

if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49256; File No. SR-CBOE-2003-54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Misrepresentations and Omissions in Communications to the Exchange and the Options Clearing Corporation

February 13, 2004.

On November 12, 2003, 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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CBOE Rule 4.6 (False Statements) and adopt new CBOE Rule 4.22 to distinguish willfully made or material misrepresentations or omissions from other misrepresentations or omissions. In addition, the Exchange proposed to amend CBOE Rule 17.50 to add Rule 4.22 to its Minor Rule Violation Plan

and provide a summary fine schedule for violations of Rule 4.22.

The proposed rule change was published for comment in the **Federal Register** on January 13, 2004.³ The Commission received no comments on the proposal.

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.⁴ In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(6)⁵ of the Act because it should enable the Exchange to appropriately discipline its members and persons associated with members for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange. In addition, the Commission believes that the proposal is consistent with Rule 19d-1(c)(2) under the Act,⁶ which governs minor rule violation plans

In addition, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The Commission believes that the rule change should increase the Exchange's ability to prevent members from engaging in dishonest conduct with respect to their communications with the Exchange or the Options Clearing Corporation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with the rules that the Exchange is adding to its minor rule violation plan rules and all other rules subject to the imposition of fines under that plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects

³ See Securities Exchange Act Release No. 49028 (January 6, 2004), 69 FR 2028.

⁴ 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).

⁵ 15 U.S.C. 78f(b)(6).

⁶ 17 CFR 240.19d-1(c)(2).

that the CBOE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2003-54) be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49275; File No. SR-CBOE-2003-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Simplify the Manner in Which Contrary Exercise Advices Are Submitted and To Extend by One Hour the Time for Members and Member Organizations To Submit Contrary Exercise Advices

February 18, 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 January 26, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 CBOE. The Exchange filed the proposed rule change under paragraph (f)(6) of Rule 19b-4 under the Act.³ 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

The Exchange proposes to amend CBOE Rules 11.1 and 17.50 and to issue

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

a Regulatory Circular to simplify the manner in which Contrary Exercise Advices ("CEAs"), and similarly advice cancels, are submitted to the Exchange in light of The Options Clearing Corporation's ("OCC") procedures. The Exchange also proposes new procedures to allow additional time for members and member organizations to submit CEAs for certain accounts. The text of the proposed rule change is available at the CBOE and at the Commission.

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 CBOE 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 modify its exercise notification requirements. The purpose of the proposed rule change is to amend CBOE Rules 11.1 and 17.50 and to issue a Regulatory Circular to simplify the manner in which CEAs, and similarly advice cancels, are submitted to the Exchange in light of the procedures of OCC. The Exchange also proposes new procedures to allow additional time for members and member organizations to submit CEAs for certain accounts. OCC has an established procedure, under OCC Rule 805, known as "Exercise-by-Exception" or "Ex-by-Ex," that provides for the automatic exercise of certain options that are in-the-money by a specified amount. Under the Ex-by-Ex process, option holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need to take no further action.

However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must file a CEA with CBOE in accordance with CBOE Rule 11.1 and instruct OCC of their "contrary intention." The rule is designed, in part, to deter individuals from taking

improper advantage of late breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a CEA. Members and member organizations satisfy the filing requirement by manually submitting a CEA form or by electronically submitting the CEA through OCC's electronic communications system.

If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either: (1) Submit to the Exchange an exercise instruction in a manner specified by the Exchange within the applicable time limit if the holder intends to exercise the option, or (2) take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, OCC rules require that an affirmative Exercise Notice be submitted to OCC in order to exercise such options, whether or not an exercise instruction has been submitted to the Exchange.

The Exchange states that one of the primary goals of CBOE Rule 11.1 is to maintain a level playing field between holders of long and short positions in expiring equity options.⁴ CBOE believes that after trading has ended on the final trading day before expiration, persons who are short the option have no way to close out their short positions. To put all option holders on equal footing, CBOE Rule 11.1 attempts to keep to a minimum the time period in which a holder can exercise an equity option after the close of trading on the last business day prior to expiration.⁵ The current exercise cutoff time for an option holder to decide whether or not to exercise an equity option is fixed at 4:30 p.m. Central Standard Time ("CT") on the business day immediately prior to the expiration date.⁶ In the interests of clarifying the exercise notification procedures and simplifying CBOE Rule 11.1, the Exchange proposes to issue a Regulatory Circular that would contain much of the details of these procedures that previously were contained in CBOE Rule 11.1, but as herein amended.

The proposed Regulatory Circular would describe the Exchange's regular procedures and cutoff times for the submission of exercise notifications to the Exchange for non-cash-settled equity

options under CBOE Rule 11.1, as detailed below. This Regulatory Circular shall be deemed a rule of the Exchange subject to the rule change provisions under the Act and the rules thereunder.

The proposed Regulatory Circular would reiterate the Ex-by-Ex procedures under OCC Rule 805 as provided in CBOE Rule 11.1(a) with relation to option holders' preferences for exercising or not exercising options. Specifically, an option holder may decide to do nothing and allow the determination to be made in accordance with OCC Rule 805, or submit a CEA or an advice cancel.

The proposed Regulatory Circular would provide for the cutoff time by which option holders have to decide to exercise or not exercise an expiring option. Current CBOE Rule 11.1 imposes a uniform 4:30 p.m. (CT) cutoff time for both an option holder's decision to exercise or not exercise an option and for a member or member organization to submit the CEA to the Exchange, regardless of whether the CEA is for a customer or a non-customer account.

Although the cutoff time for an option holder to decide whether or not to exercise an expiring option shall remain unchanged at 4:30 p.m. (CT), the Exchange proposes in CBOE Rule 11.1 and in the proposed Regulatory Circular to have an extended cutoff time of 5:30 p.m. (CT) for members and member organizations to submit CEAs to the Exchange for customer accounts. The Exchange also proposes to allow members and member organizations to submit CEAs for non-customer accounts by 5:30 p.m. (CT), but only if such member or member organization employs an electronic procedure with time stamp recording for the submission of exercise instructions by options holders. Members and member organizations would have to establish fixed procedures to insure secure time stamps in connection with the utilization of the aforementioned electronic time stamp provision. If a member organization does not employ an electronic time stamp and appropriate procedures to ensure secure time stamps, the member organization would have to submit CEAs for non-customer accounts by 4:30 p.m. (CT).

CBOE believes that granting members and member organizations additional time to submit CEAs (or advice cancels) to the Exchange is necessary to address a concern that a 4:30 p.m. (CT) cutoff time is problematic for customer accounts due to logistical difficulties in the time required to receive customer exercise instructions, and, subsequently, to process them through retail branch

⁴ Another component of CBOE Rule 11.1 governs the exercising of American-style cash-settled index option contracts. See current Interpretation and Policy .03 to CBOE Rule 11.1.

⁵ Expiration, commonly known as "Expiration Friday," is generally the last business day prior to the expiration of an option contract.

⁶ The "expiration date" of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such options. See OCC By-Laws Article I(E)(16).

systems and back offices before submitting them to the Exchange. The Exchange believes that extending the cutoff times for CEAs and advice cancels for non-customer accounts, if electronically time stamped, is fair and provides for consistent regulation. The Exchange does not propose to extend the submission cutoff time for member organizations that manually submit CEAs and advice cancels due to the difficulties involved in monitoring a manual procedure.

Section (d) of the proposed Regulatory Circular would provide for procedures that a member organization that has accepted the responsibility to indicate final exercise decisions on behalf of other members or non-member firms must follow. Section (d) of the proposed Regulatory Circular would also allow a member organization to establish earlier cutoff times for accepting final exercise decisions in expiring options, but not later cutoff times.

Consistent with current CBOE rules,⁷ section (e) of the proposed Regulatory Circular would allow members and member organizations to make final exercise decisions after the exercise cutoff time, but before expiration without having submitted a CEA: (1) To remedy mistakes made in good faith; (2) to take appropriate actions due to a failure to reconcile unmatched Exchange options transactions; or (3) where exceptional circumstances have restricted an option holder's ability to inform a member organization of a decision regarding exercise, or a member organization's ability to receive such a decision by the cutoff time. The burden of establishing such exceptions would rest solely on the member or member organization seeking application of such exception. Section (e) of the proposed Regulatory Circular would also provide for reporting and record keeping obligations with relation to these exceptions.

Certain provisions of CBOE Rule 11.1, both current and proposed, shall be maintained within the body of CBOE Rule 11.1 itself, as opposed to the Regulatory Circular. The procedures and cutoff times that would apply in unusual circumstances are specifically described in proposed CBOE Rule 11.1(d).

The proposed rule change also would permit the CBOE to establish different exercise cutoff times as an exception to amended CBOE Rule 11.1(b), and the procedures proposed in the Regulatory Circular, to address situations where the Exchange has advance prior knowledge or warning of a modified trading session

at expiration, or in the case of "unusual circumstances." Specifically, proposed CBOE Rule 11.1(c) would apply when a different or modified close of trading is announced. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in the exercise cutoff time by 4:30 p.m. (CT) on the business day prior to the last trading day before expiration. Under such circumstances, the deadline for making a final decision to exercise or not exercise would be 1 hour and 28 minutes following the time announced for the close of trading on that day. With respect to the submission of a CEA by members and member organizations, the cutoff time would be 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the member firm employs an electronic procedure with time stamp for the submission of exercise instructions. Member firms that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts.

Similarly, proposed CBOE Rule 11.1(d)(1) would permit the Exchange to extend the cutoff time period for the decision to exercise or not exercise expiring options, as well as the submission of a CEA due to unusual circumstances, such as systems capacity constraints or market imbalances. Furthermore, proposed CBOE Rule 11.1(d)(2) would permit the Exchange, with one (1) business day prior advance notice by 11 a.m. (CT), to establish a reduced cutoff time for the decision to exercise or not exercise expiring options as well as the submission of the CEA in a specific option class, due to unusual circumstances that involve the underlying security, such as a significant news event that arises after the close. The Exchange believes that this flexibility would further maintain a level playing field between persons holding long and short positions in expiring options. The Exchange states that this proposed rule change corresponds to a rule change by the American Stock Exchange, LLC ("Amex") that was approved by the Commission.⁸

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act in general⁹ and furthers the objectives of section 6(b)(5)

in particular,¹⁰ in that it will improve the option exercise process and thus is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information regarding the exercise of outstanding option contracts, 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

The Exchange believes that the proposed rule change does not 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

No written comments were solicited with respect to the proposed rule change. However, the Options Operation Sub-Group of the OCC Round Table Committee submitted a letter to the Intermarket Surveillance Group requesting that the options exchanges amend their rules to provide for a 5:30 p.m. (CT) deadline for the submission of customer exercise notifications by clearing firms.

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

The proposed rule change has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act¹¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹² 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) does not become operative for thirty 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, it has become effective pursuant to section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder.¹⁵

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ As required under Rule 19b-4(f)(6)(iii), 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 filing date or such shorter period as designated by the Commission.

¹ See also Proposed CBOE Rule 11.1(f).

⁸ See *infra* note 19.

⁹ 15 U.S.C. 78f(b).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the thirty-day operative date specified in Rule 19b-4(f)(6)(iii)¹⁷ in order to conform its rules pertaining to the submission of exercise notifications with those of other options exchanges.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest¹⁸ because it will allow the CBOE to immediately implement rules similar to ones already in place at the other options exchanges,¹⁹ and will simplify the manner in which CEAs, and similarly advice cancels, are submitted to the Exchange. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.

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-2003-47. This file number

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 49191 (February 4, 2004), 69 FR 7055 (February 12, 2004) (SR-BSE-2004-04); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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-2003-47 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-4118 Filed 2-24-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49278; File No. SR-ISE-2003-34]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to Firm Quotations

February 19, 2004.

On November 20, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to require ISE market makers to be firm for the stated size of their quotations in all instances. The ISE submitted Amendment No. 1 to the proposed rule change on December 3, 2003.³

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003. Amendment No. 1 deleted a reference to "Order

Currently, a market maker's disseminated quotation is required to be firm at its stated size for all incoming orders, except when quotes of two ISE market makers interact. In these cases, a market maker may limit its exposure to one contract, regardless of the size of its disseminated quotation.⁴ This proposed rule change will eliminate that exception.

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2003.⁵ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of a national securities exchange be designed 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.⁸ The Commission believes that requiring market makers' quotes to be firm for the full stated size in all cases will further the development of the national market system by requiring ISE market makers to comply with the Quote Rule—Rule 11Ac1-1 under the Act.⁹

Execution Size"—a term no longer used in the rule—and substituted the term "a bid or offer."

⁴ See Securities Exchange Act Release No. 47220 (January 21, 2003), 68 FR 4260 (January 28, 2003).

⁵ See Securities Exchange Act Release No. 48892 (December 8, 2003), 68 FR 70058.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

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

⁹ Rule 11Ac1-1 sets forth requirements for the dissemination of quotations and responsibilities of broker-dealers. 17 CFR 240.11Ac1-1. By letter dated January 21, 2003, the Commission granted responsible brokers and dealers on the ISE a limited exemption from the Quote Rule to permit an ISE market maker to be firm for only one contract when its quotations interact with those of other ISE market makers. See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003. Concurrent with approval of this proposed rule change, the Commission is revoking the ISE's limited exemption to the Quote Rule. See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003. Concurrent with approval of this proposed rule change, the Commission is revoking the ISE's limited exemption to the Quote Rule. See letter from Robert L.D. Colby, Deputy Director, Division