

described above). If any portion of the Credit is recaptured from the fixed maturity option selected under GPB Type A, the amount in that fixed maturity option may not grow to equal the initial contribution plus the Credit. If any portion of the Credit is recaptured from a fixed maturity option under GPB Type B, the account value in that option would be reduced, but the guaranteed amount under GPB Type B would not be affected by the Credit recapture.

#### Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is 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 Act.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit Applicants to recapture Credits under 2006 Amended Contracts under the same circumstances covered by the Existing Order, and if a death benefit is payable due to a death during the one-year period following the Company's receipt of a contribution to which a Credit was applied, as described above.

3. Applicants submit that the recapture of Credits under the 2006 Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when the Company recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated on contributions made within one-year of the owner or annuitant's death is not vested. Rather, the Company retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience

attributable to any Credit). The amounts recaptured will never exceed the Credits provided by the Company from its own general account assets, and the Company will not recapture any gain attributable to the Credit.

5. Furthermore, Applicants submit that the recapture of Credits relating to contributions made within one year of death is designed to provide the Company with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make a contribution to receive the benefits of the Credit shortly before the death (either through an increased death benefit payment or an increased account value or other benefit to a continuing owner), leaving the Company less time to recover the cost of the Credit applied.

6. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by the Company from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value. Applicants are aware of no reason why the relief provided by the Existing Order should not also extend to the 2006 Amended Contracts.

7. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the 2006 Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

#### Conclusion

Applicants submit, based on the grounds summarized above, that their request for an order that applies to the Accounts or any Future Account in connection with the issuance of 2006 Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the 2006 Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or the Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order. Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, 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 Act, and that, therefore, the

Commission should grant the requested order.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-11897 Filed 7-25-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54171; File No. SR-CBOE-2006-01]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Regarding a Disaster Recovery Facility

July 19, 2006.

On January 3, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change regarding the establishment of a disaster recovery facility ("DRF"). On June 2, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on June 26, 2006.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

The Exchange proposes to adopt new Exchange Rule 6.18, which contains the rules that would govern the operation of the DRF in the event of a disaster or other unusual circumstance that renders the Exchange's trading floor inoperable. As set forth in the Notice, the DRF would allow CBOE's members to operate remotely in a screen-based-only environment until the Exchange's trading floor again became available. Prior to the commencement of trading on the DRF, the Exchange would announce all classes of securities that would be traded on the DRF with priority given to those classes exclusively listed on the Exchange. The Exchange represents that it is able to

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

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

<sup>3</sup> In Amendment No. 1, CBOE made minor revisions to the proposed rule text and clarified certain details of its proposal.

<sup>4</sup> See Securities Exchange Act Release No. 54014 (June 19, 2006), 71 FR 36367 ("Notice").

conduct appropriate surveillance of trading activity on the DRF and has in place relevant surveillance procedures.<sup>5</sup> All classes of securities traded on the DRF would be subject to the Exchange's Hybrid System rules relating to the electronic component of Hybrid trading and any applicable non-trading rules. To the extent system capacity limits the number of members that can quote on the DRF, proposed Exchange Rule 6.18 provides a priority system to select member participants. Connectivity procedures are available to all CBOE members. The Exchange represents that there is already sufficient member connectivity to ensure that the DRF, if activated, could operate in a useful manner.<sup>6</sup>

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>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,<sup>8</sup> which requires that an exchange is organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. Specifically, the Commission finds that proposed Exchange Rule 6.18 provides a business continuity plan that is reasonably designed to allow the Exchange to continue its trading operations in the event a disaster or other unusual circumstance renders the CBOE trading floor inoperable. Furthermore, the Commission believes the proposed rule change is reasonably designed to enhance the resilience of the U.S. financial markets generally.

In addition, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>9</sup> 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. Specifically, the Commission finds the proposed rule change is reasonably designed to provide market participants with the necessary disclosure to understand the Exchange's operational capabilities and plans in the event of a disaster.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2006-01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-11926 Filed 7-25-06; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54179; File No. SR-NASDAQ-2006-013]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to Modify Nasdaq Data Feeds

July 20, 2006.

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 June 21, 2006, The NASDAQ Stock Market LLC ("Nasdaq"), 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 Nasdaq. 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

Nasdaq is proposing to incorporate data from Nasdaq's INET facility into Nasdaq TotalView data entitlements and to establish fees for the use and distribution of those data entitlements. Nasdaq proposes to: (1) Incorporate the INET ITCH Feed into the TotalView entitlement, rename the feed TotalView ITCH, and charge TotalView user fees to TotalView ITCH Feed recipients; (2) add the full depth of Nasdaq Market Participant quoting of New York Stock Exchange-("NYSE") and American Stock Exchange-("Amex") listed stocks into the TotalView entitlement; (3) establish a modified distributor fee for the TotalView entitlement, renamed the "Depth Feed"; (4) establish a modified user fee schedule for TotalView data; (5) allow for the unlimited, free distribution of Nasdaq's aggregate best bid and offer quotation for Nasdaq's quoting in NYSE- and Amex-listed stocks; and (6) charge fees for the receipt and distribution of individual Nasdaq Market Participants' best bid and offer in NYSE- and Amex-listed stocks. If approved, Nasdaq states that it would make this proposal effective at the beginning of the first full month following the integration of Nasdaq's trading systems into a single platform.<sup>3</sup>

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

\* \* \* \* \*

### 7019. Market Data Distributor Fees

(a) No change.

(b) The charge to be paid by Distributors of the following Nasdaq Market Center real time data feeds shall be:

	Monthly direct access fee	Monthly internal distributor fee	Monthly external distributor fee
Issue Specific Data .....	.....	.....	<i>\$1000 for distribution to 50 or fewer subscribers;</i> \$2,500 for distribution to more than 50 and less than or equal to 100 subscribers;
Dynamic Intraday .....	\$2,500	\$1,000 for distribution to greater than 10 subscribers.	\$4,500 for distribution to greater than 100.
Depth Feed:			

<sup>5</sup> See Notice at 3.

<sup>6</sup> *Id.*

<sup>7</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(1).

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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> See Securities Exchange Act Release No. 53583 (March 31, 2006), 71 FR 19573 (April 14, 2006) (SR-NASDAQ-2006-001).