

section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before October 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Host America Corporation To Withdraw From Listing and Registration Its Common Stock, \$.001 Par Value, From the Boston Stock Exchange, Inc. File No. 0-16196

September 17, 2002.

Host America Corporation, a Colorado corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 12d2-2(d) thereunder,² to withdraw its Common Stock, \$.001 par value ("Security"), from listing and registration on the Boston Stock Exchange, Inc. ("BSE" or "Exchange").

The Issuer stated in its application that it has complied with the Rules of the BSE that govern the removal of securities from listing and registration on the Exchange. In making the decision to withdraw the Security from listing and registration on the BSE, the Issuer considered the relative liquidity provided by the BSE versus other securities exchanges and the cost associated with maintaining multiple listings. The Issuer stated in its

application that the Security has been listed on the Nasdaq SmallCap Market since July 27, 1998. The Issuer represented that it will maintain its listing on the Nasdaq SmallCap Market.

The Issuer's application relates solely to the Security's withdrawal from listing on the BSE and from registration under section 12(b) of the Act³ and shall not affect its obligation to be registered under section 12(g) of the Act.⁴

Any interested person may, on or before October 8, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46501; File No. SR-CBOE-2002-52]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc., Revising the Maintenance Listing Criteria for Underlying Securities in CBOE Rule 5.4

September 16, 2002.

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 August 12, 2002, 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 and II below, which Items have been prepared by the Exchange. The

CBOE submitted Amendment No. 1 to the proposed rule change on September 13, 2002.³ The CBOE submitted Amendment No. 2 to the proposed rule change on September 16, 2002.⁴ 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

The Exchange proposes to amend CBOE Rule 5.4 to permit the addition of a new series of individual equity option contracts that otherwise meet the maintenance listing standards except for the requirement that the market price per share of the underlying security be at least \$3.00. The text of the proposed rule change is provided below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 5.4. Withdrawal of Approval of Underlying Securities

Whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore may prohibit any opening purchase transactions in series of options of that class previously opened, to the extent it deems such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price the Exchange, in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of

³ In Amendment No. 1, the Exchange clarified that the proposed rule change would apply when opening an additional series of options contracts traded on a national securities exchange other than the CBOE. See letter from Edward Joyce, President and Chief Operating Office, CBOE, to Steven Johnston, Special Counsel, Division of Market Regulation ("Division"), dated September 12, 2002 ("Amendment No. 1").

⁴ In Amendment No. 2, the Exchange made a technical change to proposed rule text. See letter from James Flynn, Attorney II, CBOE, to Steven Johnston, Special Counsel, Division of Market Regulation, dated September 16, 2002 ("Amendment No. 2").

³ 15 U.S.C. 78(b).

⁴ 15 U.S.C. 78(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78(d).

² 17 CFR 240.12d2-2(d).

³ 15 U.S.C. 78(b).

⁴ 15 U.S.C. 78(g).

⁵ 17 CFR 200.30-3(a)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the class covering that underlying security. When all option contracts in respect of any underlying security that is no longer approved have expired, the Exchange may make application to the Securities and Exchange Commission to strike from trading and listing all such option contracts. * * * *Interpretations and Policies:*

.01 The Board of Directors has established guidelines to be considered by the Exchange in determining whether an underlying security previously approved for Exchange option transactions no longer meets its requirements for the continuance of such approval. Absent exceptional circumstances, with respect to Paragraphs (a), (b), or (c) listed below, an underlying security will not be deemed to meet the Exchange's requirements for continued approval whenever any of the following occur:

(a) No Change.

(b) No Change.

(c) No Change.

(d) *Subject to Interpretation .02 below*, [T]he market price per share of the underlying security closed below \$3 on the previous trading day as measured by the closing price reported in the primary market in which the underlying security is traded.

(e) No Change.

(f) No Change.

(g) No Change.

.02 In connection with Paragraph (d) of Interpretation and Policy .01 above, the Exchange shall not open for trading any additional series of option contracts of the class covering an underlying security at any time when the market price per share of such underlying security is less than \$3 in the primary market in which it is *traded unless the additional series is traded on at least one other registered national securities exchange and at the time the additional series was listed by such other registered national securities exchange it met the \$3 market price requirement*. Subject to Paragraph (d) of Interpretation and Policy .01 above, the Exchange may open for trading additional series of option contracts of a class covering an underlying security when the market price per share of such underlying security[ies] is at or above \$3 at the time such additional series are authorized for trading. For purposes of this Interpretation .02, the market price of such underlying security is measured by (i) for intra-day series additions, the last reported trade in the primary market in which the underlying security is traded at the time the Exchange determines to add these additional series intra-day, and (ii) for next-day and expiration series additions, the closing price

reported in the primary market in which the underlying security is traded on the last trading day before the series are added.

.03 No Change.

.04 No Change.

.05 No Change.

.06 No Change.

.07 No Change.

.08 No Change.

.09 No Change.

.10 No Change.

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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 III below. The CBOE 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

Interpretation .01 to Rule 5.4 provides the guidelines to be used in determining whether an underlying individual equity security, previously approved for options trading, meets the requirements for continued approval. Specifically, Interpretation .01(d) to Rule 5.4, provides that the Exchange may not list additional series for an option class if the market price per share of the underlying security closed below \$3 on the previous trading day as measured by the closing price reported in the primary market in which the underlying security is traded.

In recent months, due to a general decline in market price per share of numerous underlying securities, the ability to trade an additional series of an approved options class may vary between exchanges depending on the timing in which a particular Exchange attempts to bring up a series in that class. As such, under the current application of Rule 5.4, the Exchange could be precluded from adding a series that is actively traded on one or more other securities exchanges.

The Exchange therefore proposes to amend Interpretations .01(d) and .02 to Rule 5.4 in order to permit the addition of any additional series of options contract of the class covering such

underlying security regardless of the market price of the underlying security if such options series is traded on at least one other registered national securities exchange.⁵ The proposed changes to Interpretations .01(d) and .02 to Rule 5.4 would provide that, for underlying securities that satisfy all of the maintenance listing requirements other than the \$3.00 per share price requirement, the Exchange would be permitted to list additional options series on securities regardless of the market price so long as such series are traded on at least one other registered national securities exchange. The CBOE does not believe that the \$3 guideline is necessary to accomplish the intended purpose of the maintenance requirement when the options series is trading at another options exchange. In particular, the Exchange believes that the listing of a series already trading at another options exchange is not susceptible to manipulation and will not lead to a proliferation of options classes on underlying securities that lack liquidity needed to maintain fair and orderly markets.

The Exchange believes that the satisfaction of all Exchange maintenance listing standards, other than price, assures that options will be listed and traded on the securities of companies that are financially sound. Accordingly, the Exchange will continue to apply the other maintenance listing guidelines which assure that: (1) The underlying security consists of a large number of outstanding shares held by non-affiliates of the issuer; (2) the underlying security is actively-traded; (3) there is a large number of holders of the underlying security; and (4) the underlying security continues to be listed on another national securities exchange or traded through the facilities of a national securities association.

The CBOE believes that the demands of options customers and the marketplace should determine the securities on which options continue to be traded. The Exchange represents that the use of the revised guidelines will continue to ensure that options will be traded on securities of companies that are financially sound and are still subject to adequate minimum standards.

The CBOE believes that this proposal is narrowly drafted to address the

⁵ The Exchange represents that its proposed rule change is consistent with recent amendments to other Exchanges' rules which permit the addition of a new series of an individual equity option class that otherwise meets the maintenance listing standards, regardless of whether the market price per share of the underlying security meets the pricing criteria. See, e.g., Securities Exchange Act Release No. 46375 (August 16, 2002), 67 FR 54828 (August 26, 2002).

circumstances in which a series of an approved options class is ineligible for addition on the CBOE while at the same time, such series is trading on another options exchange. When an underlying security otherwise meets the maintenance listing standards and at least one other exchange trades the options series, the options already are available to the investing public. The Exchange believes that increased competition for order flow in these additional series of approved options classes will benefit investors and the marketplace for options and the respective underlying securities. It should be noted that this proposed rule change would not serve to introduce additional options series.

Because the addition of an options series under the proposed alternative maintenance listing standard requires trading of such series on another options exchange, the CBOE believes that there would be no investor protection concerns with listing such additional options series on the CBOE. In addition, the Exchange believes that listing these options series on the CBOE would enhance competition and benefit investors.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act⁶ in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any 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.

III. 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. 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 CBOE. All submissions should refer to File No. SR-CBOE-2002-52 and should be submitted by October 15, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of 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(b)(5) of the Act.⁷ The Commission believes investors benefit from the competition among options exchanges that results when options are listed on more than one options exchange; and that investors are sufficiently protected, even though the CBOE will be permitted to list a series of option contracts when the market price of the underlying security is below \$3, because the Exchange must still comply with all of its other maintenance listing requirements, and because the market price of the underlying security was at or above \$3 when the security was listed on the first options exchange.⁸ Therefore, the Commission finds that the proposed rule change, as amended, will promote just and equitable principles of trade, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.⁹

The CBOE has requested that the proposed rule change, as amended, be given accelerated approval pursuant to section 19(b)(2) of the Act.¹⁰ The Commission believes accelerated approval of the proposal would enhance competition among the options exchanges. Accordingly, the

Commission finds good cause, consistent with section 19(b)(2) of the Act,¹¹ to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2002-52), as amended, is hereby approved on an accelerated basis.

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. 34-46502; File No. SR-NFA-2002-04]

Self-Regulatory Organizations; Notice of Filing and Effectiveness of Proposed Rule Change by the National Futures Association Concerning Proficiency Requirements

September 16, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-7 under the Act,² notice is hereby given that on August 28, 2002, the National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC").

On August 15, 2002, NFA requested that the CFTC make a determination that review of the proposed rule change is not necessary. The CFTC made such a determination on August 26, 2002.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act³ makes NFA a national securities association for

⁷ *Id.*

⁸ The Commission notes that such series must have been properly listed by the original options exchange.

⁹ 15 U.S.C. 78f(b)(5). 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).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ *Id.*

¹² *Id.*

¹³ 17 CFR 240.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(7).

² 17 CFR 240.19b-7.

³ 15 U.S.C. 78o-3(k).

⁶ 15 U.S.C. 78f(b)(5).