and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,[10] 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,[11] 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.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5800 Filed 4–18–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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'')[1] and Rule 19b–4 thereunder,[2] 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.[3] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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.

proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2006.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposed Rule Change

Proposed Changes to CBOE Rule 18.10

The Exchange proposes to amend CBOE Rule 18.10 to codify its unwritten policy that restricts members of the Committee from representing parties as counsel[5] in any arbitration dispute, claim or controversy that has been submitted to CBOE for resolution (''CBOE Arbitration''). This restriction would extend for six months after the date on which a Committee member ceases being a member of the Committee. Moreover, if a Committee member is appointed as an arbitrator in a pending CBOE Arbitration (''Pending CBOE Arbitration'') and subsequently ceases being a member of the Committee, but continues to serve as an arbitrator in the Pending CBOE Arbitration, that person cannot represent a party as counsel in a separate CBOE Arbitration until he or she has ceased serving as an arbitrator in the Pending CBOE Arbitration.

Under CBOE rules, any CBOE Arbitration between parties who are members or persons associated with a member shall be resolved by an arbitration panel that consists of three members of the Committee.[6] The Committee is maintained primarily as a means for managing a pool of qualified industry arbitrators that is composed of a cross-section of Exchange members and/or former members or associated persons of members or other individuals who are knowledgeable about the securities industry.[7] All Committee members are appointed in accordance with Exchange governance rules and guidelines.[8]

The Exchange has long adhered to an unwritten policy that prohibits a Committee member who is an attorney from representing a party in a CBOE Arbitration while that person is serving on the Committee. This policy is consistent with the Exchange's belief that, while serving on the Arbitration Committee, arbitrators should be committed to the impartial resolution of any disputes that come before them and should avoid circumstances that could disqualify them from being appointed in future arbitrations or give rise to the appearance of partiality. The Exchange does not believe that a Committee member should act as an advocate in a CBOE Arbitration while serving as a member of the CBOE Arbitration Committee. Accordingly, the Exchange feels it would be prudent to codify its unwritten policy within the rules governing CBOE Arbitrations. Additionally, the Exchange notes that the proposed rule text relating to restricting an arbitrator from representing a party as counsel in any CBOE Arbitration (proposed Rule 18.10(c)) also would extend to restrict an arbitrator from representing a party as counsel in any capacity, not just acting as an attorney.

In addition, the Exchange believes that a sufficient period of time should pass after an arbitrator is no longer a member of the Committee before that individual may represent a party as counsel in a CBOE Arbitration. Without this required separation period, a former Committee member conceivably could appear as counsel to a party before other members of the Committee in a CBOE arbitration immediately after resigning from the Committee. Although CBOE does not believe that membership on the Arbitration Committee necessarily creates meaningful relationships with other Committee members, such that present Committee members could not be impartial in considering a case on which a recently retired Committee member serves as counsel, a prescribed waiting period is a sensible precaution against the appearance of partiality. The Exchange believes that a six-month waiting period would be appropriate and would help to eliminate the appearance of partiality that could otherwise exist.

Finally, the rule proposal provides that, if a Committee member is appointed as an arbitrator to a pending CBOE Arbitration and subsequently ceases to be a member of the Committee, but continues to serve as an arbitrator in the pending CBOE Arbitration, that person cannot represent a party in a separate CBOE Arbitration as counsel until the arbitrator ceases to be appointed as an arbitrator in the pending CBOE Arbitration. This provision of the proposed rule would address the unlikely, but possible, situation in which an arbitration proceeding remains pending more than six months after the date on which an appointed arbitrator to that case ceased being a member of the Committee.[9] The Exchange believes that this provision is consistent with the purpose of this rule change, which is the avoidance of the appearance of partiality on the part of a CBOE Arbitrator.

The proposed rules supplement existing policies and procedures that are in place to screen arbitrators for conflicts, potential conflicts, and the appearance of conflicts prior, and subsequent, to appointment. Specifically, CBOE policies and procedures require any arbitrator, prior to or subsequent to appointment to a CBOE Arbitration, to disclose any information that presents a conflict, existing or potential, or creates the appearance of a conflict with any party, fact, or circumstance related to the case in question.[10] Arbitrators also are required to disclose any new information or circumstances that may arise after their appointment that would create a similar conflict or potential for conflict. Thus, if a former member of the Arbitration Committee were to serve as counsel to a party before a CBOE arbitration panel, the appointed arbitrators would be required to disclose any past relationships with the former Committee member regardless of how much time has passed since that former member resigned from the Committee.[11]

Proposed Changes to CBOE Rules 18.13 and 18.14

The Exchange also proposes to adopt new rules governing the process for removing or disqualifying arbitrators: (1) When the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias, or (2) for failing to comply with arbitrator disclosure requirements. Specifically, Exchange Rules 18.13 and 18.14 would be

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[4] *See* Securities Exchange Act Release No. 53431 (March 7, 2006), 71 FR 12755 (March 13, 2006).

[5] CBOE Rule 18.17 provides: ''All parties shall have the right to representation by counsel at any stage of the proceedings.'' Since persons who are eligible to act as ''counsel'' in CBOE arbitration proceedings are not limited to licensed attorneys, the proposed rule change would apply to any person acting as ''counsel'' in a CBOE arbitration proceeding whether the person is a licensed attorney or not.

[6] *See* CBOE Rule 18.2(a). Rule 18.2(a) specifically provides that the arbitration panel appointed to resolve member-to-member arbitrations shall consist of ''not less than three members of the Arbitration Committee.'' However, as a matter of practice, arbitration panels typically consist only of three members of the Arbitration Committee.

[7] Unlike other Exchange committees, the Arbitration Committee does not meet as a whole except for training or to administer the annual Committee orientation. For a CBOE Arbitration involving customers or non-Exchange members and a member(s), CBOE rules require that the dispute be resolved by an arbitration panel that consists of no less than three arbitrators, the majority of which consists of arbitrators who are not from the securities industry (''Public Arbitrators''). (*See* CBOE Rule 18.10). In non-member CBOE Arbitrations, members of the Arbitration Committee may be appointed as industry arbitrators.

[8] *See* CBOE Rule 18.10.

[9] Proposed CBOE Rule 18.10(c)(ii).

[10] *See* CBOE Rule 18.13.

[11] *Id.*

amended to provide greater safeguards against the possibility that a CBOE Arbitration could proceed with an appointed arbitrator who should, by rule, not be hearing and resolving the arbitration. These amendments would be substantially similar to those recently proposed by the NASD.[12]

Rule 18.13(a)–(c) currently outlines the disclosures that a CBOE arbitrator must make that help to assess whether the arbitrator would be precluded from rendering an objective and impartial decision in a CBOE Arbitration.[13] Proposed Rules 18.13(d)(1) and 18.13(d)(2) provide that the Director of Arbitration may remove an arbitrator based on the disclosures made under Rule 18.13(a)–(c) and information not known to the parties when the arbitrator was selected. The Exchange also proposes to amend Rule 18.13(d), in proposed Rule 18.13(d)(3), to clarify that the Director of Arbitration will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the CBOE Arbitration. Such interest or bias must be direct, definite, and capable of reasonable demonstration, rather than being remote or speculative. In addition, proposed Rule 18.13(d)(4) would help to ensure that parties to a CBOE Arbitration are informed of the disclosure of any new information that is required to be disclosed by an arbitrator under Rule 18.13 unless either the Director of Arbitration removes the arbitrator or the arbitrator withdraws voluntarily as soon as the arbitrator learns of any interest, relationship, or circumstances described under Rule 18.13(a) that might preclude the arbitrator from rendering an objective and impartial determination in the CBOE Arbitration. These proposed changes are substantially similar to the standards proposed by NASD.[14]

Also, this proposal would amend CBOE Rule 18.14, which currently provides the process by which the Exchange fills vacancies of an arbitrator, who for any reason, is unable to perform as an arbitrator.[15] The Exchange proposes to provide within Rule 18.14 a more detailed process by which the Director of Arbitration may remove or disqualify an arbitrator based on: (1) Conflicts of interest or bias involving an arbitrator; (2) challenges for cause; and (3) information required to be disclosed pursuant to Rule 18.13 and that was not previously disclosed.[16] These proposed changes are also substantially similar to proposed NASD arbitration rules governing the same subject matter.[17]

III. Discussion and Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5) of the Act.[18] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change furthers the objectives of Section 6(b)(5), in that it is designed to protect investors and the public interest by strengthening the integrity of the CBOE Arbitration program. The proposed rule change does so by limiting the possibility of conflicts of interest: (1) By restricting members of the Committee from representing parties to an arbitration while serving on the Committee and for six months after ceasing to be a member of the Committee, and (2) by adopting new rules governing the process for removing or disqualifying arbitrators when the appointed arbitrator has conflicts of interest with the parties or subject matter or if there is evidence of arbitrator bias, as well as for failing to comply with arbitrator disclosure requirements.

IV. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2004–65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Nancy M. Morris,

Secretary.

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[12] *See* Securities Exchange Act Release No. 51856 (June 15, 2005); 70 FR 36442 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Customer Disputes (''Proposed Customer Code'')); Securities Exchange Act Release No. 51857 (June 15, 2005); 70 FR 36430 (June 23, 2005) (proposing new NASD Code of Arbitration Procedure for Industry Disputes (''Proposed Industry Code'')).

[13] *See* CBOE Rule 18.13(a)–(c).

[14] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 11.

[15] Such reasons include the disqualification, resignation, death, disability, or withdrawal of the arbitrator.

[16] Proposed Rule 18.14(c) also would provide standards to be used in deciding challenges for cause, which standards are identical to those provided under proposed Rule 18.13(d).

[17] *See* Proposed Customer Code and Proposed Industry Code, *supra* note 12.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53634; File No. SR–ISE–2006–16]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Regulatory Fees

April 12, 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 April 3, 2006, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') 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 Exchange. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 ISE is proposing to amend its Schedule of Fees to change its Regulatory Fees. The text of the proposed rule change is available at the Exchange, at the Commission's Public Reference Room, and at the Exchange's Web site: *http://www.iseoptions.com/legal/proposed_rule_changes.asp.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).