

Amex amended the proposed rule change.⁴ On November 14, 2003, the Amex amended the proposed rule change.⁵

The proposed rule change and Amendment Nos. 1, 2, and 3 were published for comment in the **Federal Register** on November 28, 2003.⁶ The Commission received no comments on the proposal. On January 9, 2004, the Amex filed Amendment No. 4 to the proposed rule change.⁷ This order approves the proposed rule change.

In the filing, the Amex states that the proposed rule change consolidates current Exchange procedures regarding MOC and LOC orders in Rule 131A. In addition, paragraph (m) of Rule 118 establishes MOC and LOC procedures for Nasdaq securities that are substantially similar to the procedures proposed in Rule 131A. Amex is implementing an MOC Imbalance Calculation Policy and amending its MOC Imbalance Publication Policy so that it more closely resembles the New York Stock Exchange's ("NYSE") policy as set out in NYSE Rule 123C(5). The Amex states that the most salient feature of the revised policies is the additional dissemination of an imbalance at 3:50 p.m.

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.⁸ The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of section 6(b)(5),¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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. Specifically, the Commission believes that the Amex's proposal to amend its rules governing at-the-close orders and auxiliary opening procedures on the Exchange may provide useful information to market participants and may minimize price volatility on the close. In addition, the Commission believes that the proposed rule change may result in the public dissemination of information that more accurately reflects the trading in a particular security on the Exchange at the close.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹¹, that the proposed rule change (SR-Amex-2003-21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-3781 Filed 2-20-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49241; File No. SR-CBOE-2003-56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Exemption of Standardized Options From the Securities Act of 1933 and Provisions of the Securities Exchange Act of 1934

February 12, 2004.

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 December 3, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") 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 proposed rule change has been filed by CBOE under Rule 19b-4(f)(6) under the Act.³ On January 2, 2004, CBOE filed Amendment No. 1 to the proposed rule change.⁴ 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

CBOE proposes to amend its rules to reflect the Commission's recent adoption of Rule 238 under the Securities Act of 1933 (the "Securities Act")⁵ and Rule 12a-9 under the Act,⁶ which together exempt standardized options issued by a registered clearing agency and traded on a registered national securities exchange or on a registered national securities association from most of the provisions of the Securities Act and from the registration requirements of Section 12 of the Act.⁷ The text of the proposed rule change is available at the Exchange and at the Commission.

I. 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 parts of such statements.

³ 17 CFR 240.19b-4(f)(6).

⁴ See letter from David Doherty, Attorney, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, December 30, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE deleted proposed revisions to CBOE Rule 9.21(a)(iv) and its description.

⁵ 17 CFR 230.238.

⁶ 17 CFR 240.12a-9.

⁷ 15 U.S.C. 78l. See also Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934, Securities Act Release No. 8171 and Securities Exchange Act Release No. 47082 (December 23, 2002), 68 FR 188 (January 2, 2003) ("Commission Release").

⁴ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated October 17, 2003 ("Amendment No. 2").

⁵ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated November 13, 2003 ("Amendment No. 3").

⁶ See Securities Exchange Act Release No. 48813 (November 20, 2003), 68 FR 66898.

⁷ See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated January 8, 2004 ("Amendment No. 4"). In Amendment No. 4, the Amex revised the text of the proposed rule change to correct a number of typographical errors. This was a technical amendment and is not subject to notice and comment.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 2, 2003, final rules of the Commission became effective which exempt standardized options issued by a registered clearing agency and traded on a registered national securities exchange or a registered national securities association from all provisions of the Securities Act, other than the anti-fraud provisions of section 17 of the Securities Act,⁸ and from the registration requirements of section 12(a) of the Act.⁹ CBOE is proposing to revise its rules that contain references to a prospectus in connection with options trading, because, as a registered national securities exchange, CBOE represents that all of its listed options fall within the scope of the exemptions provided by these rules.

Specifically, CBOE proposes to delete the phrase "and Prospectus" from the title of current CBOE Rule 9.15 ("Delivery of Current Options Disclosure Documents and Prospectus") and from the reference to the title of current CBOE Rule 9.15 in Interpretation and Policy .04 to CBOE Rule 9.7.¹⁰ CBOE is also proposing to delete current CBOE Rule 9.15(b), which essentially restates the prospectus delivery requirements of the Securities Act. Likewise, the proposed rule change deletes references to the prospectus from CBOE Rules 21.19A and 26.10.

CBOE is currently in the process of reviewing its rules to determine if more substantive changes to the CBOE rules should be made in light of the Commission Release.¹¹

2. Statutory Basis

The Exchange asserts that because the proposed rule change reflects final rules of the Commission, which exempt standardized options that are issued by registered clearing agencies and traded on a registered national securities exchange or a registered national securities association from all provisions of the Securities Act (except for section 17 of the Securities Act)¹² and the registration provisions of the Act, it is therefore consistent with

section 6(b) of the Act,¹³ in general, and furthers the objectives of section 6(b)(5) of the Act,¹⁴ in particular, 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, in general, to protect investors and the public interest.

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

CBOE does not believe that the proposed rule change will impose any burden on competition 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

CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,¹⁵ it has become effective pursuant to section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

At any time within sixty days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

in furtherance of the purposes of the Act.¹⁸

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CBOE-2003-56. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should be submitted by March 15, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-3776 Filed 2-20-04; 8:45 am]

BILLING CODE 8010-01-P

⁸ 15 U.S.C. 77q.

⁹ 15 U.S.C. 78j(a).

¹⁰ CBOE is also correcting the reference to the title of current CBOE Rule 9.15 in Interpretation and Policy .04 to CBOE Rule 9.7 by adding the term "Options Disclosure Document." Telephone conversation between David Doherty, Attorney, Legal Division, CBOE, and Frank N. Genco, Division, Commission, on December 22, 2003.

¹¹ See *supra* note 7.

¹² 15 U.S.C. 77q.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ On October 17, 2003, CBOE provided the Commission with written notice of its intent to file the proposed rule change. See letter from David Doherty, Attorney, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, October 17, 2003.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ For purposes of calculating the sixty-day abrogation period, the Commission considers the abrogation period to have begun on January 2, 2004, the date on which the Commission received Amendment No. 1.

¹⁹ 17 CFR 200.30-3(a)(12).