

## Rule 1. Hours of Business

The Exchange also proposes to amend Amex Rule 1 regarding the Exchange's hours of business to provide that the ANTE System would conduct a closing rotation after the close of trading on each trading day. The closing rotation would commence as soon as practicable after 4:02 p.m. or 4:15 p.m. depending on the option class. In addition, the Exchange takes this opportunity to correct the opening paragraph of Commentary .02 to reflect that options on select Exchange Traded Fund Shares should freely trade until 4:15 p.m. each business day.

The Exchange believes that the ANTE System would provide investors with deeper and more liquid markets, market participants with substantially enhanced incentives to quote competitively, and order entry firms with a trading system that would increase their ability to meet their best execution and due diligence obligations.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in particular, because 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, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that the proposed rule change, as amended, will impose no burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change, as amended.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

## 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:

(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. 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-Amex-2003-89. This file number 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 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 the Exchange. All submissions should refer to file number SR-Amex-2003-89 and should be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49462, File No. SR-CBOE-2004-02]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., To Amend the Obvious Error Rule Relating to "No-Bid" Options

March 23, 2004.

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 January 8, 2004, 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 February 2, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 obvious error rule, CBOE Rule 6.25, relating to "no-bid" options. Proposed new language is *italicized*.

\* \* \* \* \*

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

##### (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)-(6) No change.  
 (7) *No Bid Series: Buyers of options series quoted no bid may request that their execution be nullified provided: (a) the bid in that series immediately preceding the execution was zero; (b) at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid immediately before the execution; and (c) the bid following the execution in that series was zero.*

<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, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 30, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the original filing in its entirety.

(b)–(e) No change.

Interpretations and Policies \* \* \*

.01–.02 No change.

\* \* \* \* \*

### **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 III 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**

Recently, the Commission approved CBOE's obvious error rule, CBOE Rule 6.25,<sup>4</sup> which establishes six specific objective guidelines that may be used as the basis for adjusting or nullifying a transaction. The Exchange proposes to adopt one additional guideline, relating to "no-bid"<sup>5</sup> options, which may be used as a basis for nullifying trades. Under this guideline, buyers of options that were quoted no-bid may request that their execution be nullified provided:

(a) The bid in that series immediately preceding the execution(s) in question was zero;

(b) At least one strike price below (for calls) or above (for puts) in the same options class was quoted no-bid immediately before the execution(s) in question; and

(c) The bid following the execution(s) in question in that series was zero.

A "zero-bid" or "no-bid" option refers to an option where the bid price is \$0.00.<sup>6</sup> According to CBOE, series of options quoted zero-bid are usually deep out-of-the-money series that are perceived as having little if any chance of expiring in-the-money. For this reason, relatively few transactions occur in these series and those that do are usually the result of a momentary

pricing error. In some cases, the pricing error is substantial enough such that CBOE Rule 6.25(a)(1) becomes applicable. In many cases, though, the pricing error is not substantial enough to warrant adjustment under CBOE Rule 6.25(a)(1). The proposed rule would apply to these transactions.

For example, if the underlying stock trades at \$21 during December expiration week, related options with the strike price of 30, 35, and 40 likely would trade no-bid at a nickel. Assume a momentary pricing anomaly occurs, resulting in a quoted price of \$0.10–0.20 in the 40s and, as a result, an electronic order to sell immediately executes against the \$0.10 bid. The displayed quote immediately returns to no-bid at a nickel. In this case, the market maker has just purchased a worthless option for \$0.10.<sup>7</sup> Because the displayed quote prior to the trade was zero-bid, the 35s were zero-bid, and the quote after the erroneous transaction in question was zero-bid, this transaction would qualify for relief under the rule.

According to CBOE, the proposed rule is similar to Pacific Exchange, Inc. ("PCX") Rule 6.87(g)(2)(F)<sup>8</sup> with a few notable differences, as described below. First, CBOE believes its proposed rule is more restrictive in that it requires the bid following the execution in question to return to zero. CBOE believes that this serves as an added measure of protection designed to ensure that the transaction really was erroneous.

Second, the PCX rule requires at least one strike below (calls) or above (puts) be quoted no-bid "at the time of execution" while CBOE uses "immediately prior to the execution" as the reference point. CBOE believes that this is an important distinction only if more than one series of the same class is affected. With respect to the example above, assume that at the same time the 30s, 35s, and 40s all go from no-bid to \$0.10–0.20, and a few seconds later an execution occurs in each series, and then the price in each series returns to zero-bid. In this scenario, using the PCX reference point of "at the time of execution," none of the trades could be adjusted because the second criteria (*i.e.*, at least one strike below is quoted

<sup>7</sup> This trade does not qualify as an obvious pricing error because it is less than \$0.10 from fair market value.

<sup>8</sup> Under PCX Rule 6.87(g)(2)(F), parties to a trade may have a trade nullified or its price adjusted if any such party makes a timely documented request and the trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

zero-bid) is not satisfied.<sup>9</sup> Using the CBOE reference point of "immediately prior to execution" allows the trades in all three series, which CBOE believes clearly are erroneous, to be nullified.<sup>10</sup> Finally, CBOE's proposed rule only allows for the nullification of trades, whereas the PCX rule would allow for the nullification or adjustment of trades. Practically, CBOE believes that these trades cannot be adjusted because the adjusted price would be zero.

##### **2. Statutory Basis**

CBOE represents that the filing provides for the nullification of no-bid trades executed at clearly erroneous prices due to the occurrence of an inaccurate pricing anomaly. In addition, CBOE notes that a substantially similar provision has already been approved on PCX. Therefore, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of section 6(b)(5)<sup>12</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.

#### *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 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*

CBOE 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

<sup>9</sup> For example, the trade in the 40s could not be nullified, because at the time of execution the strike below (*i.e.*, the 35s) were *not* quoted no bid. Rather, they were quoted \$0.10–0.20. The same goes with the trade in the 35s: at the time of execution, the 30s were not quoted zero bid.

<sup>10</sup> This assumes, however, that the strike below the 30s is quoted zero bid.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>4</sup> Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003).

<sup>5</sup> "No-bid" is synonymous with "zero-bid."

<sup>6</sup> The offer price is typically \$0.05. In this instance, the option typically is referred to as "no bid at a nickel."

publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(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 proposed rule change, 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-2004-02. This file number 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 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 be submitted by April 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49468; File No. SR-CBOE-2004-11]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. Relating to a Pilot Program for Modification of ROS on the Settlement Date of Futures and Options on Volatility Indexes

March 24, 2004.

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 20, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by CBOE. On March 15, 2004, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 18, 2004, CBOE filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change, as amended, on a pilot basis through November 17, 2004.

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

CBOE proposes to modify the method by which CBOE's Rapid Opening

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

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

<sup>3</sup> See letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 12, 2004 ("Amendment No. 1") (replacing the original Form 19b-4 filing in its entirety).

<sup>4</sup> See letter from David Doherty, Attorney, Legal Division, CBOE, to Terri Evans, Assistant Director, Division, Commission, dated March 17, 2004 ("Amendment No. 2"). In Amendment No. 2, CBOE amended its initial filing to request approval of the proposed rule change on a pilot basis until November 17, 2004. CBOE also proposed to amend CBOE Rule 6.2A.03(vii) to make the description of those eligible to place orders on the electronic book for the proposed modified ROS opening procedure consistent with the description set forth in proposed CBOE Rule 6.2A.03(i). CBOE also represented that prior to implementing a systems change to prevent market makers logged onto ROS from trading with themselves, it will file a proposed rule change with the Commission pursuant to Section 19(b)(3)(A) of the Act and further clarified that Lead Market-Makers ("LLMs") are treated the same under the modified ROS opening, except for the ability of LLMs to collectively set the AutoQuote values used by ROS.

System ("ROS") determines the opening price of certain broad-based index options in limited circumstances on a pilot basis through November 17, 2004. The purpose of the proposed rule change is to facilitate the calculation of a final settlement price for futures and options contracts on volatility indexes. The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

\* \* \* \* \*

#### Rule 6.2A. Rapid Opening System

This rule has no applicability to series trading on the CBOE Hybrid Opening System. Such series will be governed by Rule 6.2B.

(a)-(d) No change.

\* \* \* Interpretation and Policies

.01-.02 No change.

.03 *Modified ROS Opening Procedure for Calculation of Settlement Prices of Volatility Indexes.*

*All provisions set forth in Rule 6.2A and the accompanying interpretations and policies shall remain in effect unless superseded or modified by this Rule 6.2A.03. To facilitate the calculation of a settlement price for futures and options contracts on volatility indexes, the Exchange shall utilize a modified ROS opening procedure for any index option series with respect to which a volatility index is calculated (including any index option series opened under Rule 6.2A.01). This modified ROS opening procedure will be utilized only on the final settlement date of the options and futures contracts on the applicable volatility index in each expiration month.*

*The following provisions shall be applicable when the modified ROS opening procedure set forth in this Rule 6.2A.03 is in effect for an index option with respect to which a volatility index is calculated: (i) all orders (including public customer, broker-dealer, Exchange market-maker and away market-maker and specialist orders), other than contingency orders, will be eligible to be placed on the Electronic Book for those option contract months whose prices are used to derive the volatility indexes on which options and futures are traded, for the purpose of permitting those orders to participate in the ROS opening price calculation for the applicable index option series; (ii) all market-makers, including any LMMs and SMMs, if applicable, who are required to log on to ROS or RAES for the current expiration cycle shall be required to log on to ROS during the modified ROS opening procedure if the market-maker is physically present in*

<sup>13</sup> 17 CFR 200.30-3(a)(12).