Act,[8] which requires, among other things, that the rules of a national securities 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 a national market system and, in general, to protect investors and the public interest. The proposal appears designed to strike a reasonable balance between preserving the opportunity for price discovery before a stock opens or reopens while providing timely opportunities for investors to participate in the market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2006–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–16367 Filed 10–3–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54526; File No. SR–CBOE–2006–70]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto To Adopt Rules Relating to Regulation NMS

September 27, 2006.

I. Introduction

On August 18, 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'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to modify its rules relating to the trading of non-option securities to conform with Regulation NMS. The proposal was published for comment in the **Federal Register** on August 25, 2006.[3] The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on September 27, 2006.[4] This notice and order requests comment on Amendment No. 1 and approves the proposal, as amended, on an accelerated basis.

II. Description of the Proposal

The Commission recently approved the Exchange's proposal to establish a new electronic trading system for non-option securities known as ''Stock Trading on CBOE*direct*'' or ''STOC.''[5] In this filing, CBOE proposes additional rules and additional system functionality to STOC designed to comply with Regulation NMS and to enable CBOE to qualify as automated trading center whose quotations will be protected under Regulation NMS. In its release extending the compliance dates for Rules 610 (the Access Rule) and 611 (the Order Protection Rule) of Regulation NMS,[6] the Commission established a ''Specifications Date'' of October 16, 2006, by which final technical specifications for interaction with Regulation NMS-compliant trading systems of automated trading centers must be published on SRO Web sites. Among other things, these specifications must address: (1) The identification of quotations as automated or manual to meet the requirements of Rule 600(b)(4);[7] (2) an immediate-or-cancel order (''IOC'') functionality that meets the requirements of Rule 600(b)(3);[8] and (3) an intermarket sweep order (''ISO'') functionality that allows other industry participants to meet the requirements of Rule 600(b)(30).[9] The proposed rules would modify the existing STOC rules to address these requirements as well as other matters relating to Regulation NMS.

Unless execution of an order would cause an impermissible trade-through of a protected quotation of another trading center, all marketable orders would automatically execute on the STOC system against the system's best bid or offer (which incorporates resting limit orders and interest from CBOE market-makers). There would be no manual quotations, and STOC is designed to provide quotations that are always ''automated'' for purposes of Rule 600(b)(4). If CBOE were to experience a technical failure, it would cease disseminating quotations (as opposed to disseminating manual quotations).[10]

The Exchange also proposes to modify its existing rule defining and governing the handling of IOC orders to make clear that, consistent with the requirements of Regulation NMS, IOC orders routed to the STOC System would either be immediately executed (in part or in full) or canceled.[11] The Exchange also is proposing to adopt a rule providing that, consistent with the requirements of Regulation NMS, ISOs routed to CBOE would be immediately and automatically executed on receipt without regard for better-priced protected quotations displayed by other trading centers.[12]

CBOE has proposed additional rules relating to Regulation NMS. First, as required by Rule 610(d) of Regulation NMS,[13] CBOE has proposed to add language providing that members should reasonably avoid displaying quotations that lock or cross protected quotations from other trading centers.[14]

Second, the Exchange is proposing language that will allow it to invoke the ''self-help'' exception contained in Rule 611(b)(1) of Regulation NMS.[15] CBOE could invoke self-help and bypass quotations displayed by a trading center if the trading center repeatedly fails to respond within one second to orders attempting to access its protected quotations, provided the failures are attributable to the trading center and not to transmission delays outside its control. CBOE must immediately notify the trading center of its determination to invoke self-help.[16]

Third, when appropriate functionality is available on CBOE, the Exchange would provide outbound routing, through a third-party service provider (''Routing Service Provider''), to other trading centers displaying better-priced protected quotations on behalf of orders that may be routed.[17] This outbound

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53112 (January 12, 2006), 71 FR 3579.

[4] Amendment No. 1 replaced the original filing in its entirety.

[5] 5 See Securities Exchange Act Release No. 54422 (September 11, 2006), 71 FR 54537 (September 15, 2006) (SR–CBOE–2004–21).

[6] Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (''Regulation NMS Compliance Date Release'').

[7] 17 CFR 242.604(b)(4).

[8] 17 CFR 242.604(b)(3).

[9] 17 CFR 242.604(b)(30).

[10] *See* proposed CBOE Rule 52.13(a).

[11] Such orders would not be ''held up'' for manual processing or for potential price improvement above CBOE's disseminated quotation. *See* proposed CBOE Rule 51.8(g)(4).

[12] *See* proposed CBOE Rule 51.8(n).

[13] 17 CFR 242.610(d)

[14] *See* proposed CBOE Rule 52.12.

[15] 17 CFR 242.611(b)(1).

[16] *See* proposed CBOE Rule 52.13(b).

[17] Prior to that time, however, CBOE would access better-priced quotations through the ITS Plan (or its successor). Under previously approved STOC rules, when STOC receives a marketable order that cannot be executed without causing a trade-through (and assuming that the order is not an IOC order), the system will display the order to market participants at the NBBO price for a short time (three seconds or less, to be determined by the Exchange's STOC Trading Committee). If no market participant ''steps up'' to the NBBO during the display period, the system will route the order to the STOC DPM for

routing would be provided directly and automatically by CBOE pursuant to three separate agreements: (1) An agreement between the Exchange and each member on whose behalf orders would be routed; (2) an agreement between the Exchange and each third-party broker-dealer that would serve as a ''give-up'' on an away trading center; and (3) an agreement between the Exchange and the Routing Service Provider, pursuant to which the Exchange would transmit to the Routing Service Provider orders for outbound routing, with embedded routing instructions as determined by the STOC System, which orders would then be routed via the Routing Service Provider's connectivity to the appropriate market centers for automatic execution.[18] With respect to these routing services, CBOE would establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Routing Service Provider. To the extent the Routing Service Provider reasonably receives confidential and proprietary information, its use of such information would be restricted to legitimate business purposes necessary for providing routing services.

Fourth, the Exchange has proposed a change to CBOE Rule 53.56(b)(6). This provision sets forth the obligation of a designated primary market-maker on the STOC System (''STOC DPM'') [19] to act as agent for orders that are not executed on the system because CBOE is not at the NBBO, and requires the STOC DPM to accord priority to such public customer orders over the STOC DPM's principal transactions. In Amendment No. 1, the Exchange proposes to delete language that permits the STOC DPM to trade on parity with the public customer order the STOC DPM represents as agent in this situation if the customer consents to giving up its priority.

Finally, in Amendment No. 1, the Exchange has proposed to delete portions of existing CBOE Rules 52.1(d) and 53.24(b) relating to the priority of automatically regenerated quotations of STOC market-makers. As a result, an automatically regenerated quotation of a STOC market-maker would be assigned the same priority that a newly generated quotation by the market-maker would have at the time of regeneration.

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 and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; 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. The Commission also finds that the proposal is consistent with Section 6(b)(8) of the Act,[22] which prohibits an exchange's rules from imposing a burden on competition that is not necessary or appropriate in furtherance of the Act. Finally, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C) of the Act,[23] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers and among exchange markets, and between exchange markets, and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

The Commission did not receive any comments on the proposal. This order approves the rule change, as amended.

A. Compliance With Regulation NMS

1. Automated Quotations/Automated Trading Center

CBOE seeks to qualify as an automated trading center under Regulation NMS. To do so, an exchange must display automated quotations.[24] An automated quotation is a quotation displayed by a trading center that, among other things, permits an incoming order to be marked immediate-or-cancel, immediately and automatically executes an order so marked against the displayed quotation or cancels without routing elsewhere, immediately transmits a response, and immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.[25]

The Commission finds that the Exchange's proposed rules are consistent with the requirements of Regulation NMS with respect to automated quotations. CBOE Rule 51.8(g)(4) provides for submission of IOC orders that are either immediately executed (in whole or in part) or canceled. Moreover, CBOE Rule 52.6 has been amended to clarify that orders marked IOC will not be delayed for potential price improvement on the STOC System. Automated trading centers are also required to identify all quotations other than automated quotations as manual quotations, and to adopt reasonable standards limiting when the exchange's quotations change to manual quotations.[26] CBOE has elected not to display manual quotations, but rather would cease disseminating quotations when a technical failure renders it unable to display automated quotations. The Commission finds that CBOE's election not to disseminate quotations when its quotations are not automated is consistent with the Act in general, and with Regulation NMS in particular.

2. Protection of Automated Quotations

The Order Protection Rule requires trading centers to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks, unless an exception applies.[27] The provisions discussed below relate to the protection of automated quotations by the STOC System.

a. Intermarket Sweep Order

Rule 600(b)(30) of Regulation NMS details the requirement for an ISO functionality that allows other industry participants to meet the requirements of the Order Protection Rule. CBOE's proposed rules define an ISO as a limit

manual handling. The STOC DPM may either itself step up to the NBBO price and execute the order, or route the order via the ITS Plan (or its successor) to the other market(s) disseminating the NBBO. If a better price becomes available prior to the DPM routing away, such better price must be taken into account by the DPM. *See* CBOE Rule 52.6.

[18] *See* proposed CBOE Rule 52.10.

[19] *See* CBOE Rule 53.50 (defining STOC DPM).

[20] 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).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(8).

[23] 15 U.S.C. 78k–1(a)(1)(C).

[24] *See* 17 CFR 242.600(b)(4)(i).

[25] *See* 17 CFR 242.600(b)(3).

[26] *See* 17 CFR 242.600(b)(4).

[27] *See* 17 CFR 242.611(a)(1).

order in an NMS stock that is received by the system from a member which is to be executed: (1) Immediately at the time such order is received; (2) without regard for better-priced protected quotations displayed at one or more other market centers; and (3) at prices equal to or better than the limit price, with any portion not so executed to be treated as canceled.[28] The Commission believes that CBOE's proposed definition of intermarket sweep order is consistent with the requirements of Regulation NMS and thus is consistent with the Act.

b. Routing of Orders

As described above, the Exchange would enter into agreements that govern the routing of orders to away markets displaying better-priced protected quotations.[29] Proposed CBOE Rule 52.10 describes the arrangement between the Exchange and a Routing Service Provider. The Commission believes that engaging a Routing Service Provider, as set forth in the rule, is a reasonable means of promoting compliance with Rule 611 of Regulation NMS. The Exchange would be responsible for routing decisions and would retain control of the routing logic. The Commission also notes that the rule contemplates procedures and internal controls designed to protect confidential and proprietary information, which should help ensure that the Routing Service Provider does not misuse routing information obtained from the Exchange. In addition, the rule requires the equitable allocation of reasonable dues, fees, and other charges among Exchange members and other persons using the Exchange's facilities, and forbids unfair discrimination in connection with the routing services provided by the Exchange.

Until such time as the Exchange enters into a routing agreement with a Routing Service Provider, CBOE would access better priced quotations through the ITS Plan (or its successor).[30] Marketable orders that the system cannot execute at the NBBO (with the exception of IOC orders) are routed to the STOC DPM for manual handling. The STOC DPM may either step up to the NBBO price and execute the order, or route the order via the ITS Plan (or its successor) to the other market(s) disseminating better-priced quotations, as required by the ITS Plan.[31]

The Commission believes that CBOE's order routing rules are reasonably designed to prevent trade-throughs on the STOC System, and therefore are consistent with the Exchange Act and Regulation NMS.

c. Self-Help

Paragraph (b)(1) of Rule 611 permits a trade-through of a protected quotation if the trading center displaying the protected quotation was experiencing a failure, material delay, or malfunction of its systems or equipment when the trade-through occurred. The Commission stated in the Regulation NMS Adopting Release that, ''th[is] exception gives trading centers a self-help remedy if another trading center repeatedly fails to provide an immediate response (within one second) to incoming orders attempting to access its quotes.''[32] The Commission believes that proposed CBOE Rule 52.13(b), which provides that the Exchange may, subject to certain conditions, bypass the quotations displayed by another trading center if such trading center repeatedly fails to respond within one second to orders attempting to access such trading center's protected quotations, is reasonably designed to allow CBOE to invoke self-help in a manner consistent with Rule 611 of Regulation NMS and is, therefore, consistent with the Act.

d. Outbound ISOs and the Identification of Permissible Trade-Throughs

In Amendment No. 1, the Exchange proposed a new rule governing generation of outbound ISOs by the STOC System. The system would generate an outbound ISO to any away trading center displaying a protected quotation simultaneously with the execution of a transaction on the Exchange at a price inferior to a protected quotation, unless a specified exception to the Order Protection Rule applies.[33] The proposed rule also requires the Exchange to identify all trades executed pursuant to an exception to or exemption from the Order Protection Rule in accordance with specifications approved by the operating committee of the relevant national market system plan.[34] The provision of the rule requiring identification of trade-through exceptions is designed to create uniformity across the markets regarding how permissible trade-throughs are reported, and should create more transparency for investors and regulators. The Commission believes, therefore, that proposed CBOE Rule 52.7 furthers the public interest and is consistent with the Act.

3. Access Rule

Paragraph (a) of the Access Rule[35] prohibits a national securities exchange from imposing unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the exchange to a quotation in an NMS stock displayed through the SRO quoting facility. The Commission believes that the STOC rules and the STOC System have been reasonably designed to meet the standard in paragraph (a) of the Access Rule. In addition, paragraph (d) of the Access Rule[36] requires a national securities exchange to establish, maintain, and enforce rules that, among other things, require its members reasonably to avoid displaying quotations that lock or cross any protected quotation in an NMS stock and prohibit its members from engaging in a pattern or practice of doing so. Proposed CBOE Rule 52.12 requires members of the Exchange to reasonably avoid displaying, and to not engage in a practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan, subject to certain limited exceptions. The Commission believes that this rule is consistent with Rule 610(d) of Regulation NMS.

B. Accelerated Approval of Amendment No. 1

Pursuant to Section 19(b)(2) of the Act,[37] the Commission finds good cause for approving the amended proposal prior to the thirtieth day after the publication of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange revised the proposal: (1) To add proposed CBOE Rule 52.7, relating to the generation of outbound ISOs and the identification of trade-through exceptions; (2) to clarify that, until the Exchange's automated

[28] However, if an order is received through the communications network operated pursuant to the ITS Plan or any successor to the ITS Plan, the order would trade only at a single price. *See* proposed CBOE Rule 51.8(n).

[29] The Exchange intends to enter into the routing agreements described in proposed CBOE Rule 52.10 prior to the ''Trading Phase Date'' of February 5, 2007. *See* Regulation NMS Compliance Date Release.

[30] *See supra* note 17.

[31] *See* CBOE Rule 52.6.

[32] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37535 (June 29, 2005).

[33] *See* proposed CBOE Rule 52.7(a). The permitted exceptions in the Exchange's rule are consistent with those set forth in Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b).

[34] In addition, if a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (6) and the self-help exception of Rule 611(b)(1), such trade shall be identified as executed pursuant to the intermarket sweep order exception. *See* proposed CBOE Rule 52.7(b).

[35] 17 CFR 242.610(a).

[36] 17 CFR 242.610(d).

[37] 15 U.S.C. 78s(b)(2).

outbound routing capabilities are in place, the STOC System will route certain non-IOC orders to the STOC DPM for manual handling; (3) to clarify proposed CBOE Rule 52.10 regarding the Exchange's planned order routing arrangements; (4) to delete language from CBOE Rule 53.56(b)(6) that allows a STOC DPM who is acting as agent for a customer order that is not executed on the system because there is a better price on another exchange to be on parity with the customer if the customer consents; (5) to delete portions of CBOE Rules 52.1(d) and 53.24(b) relating to the priority of automatically regenerated quotations of STOC market-makers; and (6) to make additional non-substantive changes to the proposed rule text. These changes do not raise any novel or substantive regulatory issues. Therefore, the Commission finds good cause for approving the proposal, with these changes, on an accelerated basis. Doing so will help enable the Exchange to meet the requirements of Regulation NMS in an expeditious manner.

IV. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether it 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–2006–70 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–2006–70. 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 Exchange. 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–2006–70 and should be submitted on or before October 25, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (File No. SR–CBOE–2006–70), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Nancy M. Morris,

Secretary.

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[38] *Id.*

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54531; File No. SR–ISE–2006–52]

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

September 28, 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 September 6, 2006, the International Securities Exchange, Inc. (''ISE'' 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 prepared by the ISE. The ISE filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) 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 Exchange is proposing to reduce the exposure period for orders entered into the Block Order Mechanism under Rule 716 to three seconds. The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE'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, the ISE 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. The ISE 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

Under ISE Rule 716, members can seek liquidity for a single-sided order of at least fifty contracts (a ''block order'') by entering such order into the Block Order Mechanism. Currently, upon entry of an order, the Block Order Mechanism gives market participants thirty seconds to respond with contra-side trading interest.[5] The ISE has reduced the exposure period for the other special order mechanisms contained in Rule 716, the Facilitation Mechanism and the Solicited Order Mechanism, to three seconds and has found that this is more than enough time for market participants to respond.

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(6).

[5] At the conclusion of this time period, either an execution occurs automatically, or the order is cancelled. Bids (offers) on the Exchange at the time the block order is executed that are priced higher (lower) than the block execution price, as well as responses that are priced higher (lower) than the block execution price, are executed at the block execution price. Responses, quotes and non-customer orders at the block execution price participate in the execution of the block order according to the allocation method set forth in ISE Rule 713(e). *See* ISE Rule 716(c).