

relevant New Fund. Therefore, applicants state that “in-kind” purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its Shares. Applicants also believe that “in-kind” purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the New Funds.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a series of the Trust not identified in the application, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such series, either (a) exemptive relief from the Commission, or (b) a no-action letter from the Division of Investment Management of the Commission.

2. The Prospectus and the Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the New Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a New Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the New Fund regarding the terms of the investment.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on an Exchange.

4. Neither the Trust nor any New Fund will be advertised or marketed as an open-end fund or a mutual fund. The Prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Trust and tender those Shares for redemption to the Trust in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Trust and tender those Shares for redemption to the Trust in Creation Units only.

5. Before a New Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule or an amendment thereto, requiring

Exchange members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

6. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each New Fund: (a) The prior Business Day's NAV and the closing price (or the mid-point of the bid-ask spread at the time of calculation of such NAV (the Bid/Ask Price)), and a calculation of the premium or discount of such closing price (or Bid/Ask Price) against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the closing price (or Bid/Ask Price) against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the New Fund, if shorter). In addition, the Product Description for each New Fund will state that the website for the Trust has information about the premiums and discounts at which the Shares have been traded.

7. The Prospectus and annual report for each New Fund will also include: (a) The information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years (or the life of the New Fund, if shorter); and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the New Fund, if shorter), (i) the cumulative total return and the average annual total return based on NAV and closing price (or Bid/Ask Price), and (ii) the cumulative total return of the relevant Underlying Index.

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

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-3284 Filed 2-26-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55296; File No. SR-Amex-2007-14]

### Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Fee Schedule

February 14, 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 30, 2007, the American Stock Exchange LLC (“Amex” 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 Amex. The Amex has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(2) 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 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 options fee schedule (the “Fee Schedule”) to (i) reduce the daily maximum aggregate fee charged for all dividend strategies, merger spreads and short stock interest spreads to \$100, (ii) reduce the monthly maximum aggregate fee charged for such trades to \$12,500, (iii) replace the term “dividend spread” with “dividend strategies,” (iv) extend the fee cap pilot program until February 1, 2008, and (v) increase the licensing fee for the Russell Index and Russell ETF Options (together the “Russell Index Options”) from \$0.10 to \$0.15 per contract side. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.amex.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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

<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)(2).

rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

*Fee Cap Program*

Currently, specialists, registered options traders, non-member market makers, firms, and member and non-member broker-dealers option transaction, comparison and floor brokerage fees are limited to an aggregate fee of \$1,000 for all dividend spreads,<sup>5</sup> merger spreads and short stock interest spreads executed on the same trading day in the same option class.<sup>6</sup> In addition, such fees are also limited to \$50,000 per month per initiating firm. In order to attract additional order flow to the Exchange, this proposal seeks to reduce the daily aggregate to \$100 and the monthly aggregate to \$12,500. The Exchange submits that the reduced fees may increase the trading opportunities for its members as well as enable the Exchange to attract new business.

This proposal will also amend the Fee Schedule to expand dividend spreads to "dividend strategies." Dividend strategies are transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend. The proposed amendment is similar to the definition currently used by the Chicago Board Options Exchange ("CBOE") as well as other exchanges.<sup>7</sup>

The fee cap program is currently operated on a six (6) month pilot basis. The proposal seeks to extend the pilot for an additional year, through February 1, 2008. To date, the Exchange believes that the fee cap program has been beneficial, and submits, that a one (1) year extension is warranted.

*Russell Index Option License Fee*

The proposal also seeks to increase the licensing fees for the Russell Index Options. Currently, the licensing fees for

the Russell Index Options are \$0.10 per contract side. The Exchange proposes to increase this fee to \$0.15 per contract side as a result of an increase in the license agreement for the Russell Index Options.

As detailed in the original filing regarding license fees for Russell Index Options,<sup>8</sup> the Exchange typically pays an index license fee to a third party as a condition to the listing and trading of such index options. In many cases, the Exchange is required to pay a significant licensing fee to the index provider that may not be reimbursed. In an effort to recoup the costs associated with certain index licenses, the Exchange has established a per contract licensing fee for the orders of specialists, registered options traders, firms, non-member market makers and broker-dealers, that is collected on every option transaction in designated products in which such market participant is a party.<sup>9</sup>

The purpose of the proposal is to charge a licensing fee of \$0.15 per contract side for Russell Index Options for specialist, registered options trader, firm, non-member market maker and broker-dealer orders executed on the Exchange. In all cases, the fees are charged only to Exchange members through whom the orders are placed.

The proposal will allow the Exchange to recoup its costs in connection with the index license fee for the trading of Russell Index Options. The Exchange notes that the Amex in recent years has revised a number of fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services. Implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.<sup>10</sup> Further, the Exchange believes that charging an options licensing fee, where applicable, to all market participant orders except for customer orders is reasonable given the competitive pressures in the industry.

<sup>8</sup> See Securities Exchange Act Release No. 53968 (June 9, 2006), 71 FR 34971 (June 16, 2006) (SR-Amex-2006-56).

<sup>9</sup> See Securities Exchange Act Release No. 52493 (September 22, 2005), 70 FR 56941 (September 29, 2005) (SR-Amex-2005-087).

<sup>10</sup> 15 U.S.C. 78f(b)(4). Section 6(b)(4) of the Act states that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

2. Statutory Basis

The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.

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

The proposed rule change does not 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**

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>12</sup> because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon the Commission's receipt of the filing. 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.

**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-Amex-2007-14 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.

<sup>5</sup> A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two (2) deep-in-the-money options.

<sup>6</sup> These fees are charged only to Exchange members.

<sup>7</sup> See CBOE Fee Schedule and Philadelphia Stock Exchange Fee Schedule.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

All submissions should refer to File Number SR-Amex-2007-14. 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 Amex. 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-Amex-2007-14 and should be submitted on or before March 20, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-3285 Filed 2-26-07; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55326; File No. SR-CBOE-2006-107]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Regarding a Permit Program for CBSX

February 21, 2007.

#### I. Introduction

On December 18, 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 to establish a permit program for CBSX, the Exchange's proposed stock-trading facility ("Permit Program"). The proposed rule change was published for comment in the **Federal Register** on December 29, 2006.<sup>3</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

CBSX will be a facility of the Exchange and will serve as the Exchange's vehicle for trading non-option securities. The Exchange proposed to modify its Constitution and Rules to establish the Permit Program and thereby allow non-CBOE seat holders access to CBSX. The Exchange noted that expanding access to CBSX beyond CBOE's options user base would enhance liquidity on CBSX and make it a more attractive stock trading venue. The principal features of the Permit Program are as follows:

- 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 pursuant to a rule filing approved by the Commission. This provision is incorporated in the Exchange's Constitution to allow the CBSX Permit Program to be terminated without a corresponding membership vote (*i.e.*, the Exchange's membership has already approved 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 for matters relating to 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; and

- All Permits would expire every October and would be eligible for renewal.

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 will be deemed one applicant in cases where there are fewer available CBSX Permits than qualified applicants.

A Permit holder and its associated persons must 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. A Permit holder and its associated persons shall also 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.

#### III. Discussion

The Commission finds that the Exchange's proposal relating to CBSX Permits is consistent with Section 6(b)(3) of the Act,<sup>4</sup> which requires that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission notes that, for purposes of the Act, Permit holders would be considered members of CBOE. Permit holders would be eligible to be nominated for an at-large position on CBOE's Board of Directors and to serve on the Exchange's Nominating Committee and would have the same petition and voting rights as CBOE 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 for matters relating to the Chicago Board of Trade exercise right.<sup>5</sup>

<sup>4</sup> 15 U.S.C. 78f(b)(3).

<sup>5</sup> Further, the Exchange has represented that Permit holders would be eligible to sit on disciplinary panels and on any committee(s) that

<sup>13</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. 54987 (December 20, 2006), 71 FR 78481.