

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54987; File No. SR-CBOE-2006-107)

December 20, 2006

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding a Permit Program for CBSX

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 December 18, 2006, the Chicago Board Options Exchange, Incorporated (“CBOE” or “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 CBOE. 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 proposes to modify its rules relating to the establishment of a permit program for the Exchange’s proposed stock-trading facility CBSX. The text of the proposed rule change is available at CBOE, the Commission’s Public Reference Room, and [www.cboe.com](http://www.cboe.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 CBOE 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

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

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

1. Purpose

CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. The Exchange (via a separate rule filing) is proposing to modify Chapters 50-55 of the CBOE Rules in connection with the establishment of the CBSX. CBSX is a separate legal entity (a Delaware Limited Liability Company) that is owned by the Exchange and several strategic partners. The Exchange is also submitting a rule filing proposing to establish CBSX as a facility of the Exchange. The purpose of this filing is to modify the Exchange's Constitution and Rules to establish a CBSX Permit Program that will allow non-CBOE seat holders access to CBSX. The Exchange believes that expanding access to CBSX beyond CBOE's options user base will enhance liquidity on CBSX and make it a more attractive stock trading venue. The salient features of the Permit Program are summarized below.

- The permits may only be used for trading stock on CBSX. A Permit does not entitle the holder to trade options on CBOE or to physically enter an option trading post on the trading floor.
- Up to 100 permits may be issued.
- The Permit Program could be terminated by the Exchange via a rule filing approved by the Commission. This provision is incorporated in the Constitution so that the Permit Program could be terminated with a rule change filing but without a corresponding membership vote (i.e., in approving this Constitutional change, the membership is approving the notion that a future termination of the Permit Program could occur without another membership vote).
- Permit holders would be deemed statutory members of CBOE. Accordingly, they would have the same petition and voting rights as regular members except for matters relating to

Exchange ownership (specifically, matters relating to demutualization, mergers, consolidations, dissolution, liquidation, transfer, or conversion of assets of the Exchange), and except matters relating the Chicago Board of Trade exercise right.

- Permit holders would have no interest in the assets or property of CBOE and would have no right to share in any distribution by the Exchange.
- Permit holders (or an executive officer of a Permit holder) would be eligible to run for an at-large director position and a Nominating Committee position.
- Permit holders would have to be registered broker-dealers.
- Permits would not be transferable.
- All Permits would expire every October and would be eligible for renewal.

In connection with the Permit application process, if there are fewer available CBSX Permits than qualified applicants, the Exchange will determine which of the applicants to approve by lot. Applicants that are affiliated shall be deemed one applicant in cases where there are fewer available CBSX Permits than qualified applicants.

A CBSX Permit holder and its associated persons shall comply with and be subject to CBOE Rules to the same extent that Exchange members and their associated persons are obligated to comply with and are subject to Exchange Rules. Further, a CBSX Permit holder and its associated persons shall be subject to the disciplinary, appeals, and arbitration jurisdiction and rules of the Exchange and entitled to the procedural rights under those rules to the same extent that Exchange members and their associated persons are subject to such jurisdiction and rules and entitled to such procedural rights.

The rule filing also eliminates outdated references in the Constitution to the New York Stock Exchange Options Permit Program which no longer exists.

Lastly, the Exchange notes that on December 14, 2006, the Exchange held a special meeting of the membership for purposes of voting on the Permit Program. The membership voted in favor of adopting the Permit Program.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>3</sup> in general, and with Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is 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 because it will expand the user base for CBSX and enhance liquidity.

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

The Exchange 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

The Exchange did not solicit or receive any written comments on 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

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

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

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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 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-2006-107 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-2006-107. 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-2006-107 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>5</sup> 17 CFR 200.30-3(a)(12).