

may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### IV. 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 at <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 No. SR-Amex-2007-19 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 No. SR-Amex-2007-19. 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 No. SR-Amex-2007-19 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55275; File No. SR-CBOE-2006-94]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Off-Floor DPMs**

February 12, 2007.

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 November 13, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") 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 substantially prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. 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**

CBOE proposes to amend CBOE rules to allow a Designated Primary Market-Maker ("DPM") to operate remotely away from CBOE's trading floor. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com>), at the Office of the Secretary, CBOE and at the Commission.

#### **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 Exchange 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 those statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

CBOE proposes to amend its rules to allow a DPM to operate remotely away from CBOE's trading floor. DPMs are member organizations that function in option classes allocated to them as a Market-Maker, and also are subject to the obligations under Rule 8.85 or as otherwise provided in CBOE's Rules. Currently, all DPMs operate on CBOE's trading floor. However, some member organizations have expressed an interest in acting as a DPM remotely away from CBOE's trading floor. As discussed below, the proposed rule change is intended to provide DPMs with the flexibility to operate on CBOE's trading floor ("On-Floor DPM") or remotely away from CBOE's trading floor ("Off-Floor DPM"). A DPM would only be permitted to operate as an Off-Floor DPM in equity option classes traded on the Hybrid Trading System.

CBOE proposes to amend Rule 8.83 to provide that in selecting an applicant for approval as a DPM, the appropriate exchange committee may place one or more conditions on the approval, including, but not limited to, whether the DPM will operate on-floor or off-floor. Additionally, CBOE proposes to amend Rule 8.83 to provide that an On-Floor DPM can request that the appropriate Exchange committee authorize it to operate as an Off-Floor DPM in one or more equity option classes traded on the Hybrid Trading System. The appropriate Exchange committee will consider the factors specified in Rule 8.83(b) in determining whether to permit an On-Floor DPM to operate as an Off-Floor DPM. In the event a DPM is approved to operate as an Off-Floor DPM, Rule 8.83 provides that the Off-Floor DPM can have a DPM Designee trade in open outcry in the option classes allocated to the Off-Floor DPM, but the Off-Floor DPM shall not receive a participation entitlement under Rule 8.87 with respect to orders represented in open outcry. CBOE also proposes to amend Rule 6.45A(a)(C) and Rule 6.74 to make clear that the DPM participation entitlement is only applicable to an On-Floor DPM.

As provided in new Interpretation .01 to Rule 8.83, if an Off-Floor DPM wishes to operate as an On-Floor DPM, the Off-

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

Floor DPM can request that the appropriate Exchange Committee authorize it to do so. In making a determination pursuant to this Interpretation, the appropriate Exchange committee would evaluate whether the change is in the best interests of the Exchange, and the committee may consider any information that it believes will be of assistance to it. Factors to be considered may include, but are not limited to, any one or more of the following: performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved, number of Market-Makers affected, and trading volume of the securities.

In connection with this rule change, CBOE proposes to amend certain DPM obligations contained in Rule 8.85. In particular, CBOE proposes to amend the obligation contained in subparagraph (a)(iv) which currently provides that the DPM must assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the appropriate Exchange committee. CBOE proposes to amend subparagraph (a)(iv) to state that an Off-Floor DPM similarly shall assure that the number of DPM Designees and support personnel continuously overseeing the DPM's activities is not less than the minimum required by the appropriate Exchange committee. Additionally, an Off-Floor DPM shall provide members with telephone access to a DPM Designee at all times during market hours for purposes of resolving problems involving trading on the Exchange.

CBOE also proposes to amend the provision in subparagraph (a)(v) of Rule 8.85 that states a DPM shall trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity. CBOE proposes to allow, as part of an existing pilot program applicable to e-DPMs,<sup>3</sup> an Off-Floor DPM to have not more than one Market-Maker affiliated with the Off-Floor DPM trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM, provided such Market-Maker is trading on a separate membership.<sup>4</sup> The affiliated Market-Maker would also have to comply with the "Guidelines for Exemptive Relief

Under Rule 8.91(e) for Members Affiliated with DPMs", set forth in Rule 8.91. (Absent the pilot program, an Off-Floor DPM may not allow any Market-Makers affiliated with the Off-Floor DPM to trade on CBOE's trading floor in any class allocated to the Off-Floor DPM.) If the Off-Floor DPM has an affiliated Market-Maker trade on CBOE's trading floor in any specific option class allocated to the Off-Floor DPM pursuant to the pilot program, Rule 8.85(a)(v) provides that the Off-Floor DPM cannot also have a DPM Designee trading in open outcry in the option classes allocated to the Off-Floor DPM.

Finally, CBOE proposes to amend Interpretation .02 of Rule 3.8 to allow an Off-Floor DPM to appoint one individual to be the nominee for all memberships utilized by the organization in an Off-Floor DPM capacity. Interpretation .02 of Rule 3.8 currently provides that a member organization can appoint one individual to be the nominee for all memberships utilized by the organization in an RMM capacity or an e-DPM capacity. This is an exception to the general requirement of Rule 3.8(a)(ii) which provides that "if a member organization is the owner or lessee of more than one membership, the organization must designate a different individual to be the nominee for each of the memberships."

## 2. Statutory Basis

CBOE believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-CBOE-2006-94 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-CBOE-2006-94. 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

<sup>3</sup> See CBOE Rule 8.93(vii). The Pilot Program is scheduled to expire on March 14, 2007.

<sup>4</sup> CBOE proposes to make a corresponding change to the "Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs." See Guidelines, Paragraph (b)(viii).

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

<sup>6</sup> 15 U.S.C. 78(f)(b)(5).

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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2006-94 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55279; File No. SR-ISE-2007-02]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Position and Exercise Limits on the KBW Bank Index

February 12, 2007.

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> notice is hereby given that on January 8, 2007, the International Securities Exchange, LLC ("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 substantially prepared by the ISE. On February 5, 2007, the ISE filed Amendment No. 1 to the proposed rule change. The ISE filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit

comments on the proposed rule change, as amended, from interested persons.

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

The Exchange is proposing to increase the position and exercise limits for options on the KBW Bank Index. The text of the proposed rule change is available at the ISE, the Commission's Public Reference Room, and <http://www.iseoptions.com>.

#### 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

The Exchange recently listed for trading options on the KBW Bank Index ("BKX") pursuant to the Exchange's generic listing standards found in its Rule 2002(b). Under ISE Rule 2005, a narrow-based index option cannot have position and exercise limits that exceed 31,500 contracts.<sup>5</sup> The Exchange notes that the Philadelphia Stock Exchange ("Phlx") also currently lists options on BKX. However, pursuant to a Rule 19b-4 filing, the position and exercise limit for options on BKX traded by Phlx is currently 44,000 contracts.<sup>6</sup> Accordingly, the Exchange proposes to increase the position and exercise limit for options on BKX traded at ISE to 44,000 contracts also. The Exchange believes it is important for a product traded at multiple exchanges to have a uniform position and exercise limit in order to eliminate any confusion among investors and other market participants.

###### 2. Statutory Basis

The basis under the Act for this proposed rule change is found in

Section 6(b)(5),<sup>7</sup> in that the adoption of uniform position and exercise limits for BKX will serve 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.

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

The proposed rule change does not impose any burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

<sup>10</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 5, 2007, the date on which the ISE submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> ISE Rule 2007 generally states that exercise limits for an index option shall be equivalent to the position limit prescribed to that index option.

<sup>6</sup> See Securities Exchange Act Release No. 49312 (February 24, 2004), 69 FR 9672 (March 1, 2004) (SR-Phlx-2004-13).