

The Issuer will seek quotation of its Security on the OTC Bulletin Board.

Any interested person may, on or before September 9, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46362; File No. SR-Amex-2002-38]

### Self Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Designate the New Trading Floor on the Ground Floor of the Exchange as a "Separate Trading Area"

August 15, 2002.

On April 23, 2002, the American Stock Exchange LLC ("Amex" 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 designate the new trading floor on the ground floor of the Exchange ("Harry's") as a "separate trading area."

On June 6, 2002, the Amex submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on July 5, 2002.<sup>4</sup> The

Commission received no comment letters on the proposal.

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>5</sup> and, in particular, the requirements of section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>7</sup> because it is designed to prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

The Commission previously approved similar proposals by the Amex to designate the sections of its trading floor as separate trading areas for the purposes of stock and options trading.<sup>8</sup> In these Orders, the Commission required that the trading of stocks and their related options be sufficiently separated in a manner that minimized the time and place advantages that could be derived from the proximity of the equity and options trading areas. In addition to the physical separation of the trading locations of equities and their related options, Amex Rule 958(f) prohibits jointly registered equity and options traders from entering options transactions on a Paired Security<sup>9</sup> for one hour after leaving the equity floor where the underlying security trades. Finally, the Orders restricted the use of hand signals or other like means of communication between members to communicate between floors.

The Commission is satisfied that these conditions are met here. Options on both listed and non-Amex-listed equities are traded on Harry's while Amex-listed equities are traded on the Main Trading Floor. Harry's is located in a separate area on the ground floor of the Exchange and is only accessible from the Exchange's other trading locations by escalator. Accordingly, the trading posts located on Harry's are not visible from the Main Trading Floor. Furthermore, the Exchange represents

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> Securities Exchange Act Release Nos. 26147 (October 3, 1988), 53 FR 39556 (October 7, 1988) ("1988 Order"); 34359 (July 12, 1994), 59 FR 36799 (July 19, 1994) ("Index Order"); and 39631 (February 9, 1998), 63 FR 8229 (February 18, 1998) ("1998 Order") (collectively "Orders").

<sup>9</sup> Generally, a Paired Security is a security which is the subject of securities trading on the Exchange and options trading on the Exchange. See Amex Rule 900(b)(38).

that it maintains adequate surveillance systems designed to prevent trading abuses and manipulation as well as to ensure compliance with the relevant Exchange rules consistent with the 1988, 1998 and Index Orders.<sup>10</sup> Further, the Commission notes that the Exchange's rules regarding Paired Securities would prohibit the trading of an equity in the same physical location as its related option.<sup>11</sup>

Therefore, the Commission finds that Harry's is a separate trading area for purposes of trading options on Amex-listed and non-listed stocks. The Commission's approval is premised on the belief that the Amex's proposed trading locations for equities and options are sufficiently separated such that there is no time and place advantage derived from the physical proximity of Harry's to locations where the underlying equities trade. Accordingly, any decision by the Amex to change the location of the designated options relative area to the designated stock area or to modify the means of access between them, would require the submission of a proposed rule change under section 19(b) of the Act.<sup>12</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change and Amendment No. 1 thereto (File No. SR-Amex-2002-38) are approved.

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

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 02-21322 Filed 8-20-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46363; File No. SR-CBOE-2002-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Extension of the Permissible Maturity of FLEX Index Options to Ten Years

August 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

<sup>10</sup> Telephone Conversation between Jeffrey P. Burns, Assistant General Counsel, Amex, and Christopher Solgan, Law Clerk, Division, Commission, on August 13, 2002.

<sup>11</sup> See Amex Rules 900(b)(38), (40), and (41).

<sup>12</sup> 15 U.S.C. 78s.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

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

<sup>5</sup> 17 CFR 200.30-3(a)(1).

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

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

<sup>3</sup> See letter from Jeffrey P. Burns, Assistant General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 5, 2002 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 46131 (June 27, 2002), 67 FR 44900.

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 30, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 24.4A, "Terms of FLEX Options," to provide a maximum term of ten years for Flexible Exchange ("FLEX") index options under certain circumstances.

The text of the proposed rule change is available at the CBOE and at the Commission.

### **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 CBOE 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*

Currently, under CBOE Rule 24A.4(a)(4)(i), FLEX index options are limited to a maturity of five years. The purpose of the proposal is to allow FLEX index options traded on the CBOE to have a maturity beyond five years and up to ten years in certain circumstances.

FLEX index option have traded on the CBOE since February 1993.<sup>3</sup> FLEX index options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Currently, FLEX index options are limited to a maximum term of five years. The CBOE states that the Exchange recently has received numerous requests from broker-dealers

to extend the maturity of FLEX index options to ten years. According to the CBOE, among the reasons broker-dealers have been interested in seeking an extension in the allowable maturity is that some of their institutional customers trade or issue securities with five- to ten-year terms and are seeking a method to hedge that long-term risk.

The proposed amendment to CBOE Rule 24A.4(a)(4)(i) would permit FLEX index options with terms up to a maximum of ten years when requested by a Submitting Member if the FLEX Post Official determines that sufficient liquidity exists among FLEX index participating members. According to the CBOE, the liquidity requirement will help to ensure that there is not a proliferation of longer-term FLEX index options series where no interest in trading such options exists.<sup>4</sup>

The CBOE states that the proposal will allow institutions to use longer-term FLEX index options to protect portfolios from long-term market moves with a known and limited cost. The CBOE believes that the proposal will better serve the long-term hedging needs of institutional investors and provide those investors with an alternative to hedging their portfolios with off-exchange customized options and warrants.

The CBOE states that by allowing for the extension of the maturity of FLEX index options to ten years in situations where there is demand for a longer-term expiration and where there is sufficient liquidity among FLEX index participating members to support the request, the proposal will better serve the needs of the CBOE's customers and the CBOE members who make a market for such customers. The CBOE believes that the proposal is consistent with and furthers the objectives of section 6(b)(5) of the Act in that it is 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 to protect investors and the public interest.

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

The CBOE 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.

<sup>4</sup> The CBOE notes that the Commission approved a CBOE rule change that permits the listing of FLEX equity options with terms from three to five years under similar circumstances. *See* Securities Exchange Act Release No. 39524 (January 8, 1998), 63 FR 3009 (January 20, 1998) (order approving File No. SR-CBOE-97-57).

#### *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.

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-2002-23 and should be submitted by September 11, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</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. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving File No. SR-CBOE-92-17).