

budget for the FAF and the FASB for calendar year 2006.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Government Accounting Standards Board ("GASB"), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2006 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53635; File No. SR-Amex-2005-075]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments No. 2 and 3 Thereto Relating to the Establishment of a New Class of Registered Options Trader Called a Supplemental Registered Options Trader ("SROT")

April 12, 2006.

#### I. Introduction

On July 14, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to establish a new class of Registered Options Trader called a Supplemental Registered Options Trader ("SROT"). On November 4, 2005,

the Amex filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On December 7, 2005, the Amex filed Amendment No. 2 to the proposed rule change.<sup>4</sup> On January 13, 2006, the Amex filed Amendment No. 3 to the proposed rule change.<sup>5</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on January 26, 2006.<sup>6</sup> The Commission received no comments from the public in response to the proposed rule change. This order approves the proposed rule, as amended by Amendments No. 2 and 3.

#### II. Description

Amex proposes to adopt Amex Rule 993—ANTE to establish a new category of registered options trader called an SROT. Amex also proposes to adopt amendments to existing Amex Rules 900—ANTE, 918—ANTE, 935—ANTE, 936—ANTE, 936C—ANTE, 950—ANTE, 951—ANTE, 958—ANTE and 958A—ANTE to incorporate this new category of trader into relevant existing rules.

The Amex proposes to define an SROT as a ROT that is a member organization so designated by the Exchange and would be granted remote quoting rights to enter bids and offers electronically only from off the Exchange's physical trading floor,<sup>7</sup> in at least 300 option classes. A member organization requesting approval to act as an SROT would file an application with the Exchange, and the Exchange would initially choose a maximum of six (6) SROTs, based upon criteria including adequacy of resources, operational history, market making and/or specialist experience in a broad array of securities, and the ability to interact with order flow in all types of markets. The Exchange proposes to designate a committee ("Committee") to make SROT approval decisions, including granting, withdrawing, denying, and deferring approval.<sup>8</sup> The proposed rule

<sup>3</sup> Amendment No. 1 replaced and superseded the original filing in its entirety.

<sup>4</sup> Amendment No. 2 replaced and superseded Amendment No. 1.

<sup>5</sup> Amendment No. 3 made clarifying changes to the Purpose section, as well as changes to the proposed rule text relating to allocation of executed contracts and affiliation limitations.

<sup>6</sup> See Securities Exchange Act Release No. 53161 (January 20, 2005), 71 FR 4388.

<sup>7</sup> See proposed Amex Rule 900—ANTE (50).

<sup>8</sup> Pursuant to paragraph (a)(vi) to proposed Amex Rule 993—ANTE, the Committee may not defer a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to Securities and Exchange Commission approval or effectiveness pursuant to a proposed rule change filed under Section 19(b) of the Act. The Committee would be required to provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral.

also includes provisions that govern SROT applicant withdrawal, as well as suspension and/or termination of SROT appointments.

The Exchange would determine the number and type of option classes assigned to an SROT, with a minimum of 300 option classes per SROT. SROTs would be required to purchase or lease one seat for every thirty (30) option classes quoted and would be required to provide continuous two-sided quotations in at least 60% of the series of their assigned classes. The proposed rule would require that SROTs maintain information barriers and that no SROT be assigned to an options class where the SROT has a direct or indirect affiliate who is a specialist, ROT or SROT in such option class. Commentary to proposed Amex Rule 993—ANTE also provides that quoting rights and the designation as an SROT are non-transferable and that SROTs may trade in a market-making capacity only in the classes of options to which he/she is assigned.

Amex proposes to modify Amex Rule 935—ANTE, which governs the allocation of unexecuted contracts to include SROTs. As proposed, when more than one market participant is quoting at the Amex Best Bid or Offer ("ABBO"), and an SROT is not interacting with its own firm's orders, the allocations in Amex Rule 935—ANTE (a)(1)–(4) would apply. However, when more than one market participant is quoting at the ABBO, and an SROT is interacting with its own firm's orders, the ANTE System will allocate the remaining contracts after non-broker dealer customer orders as follows: (i) 20% to an SROT interacting with its own firm's orders; (ii) 20% to the specialist; and (iii) the balance to registered options traders.

Amex also proposes to modify Amex Rule 958—ANTE, which governs ANTE options transactions of registered options traders and imposes certain obligations, including engaging in transactions that are reasonably calculated to contribute to the maintenance of a fair and orderly market, making competitive bids and offers necessary, in a market making capacity, to contribute to the maintenance of a fair and orderly market, to include SROTs. Furthermore, Amex proposes to modify Amex Rule 958A—ANTE, which is the Exchange's Firm Quote Rule, to apply to SROTs.

#### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

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

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

and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,<sup>10</sup> which require, among other things, that a national securities exchange's rules be 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.

Currently, the Exchange permits ROTs to submit quotes only from the physical trading floor. Under the proposal, a new class of market participant, SROTs, would be permitted to quote electronically from off the Exchange's physical trading floor. Introducing a new class of market participant able to enter quotes from off the physical trading floor should attract new market makers to the Exchange, which should increase the liquidity available in those classes to which SROTs are assigned.

The Commission notes that the Committee will determine, based on specified criteria, which member organizations should be chosen to act as SROTs. The existence of order flow commitments between an SROT applicant and order flow providers is one factor the Committee will evaluate in making its decisions. The Exchange represents, and the Commission emphasizes, that a future change to, or termination of, any such commitments would not be used by the Exchange at any point in the future to terminate or take remedial action against an SROT and that the Committee would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Similarly, the Exchange has included the "willingness to promote the Exchange" as a factor that the Committee may consider when making its application decisions. The Exchange represents, and the Commission emphasizes, that the Committee would not apply this factor to in any way restrict, either directly or indirectly, an SROT's activities as a market maker or specialist on other exchanges, or to restrict how SROTs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The Exchange also represents that should the Committee decide not to approve an SROT applicant, or should

an SROT's appointment be suspended or terminated in one or more classes, an SROT applicant or an SROT, respectively, would be entitled to a hearing under Article IV, Section 1(g) of the Amex Constitution and Amex Rule 40. Additionally, should the Committee decide to defer an SROT application, the Committee must provide written notification to any SROT applicant whose application is the subject of such deferral, describing the objective basis for such deferral. Proposed Amex Rule 993(a)(vi)—ANTE prohibits the Committee from deferring a determination of the approval of the application of an SROT applicant unless the basis for such deferral has been objectively determined by the Committee, subject to Securities and Exchange Commission approval or effectiveness pursuant to a proposed rule change filed under Section 19(b) of the Act.

Proposed Amex Rule 993(c)—ANTE sets forth the obligations that an SROT would be required to fulfill. Specifically, an SROT would be required to generate continuous, two-sided quotations in not less than 60% of the series of their assigned classes. The Commission believes that these obligations for SROTs are consistent with the Act. In particular, the Commission believes that SROT's affirmative obligations are sufficient to justify the benefits they receive as market makers.

The Exchange also represents that information barriers would be in place to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes assigned to an SROT, or that may act as a market maker in any security underlying options assigned to an SROT. SROTs would also be required to comply with Amex Rule 193 regarding the misuse of material non-public information between the affiliate and the specialist organization.

The Commission believes that the trade allocation algorithm that would apply to SROTs is consistent with the Act and should encourage SROTs to quote competitively.

Finally, the Commission notes that an SROT would be permitted to trade in a market making capacity only in the classes of options in which the SROT is assigned and, furthermore, that quoting rights and designation of an SROT would be non-transferable.

As such, the Commission believes that Amex's proposal to adopt Amex Rule 993—ANTE to establish a new category of registered options trader called an SROT and the corresponding amendments to existing Amex Rules

900—ANTE, 918—ANTE, 935—ANTE, 936—ANTE, 936C—ANTE, 950—ANTE, 951—ANTE, 958—ANTE and 958A—ANTE, are consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-Amex-2005-075), as amended by Amendments No. 2 and 3, be, and it hereby is, approved.

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

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53637; File No. SR-CBOE-2004-65]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Relating to Restrictions on Arbitrators serving on CBOE's Arbitration Committee

April 12, 2006.

#### I. Introduction

On October 14, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend rules concerning restrictions on the activities of arbitrators who serve as members of the CBOE Arbitration Committee ("Committee"). On December 13, 2005 and February 15, 2006, CBOE filed Amendments Nos. 1 and 2, respectively, to the proposed rule change including amendments to CBOE Rules 18.10, 18.13 and 18.14 concerning the removal of arbitrators and restrictions on the activities of arbitrators who serve as members of the Committee.<sup>3</sup> The

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety. Amendment No. 2 replaced the rule text in the original filing and Amendment No. 1 in their entirety. Also, Amendment No. 2 supplemented the "Purpose" section of Amendment No. 1 with additional explanations as to the basis for certain proposed rule amendments.

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).