

customer orders; and (3) the number of principal orders market makers may send through the Options Linkage is restricted. ISE claims that Amex wrongly implies that the Options Linkage would render obsolete the need for proprietary access systems.

Amex Initial Response

In the Amex Initial Response, Amex stated that it had addressed ISE's concerns in Amendment No. 2. In Amendment No. 2, Amex clarified that, after the Options Linkage is implemented, Amex members would continue to have electronic access to ISE from the Amex floor through broker-dealer order routing facilities; members would only be precluded from using ISE terminals on the Amex floor.

Amex Supplemental Response

In the Amex Supplemental Response, Amex responded in greater detail to ISE's concerns that the proposal is anti-competitive. Amex argues that it is not required by any applicable law or regulation to permanently maintain on its floor a separate, direct electronic link operated by the ISE to transmit orders in options to that exchange.

In addition, Amex argues that more than adequate alternative means exist for Amex member firms to route orders from the Amex floor to the ISE. Even though its use is restricted, the Options Linkage would be available. Furthermore, Amex's proposal would not alter the ability of Amex member firms to route orders from the floor of Amex to ISE using their own (or third party) proprietary order routing facilities. Amex believes the proprietary routing systems available to most, if not virtually all, Amex members on the Amex's floor are sufficiently fast and efficient that they can essentially function as an exchange-to-exchange system for orders sent from the floor of one exchange. Amex points out that not one Amex member firm has complained that the removal of the direct linkage with ISE when the Options Linkage is implemented would make it difficult for it to route orders to ISE. With respect to broker-dealers, they will have indirect access to the Options Linkage by delivering an order to the Amex specialist, who will have direct access to the Options Linkage.

IV. Discussion

After careful review, 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 exchange¹¹ and, in particular, the requirements of Section 6 of the Act¹² and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act¹³ because it should remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

Specifically, prohibiting Amex members from using the facilities and services of another registered exchange on the floor of the Amex as a direct electronic link to transmit orders electronically to the other exchange for the purchase or sale of listed options once the Options Linkage has been implemented is not an inappropriate burden on competition. The Commission agrees that neither the Act nor Commission rules require Amex to permit its members to have another exchange's terminals on Amex's floor to provide direct electronic access to that exchange. Finally, Amex represents that Amex members will be able to access other exchanges, as they do today, through their own or another registered broker-dealer's electronic order routing facility or service, as well as through the Options Linkage.

The Commission also finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies and limits the scope of Amex's proposal in response to the ISE Letter. Specifically, Amendment No. 2 addresses the concern raised in the ISE Letter that the proposal would preclude an Amex member from using its own or a third party's proprietary facility to access another exchange. Accordingly, consistent with Section 19(b)(2) of the Act,¹⁴ the Commission is accelerating approval of Amendment No. 2.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2 to the proposed rule change, including whether Amendment No. 2 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—

¹¹ In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 240.19b-4.

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 Amendment No. 2 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-Amex-2002-33 and should be submitted by April 16, 2003.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-AMEX-2002-33), as amended by Amendment No. 1, is approved, and that Amendment No. 2 to the proposed rule change 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.

[FR Doc. 03-7116 Filed 3-25-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47548; File No. SR-CBOE-2003-13]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Governing the Settlement Procedures for Index Options in Certain Unusual Circumstances

March 20, 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 March 19, 2003, the Chicago Board Options Exchange, Incorporated ("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. CBOE asserts that this proposal meets the criteria of

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.

section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder⁴ and is, therefore, immediately effective upon filing with the Commission. 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

CBOE proposes to amend its rules governing the settlement procedures for its index options in certain unusual circumstances. Below is the text of the proposed rule change. New language is in italics; deleted language is in brackets.

* * * * *

Rule 24.7—Trading Halts, Suspensions, or Primary Market Closure

Rule 24.7.

(a)–(d) No change.

(e) When the primary market for a security underlying the current index value of an index option does not open for trading, *halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day, or if a particular security underlying the current index value of an index option does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day in its primary market*, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, [based on the opening price of that security on the next day that its primary market is open for trading. This procedure shall not be used if the current index value at expiration is fixed] in accordance with the Rules and By-Laws of The Options Clearing Corporation.

Interpretations and Policies: No change.

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9

(a)–(1)–(3) No Change.

(4) A.M.–Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying

securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that [(i)] in the event that the primary market for an underlying security does not open for trading, *halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day*, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 24.7(e).[, unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of The Options Clearing Corporation. (ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.]

Remainder of Rule: No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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. 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

The prospect of imminent war with Iraq has again prompted CBOE to review its settlement procedures for index options to ensure that the final settlement value of such options converges with the corresponding values of the underlying stock index or stock index future, in the event of any market disruption. The Exchange believes that ensuring this convergence is vital to eliminating any unplanned arbitrage risk for public customers and

other investors, as was set forth in greater detail in a previous CBOE filing (SR-CBOE-2000-02).⁵

SR-CBOE-2000-02 amended CBOE Rules 24.7(e) and 24.9(a)(4) to ensure convergence of the values of options and their underlying securities in the event that a primary market for one or more of the component securities of such indexes failed to open. In making these changes, CBOE noted that it recognize[d] the authority of the Options Clearing Corporation ("OCC") to establish a final settlement value for index options in the event of a primary market closure pursuant to its Rules and By-Laws. The rule change proposed here makes clear that such action by the OCC would take precedence in determining any final index settlement value.⁶

The changes that CBOE made to its settlement rules in SR-CBOE-2000-02 were designed to mirror the rules of futures markets like the Chicago Mercantile Exchange ("CME"), which trades some of the index products underlying CBOE's index options. Since the approval of SR-CBOE-2000-02, however, the CME has changed its rules again. Even more importantly, the Commission recently approved changes to the OCC's rules and by-laws in order to give OCC "broad discretionary authority to adjust settlement values for OCC-cleared index options and futures whenever, and in whatever manner, OCC deems appropriate to avoid a disconnect between the futures and options markets or among the futures markets."⁷

In light of these changes, particularly those giving the OCC authority to ensure convergence between the settlement values of OCC-cleared index options and their underlying futures or other securities, the Exchange believes it can best ensure this convergence by amending CBOE Rules 24.7(e) and 24.9(a)(4) to make clear that—in cases where either a primary market for a security underlying the current index value of an index option, or just a particular such security, does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading—the price of that security shall be determined, for the purposes of calculating the current index value at expiration, in accordance

⁵ See Securities Exchange Act Release No. 42857 (May 30, 2000), 65 FR 36185 (June 7, 2000) (notice of filing of and Commission order granting accelerated approval to proposed rule change).

⁶ 65 FR at 36186.

⁷ See Securities Exchange Act Release No. 46561 (September 26, 2002), 67 FR 61943, 61944 (October 2, 2002) (Commission approval of SR-OCC-2002-09).

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

with the rules and by-laws of the OCC. This filing implements those changes.

2. Statutory Basis

The Exchange believes that the proposed changes to CBOE Rules 24.7(e) and 24.9(a)(4) are consistent with and in furtherance of the provisions of section 6(b)(5) of the Act.⁸ CBOE believes that, by establishing Exchange rules that make clear that current index option settlement values in the event of market disruption shall be determined in accordance with the rules and by-laws of the OCC, this filing will help public customers and market-makers alike to be better able to use stock index options to predictably hedge their transactions in stock index futures and/or the underlying stocks themselves. CBOE further believes that this rule change would improve the efficiency of, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, thus better protecting investors and the public interest.

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

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of 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 or received with respect to the proposed rule change.

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

CBOE asserts that, because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b-4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. CBOE has requested that the Commission waive the 30-day pre-operative waiting period. The Commission believes that waiving the 30-day period is consistent with the protection of investors and the public interest. The Commission has previously found that allowing OCC to have authority to determine settlement prices for OCC-cleared index options in times of market disruptions is consistent with the Act,¹² and the Exchange's proposal incorporates by reference the OCC's ability to exercise that authority with respect to CBOE-traded index options. The Commission believes that market participants should be able to benefit immediately from this clarification and that no purpose would be served by delaying the operative date of this rule change for 30 days. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.¹³

Rule 19b-4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. CBOE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

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. 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-2003-13 and should be submitted by April 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-7225 Filed 3-25-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47541; File No. SR-CBOE-2002-67]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Amending its Margin Rule 12.3 To Incorporate Security Futures

March 20, 2003.

On November 1, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amending CBOE Rule 12.3 ("Margin Requirements") to incorporate security futures. On November 21, 2002, the CBOE filed an amendment to the proposed rule change.³ The proposed rule change was published for comment in the **Federal Register** on December 16, 2002.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

¹ 17 CFR 200.30-3(a)(12).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See letter from Madge M. Hamilton, Senior Attorney, CBOE, to Theodore R. Lazo, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, dated November 20, 2002 ("Amendment No. 1").

⁵ Securities and Exchange Act Release No. 46971 (December 9, 2002), 67 FR 77108.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ See 15 U.S.C. 78s(b)(3)(C).

¹² See 67 FR at 91944.

¹³ 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. See 15 U.S.C. 78c(f).