

any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of: The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

4. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving each of the Substitutions. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the application, their exemptive requests meet the standards set out in Section 6(c) and that an order should, therefore, be granted.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27760]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 13, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to

provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549-0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Allegheny Energy, Inc. (70-10179)

Allegheny Energy, Inc. ("Allegheny"), a registered holding company, 10435 Downsville Pike, Hagerstown, Maryland 21740, has filed an application-declaration ("Application") under sections 6(a), 7, 9, and 12(e) of the Act and rule 54 under the Act.

Allegheny seeks authority to issue common stock and options to purchase common stock under Allegheny's Long-Term Incentive Plan ("LTIP"). Allegheny was previously authorized by order dated May 29, 1998 (Holding Co. Act Release No. 26879), ("LTIP Order") to issue and sell, through December 31, 2010, up to 10 million shares of its common stock, par value \$1.25 per share ("Common Stock"), under the LTIP.

Although the LTIP has not materially changed since it was approved by the Commission,¹ the authorization to issue stock under the Plan has been

¹ Allegheny amended the LTIP in September 1998 to allow for the issuance of stock options as payments for Performance Awards in addition to payments in Common Stock and cash. Although the original LTIP provided for the issuance of stock options as payment for other awards, payments for Performance Awards were more limited. The LTIP Order, however, generally authorized Allegheny to issue both stock and stock options as payments for all awards under the LTIP. Allegheny, therefore, subsequently amended the LTIP to provide for the issuance of stock options as Performance Awards.

undermined by Allegheny's current financial status. At the time of the LTIP Order, the criteria of rule 53 under the Act were satisfied by Allegheny, and, therefore, the Commission did not consider the effect of capitalization or earnings of any Allegheny exempt wholesale generator ("EWG") or foreign utility company ("FUCO") in granting its authorization. Allegheny no longer satisfies certain of the standards set forth in rule 53. Specifically, Allegheny's increased level of investments in EWGs and FUCOs, as described below, was conditioned on compliance with certain financing requirements that are currently not satisfied. Also, Allegheny's consolidated retained earnings have decreased over the four most recent quarterly periods, and Allegheny has reported operating losses attributable to EWG and FUCO investments in excess of the limitations set forth in rule 53(b).

Allegheny, therefore, seeks authority to continue issuing Common Stock under the LTIP. Allegheny requests that the Commission authorize it to issue up to 8 million shares of Common Stock (decreased from 10 million) under the LTIP through December 31, 2010. The stock would be issued according to the same terms and conditions set forth in the LTIP Order. As explained in that order, the LTIP was adopted by Allegheny in 1998 to attract and retain key employees and directors and motivate performance.

I. Description of the LTIP

The LTIP is administered by the Management Compensation and Development Committee ("Committee"), which may delegate to an executive officer the power to determine the employees (other than himself or herself) eligible to receive awards. The Committee may from time to time designate key employees and directors to participate in the LTIP for a particular year. As approved in the LTIP Order, the LTIP authorizes Allegheny to issue up to 10 million shares of Common Stock, subject to adjustments for recapitalizations or other changes to Allegheny's common shares. In this Application, Allegheny requests authority to issue up to 8 million shares of Common Stock under the LTIP. No participant in the LTIP may be granted more than 600,000 shares (or rights or options in respect of more than 600,000 shares) in any calendar year. For purposes of this limit, shares subject to an award that is to be earned over a period of more than one calendar year will be allocated to the first calendar year in which these shares may be earned.

The LTIP permits awards of options to purchase Allegheny Common Stock on terms and conditions as determined by the Committee. Stock options are issued at strike prices equal to the fair market value (as defined in the LTIP) of Allegheny Common Stock as of the date of the option grant. The terms of option awards are set forth in option award agreements. The Committee may award non-qualified stock options or incentive stock options (each as defined in the LTIP). No participant in the LTIP may receive incentive stock option awards under the LTIP or any other Allegheny compensation plan that would result in incentive stock options to purchase shares of Allegheny Common Stock with an aggregate fair market value of more than \$100,000 first becoming exercisable by a participant in any one calendar year.

Options awarded under the LTIP will terminate upon the first to occur of: (i) The option's expiration under the terms of the related option award agreement; (ii) termination of the award following termination of the participant's employment under the rules described in the next paragraph; and (iii) 10 years after the date of the option grant. The Committee may accelerate the exercise period of awarded options and may extend the exercise period of options granted to employees who have been terminated.

In the event of the termination of employment of a participant in the LTIP, options not exercisable at the time of the termination will expire as of the date of the termination and exercisable options will expire 90 days from the date of termination. In the event of termination of a participant's employment due to retirement or disability, options not exercisable will expire as of the date of termination and exercisable options will expire one year after the date of termination. In the event of the death of a participant in the LTIP, all options not exercisable at the time of death will expire, and exercisable options will remain exercisable by the participant's beneficiary until the first to occur of one year from the time of death or, if applicable, one year from the date of the termination of the participant's employment due to retirement or disability.

The Committee may establish dividend equivalent accounts with respect to awarded options. A participant's dividend equivalent account will be credited with notional amounts equal to dividends that would be payable on the shares for which the participant's options are exercisable, assuming that the shares were issued to

the participant. The participant or other holder of the option will be entitled to receive cash from the dividend equivalent account at times and subject to terms and conditions that the Committee determines and provides in the applicable option award agreement. If an option terminates or expires prior to exercise, the dividend equivalent account related to the option will be concurrently eliminated and no payment in respect of the account will be made.

The Committee may permit the exercise of options or the payment of applicable withholding taxes through tender of previously acquired shares of Allegheny Common Stock or through reduction in the number of shares issuable upon option exercise. The Committee may grant reload options to participants in the event that participants pay option exercise prices or withholding taxes by these methods.

In the event of a change of control of Allegheny (as defined in the LTIP), unless provided to the contrary in the applicable option award agreement, all options outstanding on the date of the change in control will become immediately and fully exercisable.

The Committee may grant shares of Common Stock on terms, conditions and restrictions as the Committee may determine. Restrictions, terms, and conditions may be based on performance standards, period of service, share ownership, or other criteria. Performance-based awards intended for federal income tax deductibility will be subject to performance targets with respect to operating income, return on investment, return on shareholders' equity, stock price appreciation, earnings before interest, taxes and depreciation/amortization, earnings per share, and/or growth in earnings per share. The terms of restricted stock awards will be set forth in award agreements.

The participant will be an owner of restricted shares awarded to him or her under the LTIP. The shares may not be transferred, pledged, or assigned (other than by will or the laws of descent and distribution or to an inter vivos trust with respect to which the participant is treated as the owner under the internal revenue code) prior to the lapse of the applicable restrictions. A participant's restricted shares will be forfeited to Allegheny in the event that the participant ceases to be employed by Allegheny prior to the expiration of the applicable forfeiture period. The Committee may waive an award's forfeiture provisions under appropriate circumstances.

In the event of a change of control of Allegheny (as defined in the LTIP), unless provided to the contrary in the applicable restricted stock award agreement, the restrictions applicable to all restricted stock awards will terminate fully on the date of the change of control.

The Committee may grant performance awards, which will consist of a right to receive a payment that is either measured by the fair market value of a specified number of shares of Allegheny Common Stock, increases in the fair market value of Common Stock during an award period and/or consists of a fixed cash amount. Performance awards may be made in conjunction with or in addition to restricted stock awards. Award periods will be two or more years or other annual periods as determined by the Committee. The Committee may permit newly eligible participants to receive performance awards after an award period has commenced.

The Committee establishes performance targets in connection with performance awards. In the case of awards intended to be deductible for federal income tax purposes, performance targets will relate to operating income, return on investment, return on shareholders' equity, stock price appreciation, earnings before interest, taxes and depreciation/amortization, earnings per share, and/or growth in earnings per share. The Committee prescribes formulas to determine the percentage of the awards to be earned based on the degree of attainment of award targets. Allegheny may make payments in respect of performance awards in the form of cash or shares of Allegheny Common Stock, or a combination of both.

In the event of a participant's retirement during an award period, the participant will not receive a performance award unless otherwise determined by the Committee, in which case the participant will be entitled to a prorated portion of the award. In the event of the death or disability of a participant during an award period, the participant or his or her representative will be entitled to a prorated portion of the performance award. A participant will not be entitled to a performance award if his or her employment terminates prior to the conclusion of an award period, provided that the Committee may determine in its discretion to pay performance awards, including full (*i.e.*, non-prorated) awards, to any participant whose employment is terminated. In the event of a change of control of Allegheny, all performance awards for all award

periods will immediately become payable to all participants and will be paid within 30 days after the change in control.

The Committee may, unless the relevant award agreement otherwise specifies, cancel, rescind, or suspend an award in the event that the LTIP participant engages in competitive activity, discloses confidential information, solicits employees, customers, partners or suppliers of Allegheny, or undertakes any other action determined by the Committee to be detrimental to Allegheny.

The LTIP contains provisions intended to ensure that certain restricted share awards and performance awards to "covered employees" under Section 162(m) of the Internal Revenue Code are exempt from the \$1 million deduction limit contained in that section of the code. Those exemptive provisions, by their terms and under the applicable IRS regulations, expired as of May 14, 2003. Any pending, but unvested, awards issued under these provisions are unaffected by the provisions' expiration, but any future restricted stock or performance awards to covered employees will not be eligible for the exemption from the Section 162(m) limit unless the provisions are reapproved by the shareholders. Allegheny may seek stockholder reauthorization of the LTIP with respect to these provisions, but has no present intention to do so. Allegheny may choose alternative methods to compensate covered employees who would have received compensation under the terminated provisions of the LTIP had these provisions not terminated.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48771; File No. SR-CBOE-2003-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Chicago Board Options Exchange, Inc. Relating to Bid-Ask Differentials

November 12, 2003.

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 June 20, 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, II and, III below, which Items have been prepared by the Exchange. The CBOE filed Amendments Nos. 1, 2, and 3 to the proposal on July 3, 2003,³ September 10, 2003,⁴ and October 29, 2003,⁵ respectively. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 8.7, "Obligations of Market Makers," to allow the appropriate Market Performance Committee ("MPC") to establish bid-ask differentials that are no more than \$0.50 wide ("double-width") for options where the bid price is less than \$2 when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote, including any Liquidity Quote,⁶ or (2) disseminates an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division of Market Regulation ("Division"), Commission, dated July 2, 2003, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 converts the proposal from a filing submitted pursuant to Section 19(b)(3)(A) of the Act to a proposal filed pursuant to Section 19(b)(2) of the Act. In addition, Amendment No. 1 clarifies that the CBOE's autoquote systems automatically will widen quotes to double the applicable bid-ask differential upon the occurrence of one of the triggering events and automatically will return the quotes to the normal bid-ask differential when the triggering event ceases.

⁴ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). Amendment No. 2 provides examples illustrating the need for the proposed relief, clarifies that CBOE market makers will not be able to widen their quotes when the New York Stock Exchange, Inc. ("NYSE") prints a trade at or within its Liquidity Quote, and states that neither the CBOE's Retail Automated Execution System ("RAES") nor the CBOE's Hybrid System will automatically execute incoming orders at prices inferior to the national best bid or offer ("NBBO").

⁵ See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated October 28, 2003 ("Amendment No. 3"). Amendment No. 3 revises the proposal to limit the application of the quote width relief to options that trade with a bid price of less than \$2 and clarifies that the quote width relief provided in the proposal will be available only to a market maker who has an automated quotation system that will return his or her quotes to the normal bid-ask differential when the triggering event ceases.

⁶ The rules of the NYSE permit the dissemination, in selected securities, of a "Liquidity Bid" and a "Liquidity Offer" which reflect aggregated NYSE trading interest at a specific price interval below the

inverted quote. The double-width relief must terminate automatically when the triggering event ceases.

The text of the proposed rule change appears below. Additions are in *italics*.

Rule 8.7 Obligations of Market Makers

- (a) No change.
- (b) No change.
- (i)-(iii) No change.
- (iv) No change.

(A) Without limiting the authority provided to it in Rule 8.7(b)(iv), the appropriate MPC may, with respect to options trading with a bid price less than \$2, establish bid-ask differentials that are no more than \$0.50 wide ("double-width") when the primary market for the underlying security: (a) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote. The imposition of double-width relief must automatically terminate when the condition that necessitated the double-width relief (i.e., condition (a) or (b)) is no longer present. Market makers that have not automated this process may not avail themselves of the relief provided herein (i.e., they may not manually adjust prices).

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

CBOE Rule 8.7(b)(iv) establishes bid-ask differentials and allows the appropriate MPC to establish differences for one or more options series.⁷ The

best bid (in the case of a Liquidity Bid) or at a specific price interval above the best offer (in the case of a Liquidity Offer). See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (File No. SR-NYSE-2002-55).

⁷ CBOE Rule 8.7(b)(iv) requires market makers to bid and/or offer so as to create differences of no more than \$0.25 between the bid and the offer for each option contract for which the bid is less than \$2; no more than \$0.40 where the bid is at least \$2