of allocating non-option securities to CBSX DPMs. The Commission emphasizes that CBOE should not use the proposed criteria—especially the “market performance commitments” and “best interest of CBSX” criteria—to directly or indirectly attempt to

The Commission notes that all allocations of securities to CBSX DPMs under this proposal are contingent on Commission approval of the CBSX Trading Rules Proposal and the CBSX Facility Proposal. Moreover, in approving CBOE's proposal to establish rules for allocating stocks on CBSX, the Commission is not prejudging CBOE's other pending proposals relating to CBSX. If the Commission were not to approve the CBSX Trading Rules Proposal and the CBSX Facility Proposal, any allocations made pursuant to this proposal would be meaningless. Approving the CBSX allocation rules does, however, afford CBOE an opportunity to prepare for the possibility that the Commission will approve the CBSX Trading Rules Proposal and the CBSX Facility Proposal, and would reduce the time between any such approvals and the commencement of trading on CBSX.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-CBOE-2006-96) is approved.

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

**Florence E. Harmon,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54979; File No. SR-NFA-2006-05]

### Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Interpretive Notice Regarding Automated Order-Routing Systems

December 20, 2006.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on December 4, 2006, National Futures Association (“NFA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule

restrict a market participant that is appointed as a CBSX DPM from performing market-making or specialist activities on other markets.

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

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

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.

change described in Items I, II, and III below, which Items have been substantially prepared by NFA. On December 14, 2006, NFA submitted an amendment 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. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”).

NFA, on November 30, 2006, submitted the proposed rule change to the CFTC for approval and invoked the “ten-day” provision of Section 17(j) of the Commodity Exchange Act (“CEA”).<sup>4</sup> By letter dated December 12, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>5</sup>

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act<sup>6</sup> makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (“Members”) who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.<sup>7</sup> NFA's interpretive notice entitled “Compliance Rule 2-9: Supervision of the Use of Automated Order-Routing Systems” (“Interpretive Notice”) applies to all futures commission merchant and introducing broker Members, including those who are registered as security futures brokers or dealers under Section 15(b)(11).<sup>8</sup>

In 2002, NFA adopted the Interpretive Notice, which referred Members to an AICPA/CICA WebTrust<sup>SM/™</sup> Self-Assessment Questionnaire for Availability and stated that they could download the questionnaire from NFA's Web site. The questionnaire is not available on NFA's Web site. Therefore, the AORS Interpretive Notice is amended to delete the paragraph referencing the WebTrust<sup>SM/™</sup> Self-Assessment Questionnaire for Availability.

<sup>3</sup> See facsimile from Thomas W. Sexton, General Counsel, NFA, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated December 14, 2006 (“Amendment No. 1”). In Amendment No. 1, NFA replaced Exhibit 4, which was incomplete in the original filing.

<sup>4</sup> 7 U.S.C. 21(j).

<sup>5</sup> See Letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, General Counsel, NFA (December 12, 2006) (“Letter”).

<sup>6</sup> 15 U.S.C. 78o-3(k).

<sup>7</sup> 15 U.S.C. 78o(b)(11).

<sup>8</sup> *Id.*

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

In its filing with the Commission, NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. NFA 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 2002, NFA adopted the Interpretative Notice, which referred Members to an AICPA/CICA WebTrust<sup>SM/TM</sup> Self-Assessment Questionnaire for Availability and stated that they could download the questionnaire from NFA's Web site. At the time the Interpretative Notice was adopted, NFA knew that the questionnaire was copyrighted but was in discussions with AICPA/CICA and believed that it would give NFA permission to use the material in this manner.

AICPA/CICA subsequently informed NFA that it had decided not to allow NFA to use the questionnaire as described in the Interpretative Notice. Although the questionnaire is not available on NFA's Web site, NFA never removed the reference in the Interpretative Notice. Therefore, the Interpretative Notice is amended to delete the paragraph referencing the WebTrust<sup>SM/TM</sup> Self-Assessment Questionnaire for Availability.

#### 2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.<sup>9</sup>

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

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the CEA.

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

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

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

NFA, on November 30, 2006, submitted the proposed rule change to the CFTC for approval and invoked the "ten-day" provision of Section 17(j) of the CEA.<sup>10</sup> By letter dated December 12, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.<sup>11</sup>

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.<sup>12</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 Filed No. SR-NFA-2006-05 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 No. SR-NFA-2006-05. 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 will also be available for inspection and copying at the principal office of the NFA. 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 No. SR-NFA-2006-05 and should be submitted on or before January 29, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55026; File No. SR-NYSE-2006-120]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Regarding Proposed Combination Between NYSE Group, Inc. and Euronext N.V.

December 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 29, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>10</sup> 7 U.S.C. 21(j).

<sup>11</sup> See Letter, *supra* note 5.

<sup>12</sup> 15 U.S.C. 78s(b)(1).

<sup>13</sup> 17 CFR 200.30-3(a)(75).

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

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

<sup>9</sup> 15 U.S.C. 78o-3(k).