

while at the same time updating various sections of its Rules.

BSECC believes that the proposed rule change is consistent with the requirements of section 17A of the Act<sup>5</sup> and the rules and regulations thereunder applicable to BSECC because it will permit the resources of BSECC to be appropriately utilized for promoting the accurate clearance and settlement of securities.

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

BSECC does not believe that the proposed rule change will impose any burden on competition.

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

BSECC has neither solicited nor received comments on the proposed change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-BSECC-2003-01. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of BSECC.

All submissions should refer to File No. SR-BSECC-2003-01 and should be submitted by February 3, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49028; File No. SR-CBOE-2003-54]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Misrepresentations and Omissions in Communications to the Exchange and the Options Clearing Corporation**

January 6, 2004.

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 November 12, 2003, the Chicago Board Options Exchange, Inc. ("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 prepared by the Exchange. 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 CBOE proposes to amend CBOE Rule 4.6 (False Statements) and adopt

new CBOE Rule 4.22 to distinguish willfully made or material misrepresentations or omissions from other misrepresentations or omissions. The Exchange also proposes to amend CBOE Rule 17.50 to provide a new summary fine schedule for violations of proposed CBOE Rule 4.22. The text of the proposed rule change is below. Additions are italicized; deletions are in brackets.

\* \* \* \* \*

### **CHAPTER IV**

#### **Business Conduct**

\* \* \* \* \*

#### *[False Statements] Misrepresentations or Omissions*

**RULE 4.6** No member, *person associated with a member* or applicant for membership shall make any *willful or material misrepresentation, including a misstatement or false statement[s], or omission* [or misrepresentations] in any application, report or other communication to the Exchange, [and no member shall make any false statement or misrepresentation] or to the Clearing Corporation with respect to the reporting or clearance of any Exchange transaction, or *willfully or materially* adjust any position at the Clearing Corporation in any class of options traded on the Exchange except for the purpose of correcting a bona fide error in recording or of transferring the position to another account.

#### *Interpretations and Policies:*

.01 No member, *person associated with a member* or applicant for membership shall be considered to be in violation of CBOE Rule 4.6 due to misrepresentations or omissions resulting from causes, such as systems malfunctions, which are outside the control of the member, associated person or applicant and could not be avoided by the exercise of due care.

\* \* \* \* \*

#### *Communications to the Exchange or the Clearing Corporation*

**RULE 4.22** No member, *person associated with a member* or applicant for membership shall make any misrepresentation or omission in any application, report or other communication to the Exchange, or to the Clearing Corporation with respect to the reporting or clearance of any Exchange transaction, or adjust any position at the Clearing Corporation in any class of options traded on the Exchange except for the purpose of correcting a bona fide error in recording or of transferring the position to another account. Violations of this Rule may be

<sup>6</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>5</sup> 15 U.S.C. 78q-1.

subject to summary fine under Exchange Rule 17.50(g)(11).

*Interpretations and Policies:*

.01 *The Exchange will distinguish misrepresentations and omissions from willful or material misrepresentations and omissions. Willful or material misrepresentations and omissions may be considered a violation of Exchange Rule 4.6.*

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## CHAPTER XVII—Discipline

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### RULE 17.50. Imposition of Fines for Minor Rule Violations

(a)–(b) Unchanged.

(c)(1) Any person against whom a fine is imposed pursuant to subsection (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), (g)(8), (g)(9), [or] (g)(10) or (g)(11) of this Rule and any person against whom a fine exceeding \$2,500 is imposed pursuant to subsection (g)(6) of this Rule may contest the Exchange's determination by filing with the Office of the Secretary of the Exchange, on or before the date specified pursuant to subsection (b)(iv) of this Rule, a written answer as provided in Exchange Rule 17.5, at which point the matter shall become subject to review by the Business Conduct Committee. The filing must include a request for a hearing, if a hearing is desired. Hearings will be conducted in accordance with the provisions of Exchange Rule 17.6. If a hearing is not requested, the review will be based on written submissions and will be conducted in a manner to be determined by the Business Conduct Committee.

(2)–(4) Unchanged.

(d)–(f) Unchanged.

(g)

(1)–(10) Unchanged.

(11) *Communications to the Exchange or the Clearing Corporation (Rule 4.22)* A fine shall be imposed upon a member, person associated with a member or applicant for membership, as applicable, who violates Rule 4.22. Such fines shall be imposed on the basis of the following schedule:

Number of offenses in any rolling twelve-month period	Fine amount
1st Offense .....	\$500
2nd Offense .....	1,000
3rd Offense .....	2,500
Subsequent Offenses .....	Referral to Business Conduct Committee

*Interpretations and Policies:*

.01–.04 Unchanged.

\* \* \* \* \*

## 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 Exchange 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

The Exchange is proposing to amend CBOE Rule 4.6 (False Statements), which prohibits members and applicants for membership from making any false statement or misrepresentation to the Exchange or the Options Clearing Corporation ("OCC"), or from adjusting any position at OCC except to correct a bona fide error or transfer a position to another account. The purpose of the proposed rule change is to: (i) Distinguish willful or material misrepresentations (including misstatements and false statements) and omissions from other misrepresentations and omissions; and (ii) provide that non-willful and non-material misrepresentations, omissions and improper option position adjustments may be dealt with under the Exchange's minor rule violation fine plan rather than with formal disciplinary action.

CBOE Rule 4.6 addresses three categories of prohibited conduct: false statements, misrepresentations, and improper position adjustments. The grouping of these three categories under a single heading "False Statements" has resulted in comments by members that a member could be charged by the Exchange with violating CBOE Rule 4.6 for conduct that does not rise to the level of a false statement, such as a minor misstatement or omission, and that such charge would unfairly characterize their conduct due to the fact that the rule is titled "False Statements." According to members, if such charges were brought by the Exchange against a member and the charges or the settlement of the Exchange investigation are publicly disclosed, an appearance may be created that a respondent was found to have

made false statements, when in fact the conduct was less egregious.

Current CBOE Rule 4.6 applies to any false statement or misrepresentation made by a member, person associated with a member or applicant for membership in a communication to the Exchange or OCC, regardless of whether the false statement or misrepresentation was made knowingly or was of a material fact. Current CBOE Rule 4.6 does not distinguish between willfully made or material false statements and misrepresentations and other less serious types of misstatements and misrepresentations. Member firms have commented to the Exchange that if a member firm employee is charged with violating CBOE Rule 4.6 for a minor misstatement, he may lose employment because of the apparent seriousness of being charged with making a "False Statement" even though the actual violative conduct and penalty imposed by the Exchange may be less severe.

The Exchange proposes to limit the scope of CBOE Rule 4.6 to willfully made or material misrepresentations (which includes misstatements and false statements) and omissions by members, associated persons of members, or applicants for membership in communications to the Exchange or OCC. Misrepresentations and omissions of a less serious nature (those that are neither willfully made nor of a material fact) are distinguished from the foregoing in that they are proposed to be prohibited by new CBOE Rule 4.22. Improper option position adjustments are proposed to be covered by both rules to give the Exchange the flexibility to charge a violation of CBOE Rule 4.6 in those situations involving a serious offense. CBOE Rule 4.6 is proposed to be renamed "Misrepresentations or Omissions." The Exchange believes that the proposed rule changes will clarify for members how the Exchange applies these rules.

By amending CBOE Rule 4.6 and adding new CBOE Rule 4.22, the Exchange also intends to provide a clearer, more concise statement of the disciplinary penalties that apply to misrepresentations and omissions to the Exchange or the OCC. Willful or material misrepresentations or omissions in communications to the Exchange or OCC and willful or material improper position adjustments would be charged under revised CBOE Rule 4.6. CBOE Rule 4.6 would continue to be applied in those instances involving a serious offense that carries substantial penalties for violation such as large fines and suspension or expulsion from membership.

Misrepresentations or omissions in communications to the Exchange or OCC and improper position adjustments that are neither willfully made nor of a material nature could be charged under new CBOE Rule 4.22. Offenses charged under proposed CBOE Rule 4.22 will allow the Exchange to fashion more appropriate disciplinary measures. A violation of proposed CBOE Rule 4.22 may be deemed minor in nature and therefore subject to summary fine. CBOE Rule 17.50 (Minor Rule Violation Fine Plan) is proposed to be amended to add a new fine schedule applicable to violations of proposed CBOE Rule 4.22. However, nothing in proposed CBOE Rule 4.22 shall prevent the Exchange, whenever it determines that any violation of that Rule is intentional, egregious, or otherwise not minor in nature, from proceeding under the Exchange's formal disciplinary rules.

The proposed rule changes are similar to existing rules at other exchanges that distinguish between willfully made false or misleading statements or omissions of material fact and other types of statements or omissions.<sup>3</sup>

## 2. Statutory Basis

The Exchange believes that the proposed rule change will advance the objectives of Section 6(b)(6) of the Act<sup>4</sup> in that it will provide that Exchange members and persons associated with members shall be appropriately disciplined in those instances when a rule violation is minor in nature, but warrants a sanction more serious than a warning or cautionary letter. The Exchange believes that the proposed rule change provides a fair procedure for disciplining members and persons associated with members in accordance with the requirements of Sections 6(b)(7)<sup>5</sup> and 6(d)(1)<sup>6</sup> of the Act. Finally, the Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts or practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest.

### *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*

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**

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 Exchange 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2003-54. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CBOE. All submissions should refer to file number SR-CBOE-2003-54 and should be submitted by February 3, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**BILLING CODE 8010-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49023; File No. SR-ISE-2003-37]**

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange, Inc. To Amend the Procedures for Executing Stock-Option Orders Under ISE Rule 722**

January 5, 2004.

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, 2003, the International Securities Exchange, Inc. ("ISE" 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 prepared by the Exchange. 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 revise the procedures for executing stock-option orders by: (1) automating the transmission of the stock leg(s) of a stock-option combination order to a broker-dealer on behalf of members; and (2) allowing for the pricing of the options leg(s) of stock-option combination orders in penny increments.

The text of the proposed rule change appears below. New text is in *italic*. Deleted text is in brackets.<sup>3</sup>

<sup>8</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> With the Exchange's consent, the Commission has made technical corrections to the proposed rule text. Telephone conversation between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Christopher Solgan, Attorney,

<sup>3</sup> See e.g., New York Stock Exchange, Inc. Rules 476 and 476A.

<sup>4</sup> 15 U.S.C. 78f(b)(6).

<sup>5</sup> 15 U.S.C. 78f(b)(7).

<sup>6</sup> 15 U.S.C. 78f(d)(1).

<sup>7</sup> 15 U.S.C. 78f(b)(5).