

Dated: October 2, 2003.

**Connie M. Downs,**

*Corporate Secretary, Overseas Private Investment Corporation.*

[FR Doc. 03-25361 Filed 10-2-03; 11:56 am]

BILLING CODE 3210-01-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### October 14, 2003 Public Hearing

*Time and Date:* 11 a.m., Tuesday, October 14, 2003.

*Place:* Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

*Status:* Hearing open to the public at 11 a.m.

*Purpose:* Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

#### *Procedures:*

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, October 10, 2003. The notice must include the individual's name, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., October 10, 2003. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

*For Further Information Contact:* Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 218-0136, or via e-mail at [cdown@opic.gov](mailto:cdown@opic.gov).

Dated: October 2, 2003.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 03-25362 Filed 10-2-03; 11:56 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48556, File No. SR-CBOE-2001-04]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Inc., and Order Granting Partial Accelerated Approval on a Pilot Basis of the Proposed Rule Change, as Amended, To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

September 29, 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 February 14, 2001, 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. On August 15, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 12, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> On September 26, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested

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

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

<sup>3</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 14, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

<sup>4</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 11, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE replaced proposed paragraph 6.25(a)(5), relating to erroneous quotes in the underlying security, with language substantially identical to that contained in CBOE Rule 43.5(b)(4).

<sup>5</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 26, 2003 ("Amendment No. 3"). In Amendment No. 3, the CBOE requested that the Commission accelerate effectiveness of proposed CBOE Rule 6.25(a)(3) and proposed CBOE Rule 6.25(b), (c), (d), and (e). The CBOE also requested that these provisions operate as a pilot until December 1, 2003.

persons. The Commission also grants accelerated approval of paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25, on a pilot basis until December 1, 2003.

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

The Exchange is proposing to adopt an obvious error trading rule. Proposed new language is *italicized*; **Federal Register** proposed deletions are in [brackets].

\* \* \* \* \*

#### *Rule 6.25 Nullification and Adjustment of Electronic Transactions*

*This Rule governs the nullification and adjustment of options trades executed electronically and has no application to options trades executed in open outcry.*

#### *(a) Trades Subject to Review*

*A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:*

*(1) Obvious Price Error: An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed amount shall be: (a) the greater of \$0.10 or 10% for options trading under \$2.50; (b) 10% for options trading at or above \$2.50 and under \$5; or (c) \$0.50 for options trading at \$5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be: (a) the greater of \$0.20 or 20% for options trading under \$2.50; (b) 20% for options trading at or above \$2.50 and under \$5; or (c) \$1.00 for options trading at \$5 or higher.*

*(i) Definition of Fair Market Value: For purposes of this rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues, fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of the Rapid Opening System ("ROS trades"),*

fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

(2) **Obvious Quantity Error:** An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The quantity to which a transaction shall be adjusted from an obvious quantity error shall be the responsible broker or dealer's average disseminated size over the previous four trading hours (which may include the previous trading day).

(3) **Verifiable Disruptions or Malfunctions of Exchange Systems:** Trades arising out of a "verifiable disruption or malfunction" in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by Trading Officials.

(4) **Erroneous Print in Underlying:** A trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market may be adjusted or nullified. In order to be adjusted or nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

(5) **Erroneous Quote in Underlying:** A trade resulting from an erroneous quote in the underlying security may be adjusted or nullified. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

(6) **Trades Below Intrinsic Value:** An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than \$0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at parity). Provided, however, that this

paragraph (6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT)) on days with regular trading hours).

(i) **Definition of Intrinsic Value:** For purposes of this rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.

(b) **Procedures for Reviewing Transactions**

(1) **Notification:** Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE. Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

(2) **Review and Determination:** Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered.

Absent unusual circumstances (e.g., a large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes

of receiving notification pursuant to paragraph (b)(1) above. If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination. Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.

(c) **Adjustments**

Unless otherwise specified in Rule 6.25(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to 6.25(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to 6.25(a)(6), the transaction shall be adjusted to a price that is \$0.10 under parity.

(d) **Review by the Appeals Committee**

A member affected by a determination made under this rule may appeal such determination to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules. For purposes of this Rule, a member must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.

(e) **Negotiated Trade Nullification**

A trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.

*Interpretations and Policies \* \* \**

.01 **Applicability:** Trading Officials may also allow for the execution of ROS trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the non-erroneous quote. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that

this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.

.02 *Trading Officials: The term "Trading Officials" means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.*

\* \* \* \* \*

#### Rule 6.2A Rapid Opening System

(a)(i)–(ii) No change

(iii) [In cases where ROS opens a particular class based on an erroneous opening print disseminated by the underlying market, which is later corrected by that underlying market, two Floor Officials may adjust the trades to reflect the accurate market. Floor Officials may also allow for the execution of trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the accurate price. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.]

(b)–(d) No change

\* \* \* \* \*

## 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 adopt new CBOE Rule 6.25 to allow it to either adjust or nullify a transaction the terms of which are obviously in error. The proposed rule contains objective standards for determining when an electronic transaction constitutes an obvious error, under what circumstances a trade may be adjusted or nullified, the price to which such transaction would be adjusted, and the procedures for appealing an adverse decision.

a. *Trades Subject to Review: Proposed CBOE Rule 6.25(a).* Proposed CBOE Rule 6.25(a) specifies the transactions that may be adjusted or nullified. The price to which transactions are adjusted shall be as specified in proposed CBOE Rule 6.25(c).

i. *Obvious Price Error.* Trading Officials<sup>6</sup> may nullify or adjust transactions in which there is an obvious pricing error, which will be deemed to have occurred when the execution price of a transaction is higher or lower than the fair market value of the series by the following amount: (a) The greater of \$0.10 or 10% for options trading under \$2.50; (b) 10% for options trading at or above \$2.50 and under \$5; or (c) \$0.50 for options trading at \$5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be double the requirements listed above.<sup>7</sup>

For purposes of the proposed Rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply-listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues and transactions occurring as part of the Rapid or Hybrid Opening System<sup>8</sup> ("ROS or HOSS

<sup>6</sup> The term "Trading Officials" means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.

<sup>7</sup> The amounts would be: (a) the greater of \$0.20 or 20% for options trading under \$2.50; (b) 20% for options trading at or above \$2.50 and under \$5; or (c) \$1.00 for options trading at \$5 or higher.

<sup>8</sup> The CBOE inadvertently omitted mention of HOSS from the rule text of proposed CBOE Rule 6.25(a)(1)(i). The CBOE has committed to submitting an amendment reflecting the changes relating to HOSS discussed herein, prior to permanent approval of the proposed rule change, as amended. Telephone conversation between Steve

trades"), fair market value shall be the first quote after the transaction(s) in question that do not reflect the erroneous transaction(s).

ii. *Obvious Quantity Error.* An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The transaction size will be adjusted to the responsible broker or dealer's average disseminated size over the previous four hours (which may include a portion of the previous business day). For example, if the DPM for class XYZ has been disseminating a size of 100 in a particular class for the preceding four hours and then inadvertently disseminates a size of 1,000 contracts, which is subsequently executed against, the quantity term of that transaction may be adjusted to 100 contracts.

iii. *Verifiable Disruptions or Malfunctions of Exchange Systems.* Trading officials may nullify or adjust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system.

iv. *Erroneous Print in Underlying.* Trading Officials may adjust or nullify a trade resulting from an erroneous print disseminated by the underlying market that is later cancelled or corrected by that underlying market. In order to be adjusted or nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

v. *Erroneous Quote in Underlying.* Trading Officials may adjust or nullify a trade resulting from an erroneous quote in the underlying security. An erroneous quote occurs when the underlying security has a width of at least \$1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the proposed Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question)

and dividing by the number of quotes during such time period (excluding the quote in question).<sup>9</sup>

vi. *Trades Below Intrinsic Value.* An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than \$0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at "parity").<sup>10</sup> Proposed CBOE Rule 6.25(a)(6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT) on days with regular trading hours).

b. *Review Procedures: Proposed CBOE Rule 6.25(b).* Proposed CBOE Rule 6.25(b) delineates objective standards regarding the review of transactions believed to have been executed in error. Pursuant to this rule, a member that believes it participated in a transaction that may be adjusted or nullified must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE on the same trading day. Absent unusual circumstances, Trading Officials shall not grant relief under the proposed Rule unless notification is made within the prescribed time periods.<sup>11</sup>

Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered. Absent unusual circumstances (e.g., a

large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes of receiving notification.<sup>12</sup> Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.

c. *Price Adjustments: Proposed CBOE Rule 6.25(c).* Unless otherwise specified in proposed CBOE Rule 6.25(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to proposed CBOE Rule 6.25(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to proposed CBOE Rule 6.25(a)(6), the transaction shall be adjusted to a price that is \$0.10 under parity.

d. *Appeal of Floor Officials' Decision: Proposed CBOE Rule 6.25(d).* Proposed CBOE Rule 6.25(d) provides objective standards regarding the appeal of an adverse decision. A member affected by a determination made under this rule may appeal to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules.<sup>13</sup> Notwithstanding any provision in CBOE Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.

e. *Negotiated Trade Nullification: Proposed CBOE Rule 6.25(e).* Proposed CBOE Rule 6.25(e) clarifies that a trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.

f. *Applicability.* The Exchange represents that proposed CBOE Rule 6.25 will operate floorwide in both equity and index option products. The Exchange proposes to amend CBOE Rule 6.2A, *Rapid Opening System*, to indicate that ROS transactions that are

executed at clearly erroneous prices will now be adjusted in accordance with proposed CBOE Rule 6.25. New Interpretation .01 to proposed CBOE Rule 6.25 consists of language previously contained in CBOE Rule 6.2A(a)(iii). Accordingly, the CBOE believes that the relocation of this rule language from CBOE Rule 6.2A to proposed CBOE Rule 6.25 raises no new or novel issues.

With the adoption of proposed CBOE Rule 6.25, the Exchange will withdraw the effectiveness of Regulatory Circular RG00–169.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The CBOE believes that the proposed rule change, as amended, will provide objective standards to use in correcting executions made as a result of an obvious error and procedures by which Trading Officials' decisions may be appealed.

### 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

The Exchange did not solicit or receive written comments on 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:

<sup>9</sup> Telephone conversation between Steve Youhn, Senior Attorney, CBOE and Susie Cho, Special Counsel, Division, Commission on September 16, 2003.

<sup>10</sup> For purposes of the proposed rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.

<sup>11</sup> In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

<sup>12</sup> If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination.

<sup>13</sup> For purposes of this Rule, a member must be aggrieved as described in CBOE Rule 19.1.

<sup>14</sup> 15 U.S.C. 78f(b).

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

(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, as amended, 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-2001-04 and should be submitted by October 27, 2003.

#### V. Commission's Findings and Order Granting Accelerated Approval of Amendment No. 3 on a Pilot Basis

After careful review, the Commission finds that proposed paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that these proposed rules are consistent with the requirements of Section 6(b)(5)<sup>17</sup> of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, 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.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions where there has been a documented Exchange

system disruption or malfunction, the execution of a trade under such circumstances indicates that an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's proposed rule relating to an obvious error resulting from a verifiable Exchange system disruptions and malfunctions establishes such specific and objective criteria for determining when a trade may involve an "obvious error" and thus may be adjusted or nullified. The CBOE has specified that trading officials may adjust or bust transactions resulting from a verifiable disruption or malfunction in the use or operation of any automated Exchange quotation, dissemination, execution, or communication system. The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trades.

The Commission finds good cause, pursuant to Section 6(b)(5)<sup>18</sup> and Section 19(b)<sup>19</sup> of the Act, to accelerate approval of paragraphs (a)(3), (b), (c), (d), and (e) of the proposed CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal regarding verifiable disruptions or malfunctions of Exchange systems; procedures for reviewing transactions; adjustments of obvious error trades; review by the appeals committee; and negotiated trade nullification, are substantially similar to proposed rule changes submitted by the International Securities Exchange, Inc. and Pacific Exchange, Inc., as well as the rules for CBOEdirect, all of which the Commission has approved.<sup>20</sup> Furthermore, pursuant to Amendment No. 3 to the proposed rule change, these provisions of the proposed rule change are in effect on a pilot basis until December 3, 2003. The Commission

<sup>16</sup> 15 U.S.C. 78f(b)(5).

<sup>17</sup> 15 U.S.C. 78s(b).

<sup>20</sup> See Securities Exchange Act Release No. 48538 (September 25, 2003) (SR-PCX-2002-01); Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (SR-ISE-2003-10); and Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (SR-CBOE-00-55).

finds, therefore, that granting partial accelerated approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)<sup>21</sup> of the Act.

#### VI. Conclusion

For the reasons discussed above, the Commission finds that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, are consistent with the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>22</sup> that paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25, as set forth in the proposed rule change, as amended, be and hereby are approved on an accelerated basis, on a pilot basis until December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-25263 Filed 10-3-03; 8:45 am]

BILLING CODE 8010-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48568; File No. SR-ISE-2003-23]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Payment-for-Order-Flow Fees

September 30, 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 September 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the Exchange has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</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>16</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> 15 U.S.C. 78f(b)(5).