SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49574; File No. SR–Amex–2003–110]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Procedures Applicable to Continued Listing Evaluation and Follow-Up

April 16, 2004.

On December 12, 2003, the American Stock Exchange LLC ("Amex'' 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 clarifying the procedures applicable to listed companies with regard to continued listing evaluation and follow-up. On February 19, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 10, 2004.[4] The Commission received no comments on the proposal.

The Exchange proposes to revise Section 1009 of the Amex Company Guide ("Company Guide'') to clarify that Exchange staff may establish a time period of less than 18 months for a listed company to regain compliance with some or all of the continued listing standards, if the nature and circumstances of the company's particular continued listing status warrant such shorter time period. In determining whether to establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards, the Exchange staff would consider whether, in view of the nature and severity of the particular continued listing deficiency, including the investor protection concerns raised, 18 months would be an inappropriately long period of time to regain compliance. While it is not possible to enumerate all possible circumstances, the following is a non-exclusive list of the types of continued listing deficiencies that, based on a particular listed company's unique situation, may result in imposition of a shorter time period: delinquencies with respect to Commission filing obligations; severe short-term liquidity and/or financial impairment; present or potential public interest concerns; [5] and/or deficiencies with respect to the requisite distribution requirements that make the security unsuitable for auction market trading.

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 [6] and, in particular, the requirements of section 6(b) of the Act [7] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5)[8] of the Act, which requires that the rules of an exchange be 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 Commission notes that the proposed rule change clarifies the Amex's existing authority to establish a time period of less than 18 months for a company to regain compliance with some or all of the Amex continued listing standards. In addition, Section 1009 of the Company Guide sets forth several factors that the Exchange would consider in its determination. Such criteria should provide transparency to the process of continued listing evaluation and follow-up, thereby benefiting listed companies and investors.

It is therefore ordered, pursuant to section 19(b)(2) of the Act [9], that the proposed rule change (File No. SR–Amex–2003–110), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division''), Commission, dated February 18, 2004 ("Amendment No. 1''). In Amendment No. 1, the Amex replaced the text of the proposed rule change in its entirety.

[4] *See* Securities Exchange Act Release No. 49351 (March 2, 2004), 69 FR 11467.

[5] Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

[6] 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).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49575; File No. SR–CBOE–2004–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Retroactive Crediting of DPM Principal Acting as Agent Order Transaction Fees

April 16, 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 March 9, 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. On March 31, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] 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 change its Fee Schedule to retroactively credit Designated Primary Market-Makers ("DPMs'') for transaction fees they incur in executing outbound "principal acting as agent'' ("PA'') Orders, as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan'').

The text of the proposed fee schedule is below. Proposed additions are in *italics.* Proposed deletions are in [brackets].

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Chris Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated March 26, 2004 ("Amendment No. 1''). In Amendment No. 1, the CBOE submitted a new Form 19b–4, which replaced and superceded the original filing in its entirety.