

however, that any Wilshire Entity or any insurance company General Account shall vote its shares in such other manner as may be required by the Commission or its staff.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, shall be the persons having a voting interest in the shares of the respective Portfolio, and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the funds of the type described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of trustees and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Trust will disclose in its prospectus that (a) Shares of the Trust may be offered to Separate Accounts of both variable annuity and variable life insurance contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Trust and the interests of Qualified Plans investing in the Trust, if applicable, may conflict; and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

10. If and to the extent that Rule 6e-2 and Rule 6e-3(T) under the 1940 Act are amended, or proposed Rule 6e-3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Trust and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e-2 and 6e-3(T), or Rule 6e-3, as such rules are applicable.

11. The Participants, at least annually, will submit to the Board such reports, materials, or data as a Board reasonably may request so that the trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in this application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

12. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

13. The Trust will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless such Qualified Plan executes an agreement with the Trust governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan participant will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Portfolio.

14. A Portfolio will make its shares available under a Variable Contract and/or Qualified Plan at or about the same time as it accepts any seed capital from any Wilshire Entity or any General Account of a Participating Insurance Company.

#### Conclusions

Applicants submit, based on the grounds summarized above, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55308; File No. SR-CHX-2006-38]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Extend the Late Trading Session and To Permit Only the Execution of Cross Orders During That Session

February 15, 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 December 22, 2006, the Chicago Stock Exchange, Inc. (the "CHX" 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 prepared by the CHX. 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 amend its rules (i) To extend its late trading session until 4 p.m. and (ii) to provide that only cross orders may be executed during that session. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), at the Exchange's principal office, and in 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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

In the Exchange's new trading model, the Exchange conducts two trading

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

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

sessions. The first session—called the regular trading session—is held from 8:30 a.m. (Central Time) to 3 p.m. (Central Time).<sup>3</sup> The second trading session—called the late trading session—is held from the end of the regular session until 3:30 p.m. (Central Time). The Exchange's Matching System begins accepting orders for the late trading session immediately after the closing of the regular trading session in a security.<sup>4</sup>

Through this proposal, the Exchange seeks to extend its late trading session by one-half hour, to 4 p.m. (Central Time), and to confirm that only cross orders may be executed during the late trading session. The slightly longer trading session is designed to allow CHX participants to trade for a full hour after the normal close of the regular trading session. The cross-orders-only rule simply confirms that CHX participants may only submit cross orders for execution during the late trading session.<sup>5</sup> The Exchange believes that it is appropriate to limit the late trading session to cross orders for a variety of reasons—including the fact that doing so is consistent with the types of orders currently submitted by CHX participants during its current after-hours trading session.<sup>6</sup> The Exchange also believes that this proposal is consistent with late trading sessions operated by other markets.<sup>7</sup>

<sup>3</sup> The regular trading session for certain ETFs extends to 3:15 p.m. (Central Time).

<sup>4</sup> See CHX Rules, Article 20, Rule 8(c)(3). All orders remaining in the Matching System at the end of the regular trading session are cancelled back to the firms that submitted them; firms must submit new orders if they seek to trade in the late trading session.

<sup>5</sup> In connection with this change to allow only cross orders to be executed during the late trading session, the Exchange is proposing a change in its definition of "NBBO" to confirm that it applies only to protected quotes disseminated during regular trading hours. Without this change, a cross order in the late trading session technically would be required to be submitted at a price that is at or better than the NBBO during the late trading session (if markets are disseminating protected quotes), even though the trade-through provisions of Rule 611 of Regulation NMS do not apply during that session. See Article 20, Rule 4(b)(4) (defining a cross order as one that is equal to or better than the NBBO).

<sup>6</sup> Under the rules relating to its soon-to-be-retired trading model, the Exchange's MAX® system is not available for trading in the post-primary trading session, which begins immediately after the end of the regular trading session. See Article XX, Rule 37, Interpretation and Policy .05. The Exchange's floor brokers can receive and execute orders during the post-primary trading session and often execute those orders as cross transactions.

<sup>7</sup> Other markets have instituted trading sessions that occur after the end of regular trading and that involve the execution of cross transactions. See, e.g., Boston Stock Exchange Rules, Ch. IIC (Extended Hours Crossing Session), Section 4 (noting that "only matched orders are eligible for execution during the ETS"); New York Stock

## 2. Statutory Basis

Approval of the rule changes proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>8</sup> In particular, the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>9</sup> because they would promote just and equitable principles of trade, 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 by permitting the Exchange to operate a late trading session during which only cross orders are eligible for execution.

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

The Exchange does not believe that the proposed rule changes would impose any burden on competition.

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

No written comments were either solicited or received.

## 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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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 No. SR-CHX-2006-38 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-CHX-2006-38. 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 will also be available for inspection and copying at the principal office of the CHX. 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-CHX-2006-38 and should be submitted on or before March 16, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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Exchange 900 Series Rules ("Off-Hours Trading Facility Rules") including Rules 902 and 907 (describing different types of coupled orders that can be executed during the NYSE off-hours sessions)).

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> 17 CFR 200.30-3(a)(12).