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 BSE. All submissions should refer to File No. SR–BSE–2002–19 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31589 Filed 12–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46957; File No. SR–CBOE–2002–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Proposing to Amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3 Which Establish the Pricing Criteria for Securities that Underlie Options Traded on the Exchange

December 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 11, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

CBOE proposes to amend Interpretation .01(b)(2) and .05(d)(ii) to CBOE Rule 5.3, which establish the pricing criteria for securities that underlie options traded on the Exchange. The text of the proposed rule change follows. Additions are in *italics.* Deleted text is in [brackets].

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Chapter V—Securities Dealt In

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Criteria for Underlying Securities

Rule 5.3

(a) Underlying securities in respect of which put or call option contracts are approved for listing and trading on the Exchange must meet the following criteria:

(1) The security must be duly registered and

(i) Listed on a national securities exchange; or

(ii) Traded through the facilities of a national securities association and reported as a ''national market system'' (''NMS'') security as set forth in Rule 11Aa3–1 under the Securities Exchange Act of 1934; and

(2) The security shall be characterized by a substantial number of outstanding shares which are widely held and actively traded.

(b) In addition, the Board of Directors shall from time to time establish guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. There are, however, many relevant factors which must be considered in arriving at such a determination. The fact that a particular security may meet the guidelines established by the Board does not necessarily mean that it will be approved as an underlying security. Further, in exceptional circumstances an underlying security may be approved by the Exchange even though it does not meet all of the guidelines. The Exchange may also give consideration to maintaining diversity among various industries and issuers in selecting underlying securities.

. . . Interpretations and Policies:

.01 The Board of Directors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to Paragraphs (a)(1) or (2), or (b)(1) or (2) listed below, at the time the Exchange selects an underlying security for Exchange option transactions, the following guidelines with respect to the issuer shall be met.

(a) Guidelines applicable to the issuer of the security are:

(1) There are a minimum of 7,000,000 shares of the underlying security which are owned by persons other than those required to report their stock holdings under Section 16(a) of the Securities Exchange Act of 1934.

(2) There are a minimum of 2,000 holders of the underlying security.

(3) The issuer is in compliance with any applicable requirements of the Securities Exchange Act of 1934.

(b) Guidelines applicable to the market for the security are:

(1) Trading volume (in all markets in which the underlying security is traded) has been at least 2,400,000 shares in the preceding twelve months.

(2) *(A) If the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this Interpretation .01(b)(2)(A), the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.*

(B) If the underlying security is not a ''covered security'', [T]the market price per share of the underlying security has been at least $7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

.02–.04 No Change.

.05(a)–(c) No Change.

(d) In the case of a Restructuring transaction that satisfies either or both of the conditions of subparagraphs (a)(1) or (a)(2) above in which shares of a Restructure Security are sold in a public offering or pursuant to a rights distribution:

(i) The Exchange may assume the satisfaction of one or both of the requirements of paragraphs (a)(1) and

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(a)(2) of Interpretation and Policy .01 above on the date the Restructure Security is selected for options trading only if: (A) The applicable conditions set forth in clause (i) of paragraph (c) above are met with respect to whichever of these requirements is assumed to be satisfied, or (B) the condition set forth in clause (ii) of paragraph (c) above is met, in either case subject to the limitations stated in said paragraph (c).

(ii) The Exchange may certify that the market price of the Restructure Security satisfies the requirement of paragraph (b)(2) of Interpretation and Policy .01 above by relying on the market price history of the Original Security prior to the ex-date for the Restructuring Transaction in the manner described in paragraph (a) above, but only if the Restructure Security has traded ''regular way'' on an exchange or automatic quotation system for at least five trading days immediately preceding the date of selection, and at the close of trading on each trading day preceding the date of selection, as well as at the opening of trading on the date of selection the market price of the Restructure Security was at least $7.50*, or, if the Restructure Security is a Covered Security, as defined in paragraph (b)(2) of Interpretation and Policy .01 above, the market price of the Restructure Security was at least $3.00.*

(iii) No Change.

.06–.09 No Change.

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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 Exchange 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 proposes to amend its pricing requirement for securities that underlie options traded on the Exchange (''underlying security''). Currently, Interpretation .01(b)(2) to CBOE Rule 5.3 requires that the market price per share of any underlying security must be at least $7.50 for the majority of business days during the three calendar months preceding the date of selection of an option class, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

The Exchange now proposes to amend Interpretation .01(b)(2) to CBOE Rule 5.3 to provide that, for underlying securities that are deemed Covered Securities, as defined under section 18(b)(1)(A) of the Securities Act of 1933 (''1933 Act''),[3] the closing market price of the underlying security must be at least $3.00 per share for the five previous consecutive business days prior to the date on which CBOE submits an option class certification. For Underlying Securities that are not Covered Securities, the Exchange states that the current $7.50 price per share requirement would continue to apply.

When the $7.50 price requirement was first implemented, the listed options market was in its infancy. Now more than twenty-eight years after the CBOE first started trading listed options, the Exchange states the listed options market is a mature market with sophisticated investors. The Exchange does not believe that this particular criteria serves to accomplish its presumed intended purpose, *i.e.*, to prevent the proliferation of option classes on overlying securities that lack liquidity needed to maintain fair and orderly markets. The Exchange states that it now seeks to move away from what it believes is a paternalistic approach to listing standards and allow the desires of its customers and the workings of the marketplace to determine the securities on which the Exchange will list options.

In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority (''OPRA'') have the capacity to handle the potential increased capacity requirements. Also, due to recent trends in the securities markets, there has been a marked increase in the number of underlying securities that, but for the pricing standard, would otherwise qualify for options listing on the Exchange. The Exchange states that changing the pricing standard to the proposed $3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection.

The Exchange does not propose to amend any of the other criteria in CBOE Rule 5.3, including the requirements that: there must be a minimum of 7,000,000 shares of the underlying security owned by public investors; there must be a minimum of 2,000 holders of the underlying security; and, that there must be a trading volume of at least 2,400,000 shares in the preceding twelve months. Additionally, by requiring the Underlying Security to be listed on the New York Stock Exchange, Inc., American Stock Exchange LLC (''Amex''), or Nasdaq National Market System (''Nasdaq''),[4] the Exchange states that this would ensure that the underlying security meets the highest listing standards in the securities industry. However, if the underlying security does not qualify as a Covered Security, the $7.50 market price per share standard still will apply.

The Exchange believes that the proposed $3.00 market price per share standard is also consistent with the guideline price in CBOE's Delisting Criteria Rule,[5] which is used to determine whether an underlying security previously approved for Exchange options transactions no longer meets the requirements for the continuance of approval. Interpretations and Policies .01(d) and .02 to CBOE Rule 5.4 sets a $3 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security that was previously approved for options trading under CBOE Rule 5.3. As long as a $3.00 standard is recognized as an acceptable pricing standard for options trading, albeit as a standard for continued listing, the Exchange believes that the proposed $3.00 should be the threshold standard for initial listing standards as well.

The Exchange also proposes, as a safeguard against price manipulation, that the underlying security have a closing market price of at least $3.00 per share for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. The market price of such underlying security

[3] Section 18(b)(1)(A) of the 1933 Act provides that, ''[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *'' 15 U.S.C. 77r(b)(1)(A). The term Covered Security, for the operation of proposed amendments to Interpretation .01(b)(2) to CBOE Rule 5.3 herein, would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[4] *See* 15 U.S.C. 77r(b)(1)(A).

[5] *See* Interpretation .01 to CBOE Rule 5.4.

would be measured by the closing price reported in the primary market in which the underlying security is traded. The Exchange believes that a ''look back'' period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security.

The Exchange also believes that the proposed rule change would encourage the delisting of inactive option classes, particularly those classes in which the market price of the underlying security is below $7.50. Currently, a Designated Primary Market Maker (''DPM'') on the Exchange to whom an option class has been allocated may be reluctant to delist an inactive option class if the market price of the underlying security is below $7.50 because once delisted, the Exchange's current initial listing criteria must be met to re-list the option class, including the requirement that the market price per share of the underlying security be at least $7.50 for the majority of business days during the preceding three months. The Exchange also notes that the Commission recently granted CBOE approval to list additional series on an option class even though the market price of the underlying security is below $3, provided that at least one other options exchange trades the series to be added, and at the time the other options exchange added that series, it met the requirements to add new series, including the $3 price requirement.[6]

The proposed $3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with CBOE's existing quarterly delisting program,[7] would contribute to reducing unnecessary quote traffic.

Finally, for the purposes of consistency within CBOE Rules, the Exchange proposes to amend Interpretation and Policy .05(d)(ii) to CBOE Rule 5.3. Currently, Interpretation .05(d)(ii) to CBOE Rule 5.3 provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of Interpretation and Policy .01(b)(2) to CBOE Rule 5.3 and specifically references the $7.50 market price per share. In order to make Interpretation .05(d)(ii) to CBOE Rule 5.3 consistent with the pricing standard change to Interpretation .01(b)(2) to CBOE Rule 5.3, the amended rule would reflect that the market price standard for Restructure Securities also shall be reduced from $7.50 to $3.00 as long as the Restructure Security is a Covered Security.

2. Statutory Basis

The Exchange believes that the current proposal will allow the Exchange to provide investors with those options that are most useful and demanded by them without sacrificing any investor protection. As such, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5)[9] in particular in that it will promote just and equitable principles of trade; facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system; and 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.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2002–62 and should be submitted by January 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–31550 Filed 12–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46971; File No. SR–CBOE–2002–67]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending the Margin Rule 12.3 to Incorporate Security Futures

December 9, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 1, 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. On November 21, 2002, the CBOE filed an

[6] *See* Securities Exchange Act Release No. 46501 (September 16, 2002), 67 FR 59585 (September 23, 2002) (SR–CBOE–2002–52). The Exchange represents that these rules are consistent with similar rules regarding listing and maintenance standards of the Amex, International Securities Exchange, Inc., Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

[7] CBOE states that it maintains an active delisting program which requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.