

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55531; File No. SR-CBOE-2006-94]

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

March 26, 2007.

#### I. Introduction

On November 13, 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 allow DPMs to operate off-floor. The Exchange filed Amendment No. 1 to the proposed rule change on January 18, 2007. The proposed rule change was published for comment in the *Federal Register* on February 20, 2007.<sup>3</sup> The Commission received no comments on the proposal.

#### II. Description of the Proposal

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 Market-Makers, 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 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-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 subparagraph (a)(v) of Rule 8.85, which states that 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>4</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>5</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."

#### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

<sup>4</sup> See CBOE Rule 8.93(vii).

<sup>5</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>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. 55275 (February 12, 2007), 72 FR 7782.

a national securities exchange<sup>6</sup> and, in particular, the requirements of Section 6 of the Act.<sup>7</sup> Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>8</sup> in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

In addition, the Commission believes that a Market Maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify receiving market maker margin. The Commission believes that CBOE's rules impose such affirmative obligations on DPMs that choose to operate remotely and notes that, under the proposal, a DPM acting from a remote location would still be required to meet the obligations of a DPM set forth in CBOE Rule 8.85.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2006-94), as modified by Amendment No. 1, is approved.

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

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

[FR Doc. E7-5980 Filed 3-30-07; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55491A; File No. SR-CBOE-2006-95]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto to List for Trading Options on the Vanguard<sup>®</sup> Emerging Markets Exchange Traded Fund

March 26, 2007.

#### Correction

FR Doc. E7-5423, issued on March 26, 2007 on page 14145, regarding Securities Exchange Act Release No. 34-55491, incorrectly cited the date of the

<sup>6</sup> The Commission has considered the amended proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

release as March 19, 2006. The date should read March 19, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>1</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

Release No. 34-55519; File No. SR-NASDAQ-2007-025)

#### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trading One-, Two-, and Three-Character Symbols

March 26, 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 March 21, 2007, 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 substantially prepared by Nasdaq. Nasdaq has filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(5) 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 the Substance of the Proposed Rule Change

Nasdaq proposes to trade the securities of Delta Financial Corporation using the three-character symbol "DFC."

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Historically, securities listed on Nasdaq have traded using four or five character symbols.<sup>5</sup> In 2005, however, Nasdaq announced its intent to allow companies listed on Nasdaq to also use one-, two-, or three-character symbols.<sup>6</sup> Nasdaq announced a series of dates throughout December 2006 and January and February 2007 where market participants could test trading Nasdaq stocks using one-, two-, or three-character symbols on weekends, in after hour sessions, and during full day sessions.<sup>7</sup> Beginning February 20, 2007, Nasdaq had the ability to accept and distribute Nasdaq-listed securities with one-, two-, or three-character symbols. Nasdaq reminded market participants about this change again on March 1, 2007, stressing that "[a]ll customers should have completed their coding and testing efforts to ensure their readiness to support 1-, 2- and 3-character NASDAQ-listed issues."<sup>8</sup>

Nasdaq believes that the changes to its systems to accommodate one-, two-, and three-character symbols will promote competition among exchanges and enhance the strength of the U.S. capital

<sup>5</sup> This includes securities listed on Nasdaq's predecessor market, operated as a facility of the NASD.

<sup>6</sup> See Head Trader Alert 2005-133 (November 14, 2005), available at: <http://www.nasdaqtrader.com/Trader/News/2005/headtraderalerts/hta2005-133.stm> and Vendor Alert 2005-070 (November 14, 2005), available at: <http://www.nasdaqtrader.com/Trader/News/2005/vendoralerts/nva2005-070.stm>. See also Head Trader Alert 2006-144 (September 29, 2006), available at: <http://www.nasdaqtrader.com/Trader/News/2006/headtraderalerts/hta2006-144.stm>, Head Trader Alert 2006-193 (November 16, 2006), available at: <http://www.nasdaqtrader.com/Trader/News/2006/headtraderalerts/hta2006-193.stm> and Vendor Alert 2006-065 (October 4, 2006), available at: <http://www.nasdaqtrader.com/Trader/News/2006/vendoralerts/nva2006-065.stm>.

<sup>7</sup> See Head Trader Alert 2006-201 (December 6, 2006), available at: <http://www.nasdaqtrader.com/Trader/News/2006/headtraderalerts/hta2006-201.stm>, Head Trader Alert 2007-008 (January 25, 2007), available at: <http://www.nasdaqtrader.com/Trader/News/2007/headtraderalerts/hta2007-008.stm>, Head Trader Alert 2007-011 (January 30, 2007), available at: <http://www.nasdaqtrader.com/Trader/News/2007/headtraderalerts/hta2007-011.stm>, Head Trader Alert 2007-020 (February 7, 2007), available at: <http://www.nasdaqtrader.com/Trader/News/2007/headtraderalerts/hta2007-020.stm>, and Head Trader Alert 2007-034 (February 16, 2007), available at: <http://www.nasdaqtrader.com/Trader/News/2007/headtraderalerts/hta2007-034.stm>.

<sup>8</sup> Head Trader Alert 2007-050 (March 1, 2007), available at: <http://www.nasdaqtrader.com/Trader/News/2007/headtraderalerts/hta2007-050.stm>.

<sup>1</sup> 17 CFR 200.30-3(a)(12).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 17 CFR 240.19b-4.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(5).