

on already existing debt with a similar maturity. The balance of the funds needed by PS&S to complete the Transaction will be obtained from a capital contribution from KeySpan to KeySpan Energy to KSI to KeySpan Business Solutions to PS&S.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48142; File No. SR-CBOE-2002-36]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change Relating to Closing-Only Transactions

July 9, 2003.

On June 27, 2002, 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. On April 2, 2003, the CBOE filed Amendment No. 1 that entirely replaced the original rule filing.<sup>3</sup> On April 21, 2003, the Exchange's rule proposal was published for comment in the **Federal Register**, as amended.<sup>4</sup> No comments letters were received on the proposal. This order approves the proposed rule change.

CBOE proposes to amend Exchange Rule 5.4 regarding its procedures for limiting transactions in options that have closing-only restrictions. Currently, the Exchange has the authority to prohibit an opening purchase transaction in an option, but must seek approval through the Office of the Chairman. The proposal would change this procedure by granting two floor officials, in consultation with a designated senior executive officer of the Exchange, the authority to prohibit opening purchase transactions for equity options whenever the Exchange has determined that an underlying

security previously approved for Exchange option transactions does not meet the current requirements for continuance of such approval. In addition, the proposal would permit certain specific types of opening transactions by members to accommodate the closing transactions of other market participants. In particular, the Exchange proposes to permit: (i) Opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) (Crossing Orders).

The Exchange also proposes similar procedural changes to Interpretations and Policies .05 (to lift restrictions on opening transactions if the underlying security, which previously did not meet the Exchange's listing standards, again meets the Exchange's listing standards), .08 (for securities consisting of shares or other securities that represent interests in registered investment companies organized as open-end management investment companies, unit investment trusts or similar entities) and .09 (for Trust Issued Receipts).

Finally, the CBOE proposes to add Interpretation and Policy .11 under CBOE Rule 8.51 regarding the implementation of non-firm mode for options that are restricted to closing-only transactions. When a series or class of option is in non-firm mode, CBOE Rule 8.51(e)(4) requires the DPM and floor officials to review and reaffirm the condition of the market every 30 minutes. The proposal would provide an exception to this requirement in situations when opening transactions have been prohibited in an option and the underlying security has been delisted, and is subsequently traded on the OTC Bulletin Board, Pink Sheets or a similar trading system. Under these circumstances, the Exchange would monitor the activity or condition of the market and the DPM and floor officials would not be required to review and reaffirm the market conditions causing the non-firm mode designation every 30 minutes.

After careful review, the Commission finds that the proposed rule change 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 and the rules and regulations thereunder.<sup>6</sup> Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In particular, the Commission believes that these procedural changes should promote efficiency regarding transactions in options that have closing-only restrictions. Further, the Commission believes that the proposal should provide a more efficient process for monitoring market conditions in options classes for which opening transactions have been restricted when the underlying security is delisted.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-CBOE-2002-36) is hereby approved, as amended.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48148; File No. SR-NQLX-2003-05]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Nasdaq Liffe Markets, LLC to Remove Rule 903(c)(7) From the Maintenance Listing Standards and To Add Rule 408(e) Relating to the Clearing Account Indicator

July 9, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on June 20, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NQLX. The Commission is publishing this notice to solicit comments on the proposed rule changes

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

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

<sup>3</sup> See Letter from Andrew Spiwak, Director Legal Division and Chief Enforcement Attorney, CBOE, to John Roeser, Special Counsel, Division of Market Regulation, Commission, dated April 1, 2003.

<sup>4</sup> See Securities Exchange Act Release No. 47659 (April 10, 2003), 68 FR 19588.

<sup>5</sup> In approving this rule, the Commission has considered the proposed rule's 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. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 17 CFR 240.19b-7.