

and uniform standards for shareholder approval of equity compensation plans. The Commission notes that, even with the availability of the proposed limited exceptions to shareholder approval under the Amex's proposal, as amended, shareholder approval under the new standards would be required in more circumstances than under existing Amex rules. The Commission further notes that the Amex proposes to adopt a requirement that an issuer must notify it in writing when it uses one of the exceptions from the shareholder approval requirements. The Commission believes that such a requirement, coupled with the additional disclosure requirements for inducement grants, should reduce the potential for abuse of any of the exceptions.<sup>27</sup>

The Commission believes that the Amex's proposal, as amended, which is similar to the NYSE's shareholder approval rule and almost identical to Nasdaq's shareholder approval rule,<sup>28</sup> sets a consistent, minimum standard for shareholder approval of equity compensation plans. The Commission believes that the Amex's proposal, as amended, should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans and should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the Amex's proposal, as amended, should help to protect investors, are in the public interest, and do not unfairly discriminate among issuers, consistent with Sections 6(b) of the Act.<sup>29</sup> The Commission therefore finds the Amex's proposal, as amended, to be consistent with the Act and the rules and regulations thereunder.

## V. Accelerated Approval of the Amex's Proposal and Amendment Nos. 1, 2 and 3

The Commission finds good cause for approving the Amex's proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal, as amended, is similar to the NYSE's proposal and almost identical to the Nasdaq's proposal requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq proposals were published for comment in the **Federal Register** and

recently approved by the Commission.<sup>30</sup> The Commission believes that it already considered and addressed the issues that may be raised by the Amex's proposal in its approval of the NYSE and Nasdaq's proposals.<sup>31</sup>

The Commission believes that accelerated approval of the Amex's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans between the Amex, the NYSE, and Nasdaq. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Amex's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act<sup>32</sup> to approve the Amex's proposal, as amended, on an accelerated basis.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>33</sup> that the proposed rule change (SR-Amex-2003-42) and Amendment Nos. 1, 2 and 3 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>34</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>30</sup> See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. See Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). See Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). See *supra* note 9.

<sup>31</sup> Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Amex, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. See *supra* note 9.

<sup>32</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>33</sup> 15 U.S.C. 78s(b)(2).

<sup>34</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48609; File No. SR-CBOE-2003-22]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

October 9, 2003.

#### I. Introduction

On May 22, 2003, the Chicago Board Options Exchange, Inc. ("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 add an interpretation to its Rule 6.7. On August 12, 2003, the Exchange filed 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 August 19, 2003.<sup>4</sup> On September 10, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> On October 6, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.<sup>6</sup>

The Commission received no comments on the proposed rule change,

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

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

<sup>3</sup> See letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated August 11, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE replaced the phrase "persons associated therewith" with the phrase "associated persons" in proposed Interpretation .04 to CBOE Rule 6.7.

<sup>4</sup> Securities Exchange Act Release No. 48320 (August 12, 2003), 68 FR 49827.

<sup>5</sup> See letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that the Options Intermarket Linkage ("Linkage") is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7. Further, the CBOE proposed that the Exchange would have no liability to its members with respect to the use, non-use or inability to use the Linkage.

<sup>6</sup> See letter from David Doherty, Attorney, Legal Division, CBOE to Jennifer Colihan, Special Counsel, Division, Commission, dated October 3, 2003 ("Amendment No. 3"). In Amendment No. 3, which superseded and replaced Amendment No. 2 in its entirety, CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that Linkage is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7.

<sup>27</sup> See also *supra* note 19 and accompanying text.

<sup>28</sup> See *supra* note 9.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

as amended. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment No. 3.

## II. Description of the Proposed Rule Change

Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),<sup>7</sup> the Linkage Participants, including the Exchange, are required to file a proposed rule change with the Commission to provide the Options Clearing Corporation ("OCC") with limited liability with respect to the members' use of the Linkage. The CBOE represents that it filed this proposed rule change to fulfill its obligation under the Agreement. The CBOE proposes to adopt Interpretation .04 to CBOE Rule 6.7 to limit the liability for the OCC with respect to CBOE members' use of the Linkage.

## III. Discussion

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 a national securities exchange<sup>8</sup> and, in particular, the requirements of Section 6(b) of the Act<sup>9</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that this proposed rule change, as amended, should foster cooperation and should promote a relationship between the CBOE and the OCC that is conducive to the effective operation of the Linkage.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> for approving Amendment No. 3

prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the CBOE proposes to eliminate a provision from proposed Interpretation .04 to CBOE Rule 6.7 that characterized Linkage as a facility or service of the Exchange for purposes of Exchange Rule 6.7. The Commission believes that removing this provision makes the CBOE's rules consistent with the rules of some of the other Exchanges recently approved by the Commission.<sup>12</sup>

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 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. 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 also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2003-22 and should be submitted by November 6, 2003.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change, as amended, (File No. SR-CBOE-2003-22) is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48600, File No. SR-CBOE-2003-44]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Amend a Rule Regarding Nullification and Adjustment of Transactions

October 7, 2003.

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 October 7, 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 and II 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 and is granting accelerated approval of the proposed rule change, which will be in effect on a temporary basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its obvious error rule, CBOE Rule 6.25, on a pilot basis. Proposed new language is *italicized*.

\* \* \* \* \*

Rule 6.25 Nullification and Adjustment of Electronic Transactions

(a)-(e) No Change.

Interpretations and Policies.....

*.03 (a) Trades may be adjusted or nullified when the execution price of the trade is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under Rule 8.7(b)(4), so long as such amount is \$0.50 or more or \$0.25 or more for options priced under \$3. For purposes of this subparagraph, the Theoretical Price of an option is the last bid (offer) price, just prior to the trade, from the exchange providing the most volume in the option with respect to an erroneous bid (offer) entered on the Exchange. If there are no quotes for comparison purposes, then the Theoretical Price of an option is as determined by two Trading Officials. CBOE will use the volume figures for*

<sup>7</sup> Linkage Project and Facilities Management Agreement (January 30, 2003).

<sup>8</sup> In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> See Exchange Act Release Nos. 48530 (September 24, 2003), 68 FR 56357 (September 30, 2003) (SR-ISE-2003-15), and 48531 (September 24, 2003), 68 FR 56370 (SR-Phlx-2003-43).

<sup>13</sup> *Id.*

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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