

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-2006-112 and should be submitted on or before March 29, 2007.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (File No. SR-CBOE-2006-112), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55389; File No. SR-CBOE-2006-110]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 Relating to the Establishment of CBOE Stock Exchange, LLC

March 2, 2007.

## I. Introduction

On December 26, 2006, the Chicago Board Options Exchange, Incorporated, (the "CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the establishment of the CBOE Stock Exchange ("CBSX"), which will be operated by CBOE Stock Exchange, LLC

("CBSX LLC"). On January 10, 2007, the CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on February 1, 2007.<sup>3</sup> The Commission received no comments regarding the proposal. On March 1, 2007, the CBOE filed Amendment No. 2 to the proposed rule change. On March 2, 2007, the CBOE filed Amendment No. 3 to the proposed rule change. This order approves the proposed rule change, grants accelerated approval to Amendment Nos. 2 and 3, and solicits comments from interested persons on Amendment Nos. 2 and 3.

## II. Overview

The Exchange proposes to establish CBSX as a facility,<sup>4</sup> as that term is defined in Section 3(a)(2) of the Act,<sup>5</sup> of CBOE. As the self-regulatory organization ("SRO") for CBSX, CBOE will have regulatory responsibility for the activities of CBSX.<sup>6</sup> CBSX will be a fully automated marketplace for the trading of securities other than options by CBOE members. CBSX will be operated by CBSX LLC, a Delaware limited liability company. In the instant proposed rule change, CBOE seeks the Commission's approval of the proposed governance structure of CBSX LLC as reflected in the Operating Agreement of CBSX LLC. CBOE has submitted separate proposed rule changes to establish rules relating to listing, membership and trading on CBSX and to establish a permit program in connection with CBSX.<sup>7</sup>

<sup>3</sup> See Securities Exchange Act Release No. 55172 (January 25, 2007), 72 FR 4745.

<sup>4</sup> Pursuant to Section 3(a)(2) of the Act, the term "facility" when used with respect to an exchange, includes "its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." 15 U.S.C. 78c(a)(2). The Commission notes that although the Operating Agreement refers to CBSX LLC as a facility of CBOE, the scope of the CBSX facility is not limited to CBSX LLC.

<sup>5</sup> 15 U.S.C. 78c(a)(2).

<sup>6</sup> CBOE represents that it has adequate funds to discharge all regulatory functions related to the facility. CBOE further represents that CBSX LLC will not be entitled to any revenue generated in connection with penalties, fines, and regulatory fees that may be assessed by CBOE against CBOE members in connection with trading on CBSX. Rather, all regulatory fines, penalties and fees assessed against and paid by CBOE members to CBOE in connection with trading on CBSX will remain with CBOE.

<sup>7</sup> The Commission approved the Exchange's proposed rule change relating to the CBSX permit program. See Securities Exchange Act Release No. 55326 (February 21, 2007), 72 FR 8816 (February

As a limited liability company, ownership of CBSX LLC is represented by limited liability membership interests. The holders of such interests are referred to as "Owners."<sup>8</sup> Initially, there are five Owners of CBSX LLC. CBOE is one of the Owners of CBSX LLC, and owns all "Series A" Voting Shares<sup>9</sup> of CBSX LLC, representing 50% of CBSX LLC.<sup>10</sup> The other four Owners and their respective ownership interests are: VDM Chicago, LLC (20%); LaBranche & Co., Inc. (10%); IB Exchange Corp. (10%); and Susquehanna International Group, LLP. (10%). Each of these four Owners owns "Series B" Voting Shares of CBSX LLC.

Under Section 3.2 of the Operating Agreement, the CBSX LLC Board of Directors ("Board of Directors" or "Board") may authorize the issuance of "Series C" Non-Voting Restricted Shares<sup>11</sup> from time to time to employees, consultants, or officers of CBSX LLC, or any other person, each of

27, 2007). The Commission also approved the Exchange's proposed rule change to establish the equity trading rules for CBSX. See Securities Exchange Act Release No. 34-55392 (March 2, 2007).

<sup>8</sup> "Owner" means a limited liability company "member" as that term is defined in § 18-101(11) of the Delaware Limited Liability Company Act ("DLLCA"), and shall include each Voting Owner and each Management Owner, but only so long as such person is shown on CBSX's books and records as the owner of at least one (1) Share (or fraction of one (1) Share). "Owner" shall include a "Substituted Owner" as defined in Section 6.5(a) of the Operating Agreement, but only upon compliance with all of the requirements of Sections 6.4 and 6.5 of the Operating Agreement. For purposes of clarity, no person shall become an "Owner" as to any Shares, if the acquisition of those Shares will require a change of ownership notice to the Commission, or will constitute a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Act, until all of the requirements of such notice or rule filing process have been accomplished and, if necessary, approved by the Commission. See Section 2.1(16) of the Operating Agreement.

<sup>9</sup> "Voting Shares" means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. See Section 2.1(27) of the Operating Agreement.

<sup>10</sup> As noted in Section 3.2 of the Operating Agreement, it is the intention of the Owners that no other members of CBSX LLC (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the Commission as provided for in Article VI, including Section 6.14 of the Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

<sup>11</sup> "Non-Voting Restricted Share" means a Share held by a Management Owner containing the voting limitations and other restrictions described in the Operating Agreement. See Section 2.1(15) of the Operating Agreement.

<sup>21</sup> *Id.*

<sup>22</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.

whom would become a Management Owner<sup>12</sup> of CBSX LLC.

As provided in Section 8.9 of the Operating Agreement, the outstanding Series A Voting Shares will, in the aggregate (and without being deemed to be a voting trust), be entitled to a number of votes equal to 50% of the total number of Voting Shares outstanding, on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share will be entitled to one vote on each matter submitted to a vote of the Owners. The Series C Non-Voting Restricted Shares will not be entitled to vote on any matter submitted to a vote of the Owners.

### 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>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,<sup>14</sup> which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules or regulations thereunder, and the rules of the exchange.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>15</sup> which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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; and are not designed to unfairly

discriminate between customers, issuers, brokers, or dealers.

#### A. CBSX as a Facility of the Exchange

The Commission believes that the proposed rule change is consistent with Section 6(b)(1) of the Act<sup>16</sup> in that upon establishing CBSX as a facility of the Exchange and entering into the relationship with CBSX LLC described above, CBOE will remain so organized, and have the capacity to be able, to carry out the purposes of the Act. The Commission notes that it previously approved similar structures with respect to the operation of exchange facilities.<sup>17</sup>

The Commission believes that CBSX LLC can be approved as the operator of the CBSX facility since CBOE will be the SRO for the CBSX facility, and CBSX LLC will conduct the facility's business operations in a manner consistent with the regulatory and oversight responsibilities of CBOE.<sup>18</sup>

Although CBSX LLC itself will not carry out any regulatory functions, all its activities must be consistent with the Act. Under Section 5.7 of the Operating Agreement, each CBSX LLC Owner agrees to comply with the federal securities laws and rules and regulations thereunder; to cooperate with the Commission and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with CBSX LLC's and CBOE's ability to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. In addition, under Section 9.16 each Director agrees to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the Commission and CBOE

pursuant to the respective regulatory authority of the Commission and CBOE. In addition, each Director will take into consideration whether any actions taken or proposed to be taken as a Director for or on behalf of CBSX LLC, or any failure or refusal to act (including a failure to be present to constitute a quorum, or to reasonably provide an affirmative vote or consent) would constitute interference with CBOE's regulatory functions and responsibilities in violation of the Operating Agreement or the Act. These provisions reinforce the notion that CBSX, as a facility of an exchange, is not solely a commercial enterprise; it is an integral part of an SRO registered pursuant to the Act and, as such, is subject to obligations imposed by the Act.

These obligations endure as long as CBSX is a facility of the Exchange, regardless of the size of CBOE's ownership interest in CBSX LLC, the operator of the facility. The Exchange currently owns 50% interest in the operator of the facility and if, in the future, it wishes to reduce its interest in CBSX LLC to below 20%, pursuant to Section 6.12(d) of the Operating Agreement the Exchange would be required to file a proposed rule change with the Commission under Section 19(b) of the Act. The Commission believes that this is a reasonable measure to alert the Commission to a significant reduction of CBOE's interest in CBSX LLC. Such a reduction in ownership could warrant additional review of the Operating Agreement to ensure that CBOE's responsibilities as the SRO of the CBSX facility are not compromised.

The Operating Agreement includes additional provisions that make special accommodations for CBOE as the SRO of the CBSX facility. Section 1.8 of the Operating Agreement sets forth CBOE's authority with respect to any action, transaction or aspect of an action or transaction that relates to CBOE's regulatory responsibilities, by requiring CBOE's affirmative vote before such action or transaction or aspect thereof can be authorized, undertaken or effective. For example, Section 9.15(a) provides that CBSX LLC may not take certain specific actions without the approval of a Super Majority of the Owners,<sup>19</sup> and the additional approving vote of CBOE.

<sup>19</sup> "Super Majority of the Owners" means, subject to the provisions of Section 1.8 of the Operating Agreement as to Regulatory Requirements, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) any two (2) of the Initial Owners of Series B Voting Shares who then retain ownership of Series B Voting

<sup>12</sup> "Management Owner" means a natural person who is identified on Exhibit A of the Operating Agreement (Exhibit 5C to the proposed rule change) as a Management Owner, who subsequently becomes a Management Owner pursuant to the provisions of Section 3.2(c) of the Operating Agreement, or who is a transferee or assignee of Non-Voting Restricted Shares (other than a Voting Owner). See Section 2.1(13) of the Operating Agreement.

<sup>13</sup> In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b)(1).

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

<sup>16</sup> 15 U.S.C. 78f(b)(1).

<sup>17</sup> See Securities Exchange Act Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (order approving the ISE Stock Exchange, LLC as a facility of the International Securities Exchange, Inc.); Securities Exchange Act Release No. 54364 (August 25, 2006), 71 FR 52185 (order approving the Boston Equities Exchange as a facility of the Boston Stock Exchange, Inc.); and Securities Exchange Act Release No. 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (order approving the Boston Options Exchange as a facility of the Boston Stock Exchange, Inc.).

<sup>18</sup> As the SRO, CBOE will have regulatory responsibility for the facility.

In addition, Section 9.2(b) of the Operating Agreement provides that, in light of its ownership of the Series A Voting Shares, CBOE is entitled to designate a number of Directors equal to the aggregate number of Directors designated by those Owners owning Series B Voting Shares. Section 9.2(d) also gives CBOE the right, as long as CBSX remains a facility of CBOE, to designate at least one Director regardless of whether it maintains any ownership interest in CBSX LLC. In addition, despite a statement of a general prohibition against Owners committing or acting on behalf of CBSX LLC contained in Section 5.6 of the Operating Agreement, Section 9.15(a) would permit CBOE to act on behalf of CBSX LLC in regulatory matters. Finally, CBOE has complete access to information through provisions such as Section 15.2 of the Operating Agreement, which allows CBOE, the other Owners, and their respective officers, directors, agents, and employees, to disclose confidential information to the Commission or CBOE.

Because the Exchange has proposed to operate CBSX as its facility, CBOE's obligations under the Act extend to its members' activities on CBSX, as well as to the operation and administration of CBSX. The Commission believes that the provisions described above are consistent with the Act and enhance the ability of CBOE to carry out its self-regulatory responsibilities with respect to its CBSX facility.

#### B. Changes in Control of CBSX LLC

The Commission believes that the restrictions in the Operating Agreement on direct and indirect changes in control of CBSX LLC are sufficient so that CBOE would be able to carry out its self-regulatory responsibilities and that the Commission can fulfill its responsibilities under the Act.

Exhibit A of the Operating Agreement lists all CBSX LLC Owners, the Series of shares owned, and the percentage ownership interest in CBSX LLC. A change to this exhibit (as well as any other provision of the Operating Agreement) would need to be filed with the Commission if so required under Section 19(b) of the Act and Rule 19b-4 thereunder. In addition, Section 6.14 of the Operating Agreement provides that any proposed transfer of CBSX LLC shares that would cause any person, alone or together with any Affiliate, to meet or cross the 20% ownership threshold or any subsequent 5%

ownership interest level (e.g., 25%, 30%, 35%, etc.) would require CBOE to file a proposed rule change with the Commission pursuant to Section 19(b) of the Act and be subject to approval by the Commission. Any proposed transfer of Series A Voting Shares would also require CBOE to file a proposed rule change under Section 19(b) of the Act and Rule 19b-4 thereunder.

Furthermore, Section 6.13 of the Operating Agreement requires CBOE to inform the Commission in writing at least ten days prior to the closing date of any transaction that results in a person's percentage ownership interest, alone or together with any Affiliate, in CBSX LLC that would result in such person meeting or crossing the 5%, 10%, or 15% ownership thresholds. The Commission believes that this approach is consistent with the Act in that it is analogous to the ongoing reporting requirements of Form 1,<sup>20</sup> the application for (and amendments to the application for) registration as a national securities exchange. Exhibit K of Form 1 requires any exchange that is a corporation or partnership to list any persons that have an ownership interest of 5% or more in the exchange;<sup>21</sup> and Rule 6a-2(a)(2) under the Act<sup>22</sup> requires an exchange to update its Form 1 within ten days after any action that renders inaccurate the information previously filed in Exhibit K.

Exhibit K imposes no obligation on an exchange to report parties whose ownership interest in the exchange is less than 5%. Similarly, Section 6.13 of the Operating Agreement requires CBOE to notify the Commission of an interest in CBSX LLC only when that interest reaches 5% or more. The Commission does not believe that the identity of a party that has less than a 5% interest in a facility of a national securities exchange is a "rule of the exchange" that must be filed pursuant to Section 19(b) of the Act and Rule 19b-4(b) thereunder.

In addition, Section 15.16 of the Operating Agreement would require an indirect controlling party to become a party to the Operating Agreement upon establishing a controlling interest in any Owner who, alone or together with any Affiliate, holds a Percentage Interest in CBSX LLC equal to or greater than 20%. Any such amendment to the Operating Agreement would require a proposed

rule change to be filed with the Commission pursuant to Section 19(b) of the Act. The proposed rule change would alert the Commission to the existence of a proposed indirect controlling party and present the Commission and CBOE with an opportunity to determine what additional measures, if any, might be necessary to provide sufficient regulatory jurisdiction over the proposed indirect controlling party. The Commission understands that Section 15.16 of the Operating Agreement would apply to any ultimate parent of CBSX LLC, no matter how many levels of ownership are involved, provided that a controlling interest exists between each link of the ownership chain.

In conclusion, the Commission believes that Sections 6.13, 6.14, and 15.16 of the Operating Agreement, together with the requirements of Section 19(b) of the Act and Rule 19b-4 thereunder, provide the Commission with sufficient authority over changes in control of CBSX LLC to enable the Commission to carry out its regulatory oversight responsibilities with respect to CBOE and the CBSX facility.

#### C. Regulatory Jurisdiction Over CBSX LLC Owners

The Commission believes that the terms of the Operating Agreement provide the Commission and CBOE with sufficient regulatory jurisdiction over the controlling parties and Owners to carry out their responsibilities under the Act. In Section 6.15(a), each Owner acknowledges that—to the extent that they are related to CBSX LLC activities—the books, records, premises, officers, directors, agents, and employees of the Owner are deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act. Moreover, in Section 6.15(b) of the Operating Agreement, each Owner acknowledges that the books, records, premises, officers, directors, agents, and employees of CBSX LLC are deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act. These provisions would enable the Commission to exercise its authority under Section 19(h)(4)<sup>23</sup> of the Act with

<sup>20</sup> 17 CFR 249.1 and 17 CFR 249.1a.

<sup>21</sup> This reporting requirement applies only to exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange. See Form 1, Exhibit K. Exhibit K applies only to the exchange itself, not to entities that operate facilities of the exchange.

<sup>22</sup> 17 CFR 240.6a-2(a)(2).

<sup>23</sup> 15 U.S.C. 78s(h)(4). Section 19(h)(4) authorizes the Commission, by order, to remove from office or censure any officer or director of a national securities exchange if it finds, after notice and an opportunity for hearing, that such officer or director has: (1) Willfully violated any provision of the Act or the rules and regulations thereunder, or the rules

respect to the officers and directors of CBSX LLC and of all Owners, since all such officers and directors—to the extent that they are acting in matters related to CBSX LLC activities—would be deemed to be the officers and directors of CBOE itself. Furthermore, the records of any Owner—to the extent that they are related to CBSX LLC activities—are subject to the Commission's examination authority under Section 17(b)(1) of the Act,<sup>24</sup> as these records would be deemed to be the records of CBOE itself.

In addition, under the terms of Section 6.15(c) of the Operating Agreement, CBSX LLC and each Owner (other than CBOE for so long as CBSX is a facility of CBOE)<sup>25</sup>—and their respective officers and directors and their agents and employees whose principal place of business and residence is outside of the United States—must irrevocably submit to the jurisdiction of the U.S. federal courts, the Commission, and CBOE for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws and the rules or regulations thereunder, commenced and initiated by the Commission arising out of or relating to CBSX LLC activities. In addition, CBSX LLC and each Owner (other than CBOE for so long as CBSX LLC is a facility of CBOE)—and their respective officers and directors and their agents and employees whose principal place of business and residence is outside of the United States—must waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of the Commission; that the suit, action or proceeding is an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that the subject matter of the suit, action, or proceeding may not be enforced in or by such courts or agency. Moreover, pursuant to Section 6.15(d) of the Operating Agreement, the CBSX LLC and each Owner (other than CBOE for so long as CBSX LLC is a facility of CBOE) are required to take such action as is necessary to ensure that such Owner's officers and directors and their

of a national securities exchange; (2) willfully abused his or her authority; or (3) without reasonable justification or excuse, has failed to enforce compliance with any such provision by a member or person associated with a member of the national securities exchange.

<sup>24</sup> 15 U.S.C. 78q(b)(1).

<sup>25</sup> The Commission notes that CBOE and its officers, directors and employees are subject to the Commission's jurisdiction because CBOE is an SRO and as such is subject to the Act and the rules and regulations thereunder.

agents and employees whose principal place of business and residence is outside the United States, consent to the application of these requirements with respect to their CBSX LLC-related activities. Finally, under Section 5.7 of the Operating Agreement, CBSX LLC and each Owner agree to cooperate with the Commission and CBOE pursuant to their respective regulatory authority.

The Commission also notes that, even in the absence of these provisions of the Operating Agreement, Section 20(a) of the Act<sup>26</sup> provides that any person with a controlling interest in CBSX LLC would be jointly and severally liable with and to the same extent that CBSX LLC is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action.

The Commission believes that, together, these provisions grant the Commission sufficient jurisdictional authority over CBSX LLC and its Owners. Moreover, CBOE is required to enforce compliance with these provisions because they are “rules of the exchange” within the meaning of Section 3(a)(27) of the Act.<sup>27</sup> A failure on the part of CBOE to enforce its rules could result in suspension or revocation of registration under Section 19(h)(1) of the Act.<sup>28</sup>

#### *D. Ownership and Voting Restrictions on CBSX LLC Owners*

Section 6.12(a) of the Operating Agreement prohibits a person (other than CBOE), either alone or together with its Affiliates, from directly or indirectly owning more than a 20% Percentage Interest in the Company (“Concentration Limitation”). Although Section 6.12(b) permits this limitation to be waived by the Board, as long as such waiver has been filed with and approved by the Commission, it precludes such a waiver if the person or its Affiliates is a CBOE member. Further, Section 8.10 of the Operating Agreement states that if an Owner of Voting Shares that is also a CBOE member owns more than 20% of the Outstanding Voting Shares (“Excess Shares”), alone or together with any Affiliate, such Owner shall have no voting rights with respect to the Excess Shares.

In addition, proposed CBOE Rule 3.32 sets forth ownership concentration limitations for CBOE members and permits the Exchange to take

<sup>26</sup> 15 U.S.C. 78t(a).

<sup>27</sup> 15 U.S.C. 78c(a)(27).

<sup>28</sup> 15 U.S.C. 78s(h)(1).

appropriate disciplinary action in the event a violation of the ownership concentration limitation is not cured within a specified time frame. Proposed Rule 3.32 also sets forth restrictions on affiliations between the Exchange and its members.

The Commission believes that the ownership concentration and voting limitations contained in the Operating Agreement and the provisions of proposed CBOE Rule 3.32 are reasonable and consistent with the Act. It is common for members who trade on an exchange to have ownership interests in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that is also a controlling shareholder of an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveilling the member's conduct or from punishing any conduct that violates the rules of the exchange or the federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital.

Finally, the Commission believes that the restriction on voting trust agreements in Section 8.8 of the Operating Agreement is reasonable and consistent with the Act. In the absence of such a provision, unaffiliated parties could act in concert and evade the Operating Agreement's provisions regarding changes in control of CBSX LLC.<sup>29</sup> A voting trust agreement would not necessarily be inconsistent with the Act, but any Owner wishing to establish a voting trust agreement first would need to have the Operating Agreement amended to enable a voting trust to be established. Any such amendment would require a proposed rule change under Section 19(b) of the Act, thus affording the Commission an opportunity to review the matter.

#### *E. Accelerated Approval of Amendment Nos. 2 and 3*

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment Nos. 2 and 3 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>30</sup>

<sup>29</sup> The Operating Agreement treats as belonging to a single person any shares held by affiliated parties of the person. See Sections 6.13, 6.14, and 15.16 of the Operating Agreement.

<sup>30</sup> 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any

In Amendment No. 2, CBOE: (i) Amended Section 1.7 to clarify the role of CBOE, as the SRO, for the activities of CBSX LLC; (ii) amended Section 5.7 to add a reference to CBOE; (iii) amended Section 6.14 to clarify that any transfer of Series A Voting Shares would require a rule filing under Section 19 of the Exchange Act, subject to approval by the Commission; (iv) amended Section 6.15 by, among other things, revising paragraphs (c) and (d) to indicate that those paragraphs are inapplicable in the case of CBOE and its respective officers, directors, agents and employees for so long as CBSX LLC is a facility of CBOE and to clarify the application of these paragraphs in the case of the agents and employees of CBSX LLC and its Owners whose principal place of business and residence is outside of the United States; and (v) amended various sections of the Operating Agreement to refer to CBOE rather than "Regulatory Services Provider." Amendment No. 2 also updated Exhibit A-1 of the Operating Agreement. Amendment No. 3 amended Section 6.15(c) to clarify the U.S. agent for service of process.

The Commission believes that Amendment Nos. 2 and 3 serve to clarify and enhance the proposal and that publication of its provisions would needlessly delay the implementation of the proposal. The Commission therefore finds good cause exists to accelerate approval of Amendment Nos. 2 and 3, pursuant to Section 19(b)(2) of the Act.<sup>31</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3 are 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-CBOE-2006-110 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.

proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

<sup>31</sup> 15 U.S.C. 78s(b)(2).

All submissions should refer to File Number SR-CBOE-2006-110. 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 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 Amendment Nos. 2 and 3 of File Number SR-CBOE-2006-110 and should be submitted on or before March 29, 2007.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>32</sup> that the proposed rule change (SR-CBOE-2006-110), as modified by Amendment No. 1, be, and it hereby is approved and Amendment Nos. 2 and 3 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>33</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55365; File No. SR-DTC-2006-07]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Wind-Down of a Participant

February 27, 2007.

#### I. Introduction

On March 28, 2006, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on September 29, 2006, amended proposed rule change SR-DTC-2006-07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 20, 2006.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change as modified by Amendment No. 1.

#### II. Description

The proposed rule change would add a new Rule 32, Wind-Down of a Participant, to DTC's Rules to address a situation where a participant notifies DTC that it intends to wind down its activities, and DTC determines in its discretion that it must take special action in order to protect itself and its participants.<sup>3</sup>

The proposed rule change would allow DTC to make a determination that a participant is a wind-down participant and would set forth the conditions DTC using its discretion may place on a wind-down participant and the actions DTC using its discretion may take with respect to a wind-down participant to protect itself and its participants. Such actions may include restricting or modifying the wind-down participant's use of any or all of DTC's services and requiring the wind-down participant to post increased participants fund deposits. DTC will retain all of its other rights set forth in its rules and participant agreements, including the right to cease to act for the wind-down participant.

The rule is designed to ensure that DTC has the needed flexibility to appropriately manage the risks

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

<sup>2</sup> Securities Exchange Act Release No. 54927 (December 13, 2006), 71 FR 76397.

<sup>3</sup> Similar proposed rule changes have been filed by the Fixed Income Clearing Corporation [File No. SR-FICC-2006-05] and the National Securities Clearing Corporation [File No. SR-NSCC-2006-05].