

proposal may be consistent with the Act, such approval will not relieve a specialist of its fiduciary obligations under the federal securities laws or agency law principles when acting as an agent.<sup>10</sup> The Commission, in approving the CBOE proposed rule change, specifically stated that its approval was based solely on its determination that the CBOE proposal was consistent with the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange. Therefore, like the CBOE rule filing, approval of this proposal will not affect existing fiduciary duties.<sup>11</sup>

Accordingly, the Amex believes that the instant proposal limiting the priority of options orders to those orders of public customers entrusted to specialists for execution is consistent with the Act and Amex rules. The addition of new paragraph (q) to Amex Rule 950 will, therefore, allow specialists acting as agent to compete equally with other members and broker-dealers in the trading crowd by not being required to afford priority to such member or broker-dealer orders.

## 2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>13</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Amex believes that the proposed rule change will impose no burden on competition.

<sup>10</sup> See *In re E.F. Hutton & Co. Securities Exchange Act Release No. 25887* (July 6, 1988) ("Manning Decision"). The Amex represents that the Commission found that broker-dealers owe a fiduciary duty to their limit order customers not to trade ahead of such orders unless the customer knows of the firm's limit order policy. Furthermore, under agency law principles, a specialist acting as agent has an obligation to act solely for its customer and not compete with the customer's order unless the customer understands such specialist intends to compete.

<sup>11</sup> The Amex offers the following as an example: A specialist that acts as agent for any customer has an obligation to act solely for the benefit of the customer in all matters connected with the customer's order, and not compete with the customer concerning the order unless the customer understands its agent is to compete, and such understanding is fully disclosed.

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

### *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**

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 self-regulatory organization 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. 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 Amex. All submissions should refer to File No. SR-Amex-2002-86 and should be submitted by April 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47492; File No. SR-CBOE-2003-09]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Expand the Order Types That Can Trade on the Exchange's Large Order Utility ("LOU")**

March 13, 2003.

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 March 10, 2003, 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 Exchange has filed the proposal as a "non-controversial" rule change pursuant to section 19(b)(3)(A)<sup>3</sup> of the Act and rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal 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**

The CBOE proposes to expand the order types that can trade on the Exchange's LOU system. Below is the text of the proposed rule change. Proposed new language is in *italics*:

\* \* \* \* \*

#### **Chicago Board Options Exchange, Incorporated Rules**

\* \* \* \* \*

#### **Rule 6.10 LOU System Operations**

This Rule governs the operation of the Large Order Utility ("LOU") system.

(a) Definitions. For purposes of this Rule, the following definitions shall apply.

(i) The term "LOU" means a facility of the Exchange that provides order routing, handling, and execution for eligible options orders routed electronically to the Exchange.

(ii) The term "In-Person Wheel" means an order allocation mechanism

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).