

regard to any "time-out" between entry of those orders, while affording the Exchange the option to reinstate the 10-second speed-bump if circumstances warrant such reintroduction. The Commission believes that 30 days is an appropriate period of time for members and member organizations to accommodate potential reinstatement of the 10-second speed bump.

VI. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.¹⁴ In Amendment No. 3, Amex addresses the concern raised in the comment letter by increasing the required notice of reinstatement of the 10-second speed bump from ten business days to 30 calendar days. As noted above, the Commission believes that this time period is appropriate. The Commission further believes that acceleration of the amendment will allow the Amex to remove the speed-bump without delay, thereby enabling entry of multiple Auto-Ex eligible orders on the same side of the market without a 10-second "time-out."

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.¹⁵ *It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,¹⁶ that Amendment No. 3 be approved on an accelerated basis, and that the proposed rule change (SR-Amex-2003-28) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48827; File No. SR-CBOE-2001-04]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

November 24, 2003.

I. Introduction

On February 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 adopt an obvious error trading rule, CBOE Rule 6.25. On August 15, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.³ On September 12, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.⁴ On September 26, 2003, the Exchange submitted Amendment No. 3 to the proposed rule change.⁵ On September 29, 2003, the proposed rule change, as amended, was granted partial accelerated approval on a pilot basis and published for comment in the **Federal Register** on October 6, 2003.⁶ The Commission did not receive

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 14, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

⁴ See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 11, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE replaced proposed subparagraph (a)(5) of CBOE Rule 6.25, relating to erroneous quotes in the underlying market, with language substantially similar to CBOE Rule 43.5(b)(4).

⁵ See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 26, 2003 ("Amendment No. 3"). In Amendment No. 3, the CBOE requested accelerated effectiveness of paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25. The CBOE also requested that paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 operate as a pilot program until December 1, 2003.

⁶ See Securities Exchange Act Release No. 48556 (September 29, 2003), 68 FR 57716 ("Notice and Partial Approval Order"). In the Notice and Partial Approval Order, the Commission granted accelerated approval to paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 on a pilot basis.

any comments on the proposed rule change. On November 17, 2003, the CBOE filed Amendment No. 4 to the proposed rule change.⁷ This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 4; and solicits comments from interested persons on Amendment No. 4.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and 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 In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)⁹ 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.¹⁰

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's

⁷ See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 14, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange: (1) Amended paragraphs (a)(1)(i) and (c) of proposed CBOE Rule 6.25 to include a reference to the Hybrid Opening System ("HOSS"); (2) defined the term "average trade" in proposed CBOE Rule 6.25(a)(4) based on the definition currently used in CBOE Rule 43.5; (3) requested permanent approval of paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25; (4) deleted CBOE Rule 6.8(d)(iii); (5) amended CBOE Rule 6.20, Interpretation .05 to clarify that trades subject to adjustment or nullification pursuant to CBOE Rule 6.25 shall be subject to the procedures set forth in CBOE Rule 6.25; and (6) made technical corrections to the proposed rule text.

⁸ For a description of the proposed rule change, see Notice and Partial Approval Order, *supra*, n. 6.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 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).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

proposed obvious error rule establishes specific and objective criteria for determining when a trade is an "obvious error." The Commission also believes that the proposal establishes specific and objective procedures governing the adjustment or nullification of such trade. In addition, the Commission notes that several provisions of the CBOE obvious error rule proposal are substantially similar to proposed rule changes submitted by the Pacific Exchange, Inc. to adopt an obvious error rule and by the Exchange to adopt a trade nullification rule for CBOEdirect, both of which the Commission has approved.¹¹ Finally, the Commission notes that CBOE represented that, with the adoption of CBOE Rule 6.25, the Exchange withdraws the effectiveness of CBOE Regulatory Circular RG 00-169.¹²

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³ for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 4 strengthens the proposal by clarifying the circumstances under which the CBOE obvious error rule will apply; by describing the meaning of certain provisions contained in CBOE Rule 6.25; and by withdrawing a provision of another CBOE rule that is superceded by CBOE Rule 6.25. Therefore, the Commission believes that granting accelerated approval of Amendment No. 4 is appropriate and consistent with Section 6(b)(5)¹⁴ of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal 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 refer to File No. SR-CBOE-2001-04 and should be submitted by December 23, 2003.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal, as amended, is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-CBOE-2001-04), as amended, be, and hereby is, approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48837; File No. SR-ISE-2003-24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., Relating to Fee Changes

November 25, 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 October 3, 2003, the International Securities Exchange, Inc. ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. 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 is proposing changes to its Schedule of Fees in order to adopt

certain fees and temporary fee waivers relating to index options. The text of the proposed rule change is available at the ISE 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 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

The Exchange is proposing changes to its Schedule of Fees in order to adopt certain fees and temporary fee waivers relating to index options.

The Exchange plans to list index options for trading. The first index option product the Exchange plans to list is the S&P SmallCap 600 Index. The Exchange has entered into a license agreement to use various indexes and trademarks of Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P"), in connection with the listing and trading of index options on the S&P SmallCap 600 Index. As with licensed equity options, the Exchange is adopting a member fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade these instruments is the most equitable means of recovering the costs of the license.

However, the Exchange is proposing to temporarily waive certain transaction fees that would otherwise apply to index options in an attempt to generate trading interest and for competitive purposes. Specifically, the Exchange is proposing to waive the following transaction fees on index options until February 28, 2004: (i) The facilitation execution fee; (ii) the market maker and firm proprietary execution fee; (iii) the surcharge for options on the S&P SmallCap 600 Index execution fee; and (iv) the comparison fee. Lastly, the Exchange made certain minor, non-substantive changes to its Schedule of Fees for clarity and consistency, as well as removed language relating to a

¹¹ See Securities Exchange Act Release Nos. 48538 (September 23, 2003), 68 FR 56858 (October 2, 2003) (File No. SR-PCX-2002-01); and 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR-CBOE-00-55).

¹² See Amendment No. 1, *supra* note 3; see also Notice and Partial Approval Order, *supra* note 6.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78s(b)(2).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.