

Dated: July 17, 2006.

Nancy M. Morris,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54161; File No. SR-Amex-2006-62]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Linkage Fee Pilot Program

July 17, 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 28, 2006, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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 and is approving the proposal on an accelerated basis for a pilot period through July 31, 2007.

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

The Exchange proposes to extend for one (1) year until July 31, 2007, the current pilot program regarding transaction fees for trades executed through the intermarket options linkage (the "Linkage") on the Exchange. The text of the proposed rule change is available on the Amex's Web site at (<http://www.amex.com>), at the Amex's Office of the Secretary, 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, Amex 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 III below. The Exchange 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 Amex is proposing to extend for one (1) year until July 31, 2007, the current pilot program establishing Exchange fees for Principal Orders ("P Orders") and Principal Acting as Agent Orders ("P/A Orders") submitted through the Linkage and executed on the Exchange. The fees in connection with the pilot program are scheduled to expire on July 31, 2006.<sup>3</sup>

The current fees applicable to P Orders and P/A Orders executed on the Exchange are as follows: (i) \$0.10 per contract side options transaction fee for equity options (exchange traded fund share ("ETF") options, QQQQ options and trust issued receipt options); (ii) \$0.21 per contract side options transaction fee for index options (including MNX and NDX options); (iii) \$0.05 per contract side options comparison fee; (iv) \$0.05 per contract side options floor brokerage fee; and (v) an options licensing fee for certain ETF and index option products ranging from \$0.20 per contract side to \$0.05 per contract side depending on the particular ETF or index option.<sup>4</sup> These are the same fees charged to specialists and registered option traders ("ROTs") for transactions executed on the Exchange. The Exchange does not charge for the execution of Satisfaction Orders sent through the Linkage.

As was the case in the original pilot program and subsequent extensions, the Exchange believes that the existing fees currently charged to Exchange specialists and ROTs should also apply to executions resulting from Linkage Orders.

Based on the experience to date, the Exchange believes that an extension of the pilot program for one (1) year until July 31, 2007 is appropriate.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>5</sup> regarding the equitable allocation of reasonable dues, fees and other charges among exchange

members and other persons using exchange facilities.

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

The Exchange believes that the proposed rule change does not 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. 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 File Number SR-Amex-2006-62 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-Amex-2006-62. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All

<sup>3</sup> See Securities Exchange Act Release No. 52150 (July 28, 2005), 70 FR 44703 (August 3, 2005) (Amex File No. 2005-079).

<sup>4</sup> See the Options Licensing Fee section of the Amex Options Fee Schedule available at <http://www.amex.com>.

<sup>5</sup> 15 U.S.C. 78f(b)(4).

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

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

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-Amex-2006-62 and should be submitted on or before August 15, 2006.

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, 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>6</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2007 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further consider the appropriateness of Linkage fees.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2006-62) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

<sup>6</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>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris,**  
*Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54169; File No. SR-CBOE-2006-45]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change Regarding the Review Authority of the Board of Directors

July 18, 2006.

#### I. Introduction

On May 5, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 amend its rules to clarify the authority of CBOE's Board of Directors ("Board") with respect to actions or inactions of CBOE committees and CBOE officers, representatives, or designees. The proposed rule change was published for comment in the **Federal Register** on June 2, 2006.<sup>3</sup> The Commission received one comment letter regarding the proposal<sup>4</sup> and a response to the comment letter from the Exchange.<sup>5</sup> This order approves the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to add new CBOE Rule 2.2, *Power of the Board to Review Exchange Decisions*, which would provide that, in connection with any delegation to a committee or committees pursuant to Article EIGHTH of CBOE's Certificate of Incorporation ("Certificate"), the Board would retain the power and authority to review,

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 53872 (May 25, 2006), 71 FR 32156.

<sup>5</sup> See letter to Nancy M. Morris, Secretary, Commission, from Lawrence J. Blum, Member, CBOE, dated June 5, 2006 ("Blum Letter").

<sup>6</sup> See letter to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, from Jennifer M. Lamie, Managing Senior Attorney, Legal Division, CBOE, dated July 7, 2006 ("CBOE Response Letter").

affirm, modify, suspend, or overrule any and all actions or inactions of CBOE committees, and of all officers, representatives, or designees of CBOE. Proposed CBOE Rule 2.2 would not apply to actions taken (or inactions) pursuant to Chapters XVII (*Discipline*), XVIII (*Arbitration*), and XIX (*Hearings and Review*) of the Exchange's Rules, unless specifically provided for in those Rules, or to actions taken by (or inactions of) the Nominating Committee or Executive Committee pursuant to Article IV of the Exchange's Constitution, which sets forth the Exchange's nominations process. In addition, the proposed rule change would amend CBOE Rule 2.1, *Committees of the Exchange*, to clarify that CBOE committees would have, in addition to the powers and duties that are specifically granted in the Exchange's Constitution or Rules, only such other powers and duties as may be delegated to them by the Board.

#### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, the comment letter received, and the CBOE Response Letter, and finds that the proposed rule change is consistent with the requirements of the Act,<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>8</sup> which requires that an exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)<sup>9</sup> or 19(g)(2)<sup>10</sup> of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The commenter asserted that the proposed rule change is unnecessary and generally in conflict with the CBOE Constitution.<sup>11</sup> The commenter also expressed concern that the aim of the proposed rule change is to reduce the influence of member/owners.<sup>12</sup> In response, the Exchange noted that CBOE is a membership corporation formed

<sup>6</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78q(d).

<sup>10</sup> 15 U.S.C. 78s(g)(2).

<sup>11</sup> See Blum Letter at 1, *supra* note 4.

<sup>12</sup> *Id.* at 2.