

price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days: or

[ii] (iii) The underlying security meets the guidelines for continued approval in Rule 503; options on such underlying security are traded on at least one other registered national securities exchange; and the average daily trading volume for such options over the last three calendar months preceding the date of selection has been at least 5,000 contracts.

(c) Securities of Restructured Companies.

(1)–(3) No change.

(4) “Market Price” Guideline. In determining whether a Restructure Security satisfies the market price history guidelines set forth in Rule 502(b)(5) (the Market Price Guideline”), the Exchange may consider the market price history of the Original Equity Security prior to the “ex-date” of the Restructuring Transaction if:

(i) the Restructure security satisfies the “Substantiality Test” set forth in subparagraph (c)(5) below; and

(ii) in the case of the application of the Market Price Guideline to a Restructure Security that is distributed pursuant to a public offering or a rights distribution:

(A) the Restructure Security trades “regular way” on an exchange or automatic quotation system for at least the five trading days immediately preceding the date of selection; and

(B) at the close of trading on each trading day on which the Restructure Security trades “regular way” prior to the date of selection, and the opening of trading on the date of selection, the market price of the Restructure Security was at least \$7.50, *or, if the Restructure Security is a “covered security,” as defined in Rule 502(b)(5)(i), the market price of the Restructure Security was at least \$3.00.*

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 proposes to amend its pricing requirement for securities underlying options traded on the Exchange (“underlying securities”). ISE Rule 502(b)(5) currently provides that options can be listed on underlying securities if (i) the market price per share of the underlying security has been at least \$7.50 for the majority of business days during the three calendar months preceding the date of selection, or (ii) options on the underlying security are traded on at least one other registered national securities exchange and have a average daily trading volume of at least 5,000 contracts.

The Exchange now proposes to amend ISE Rule 502(b)(5) to allow the listing of options on underlying securities that are “covered securities” under section 18(b)(1)(A) of the Securities Act of 1933³ (“1933 Act”) so long as the market price per share of the underlying security has been at least \$3.00 for the previous five consecutive business days preceding the date on which the Exchange submits a certificate to The Options Clearing Corporation for listing and trading. For purposes of this provision, the market price of an underlying security will be measured by the closing price reported in the primary market in which the underlying security is traded.

For the purposes of consistency within the ISE Rules, the Exchange proposes to amend ISE Rule 502(c)(4)(ii)(B), which provides a method to certify that the market price of a Restructure Security satisfies the pricing requirement of ISE Rule 502(b)(5) and specifically references the \$7.50 market price per share requirement. The amendment would reflect that the market price standard for Restructure Securities also is reduced from \$7.50 to \$3.00 as long as the Restructure Security is a “covered security” as defined in ISE Rule 502(b)(5).

³ Section 18(b)(1)(A) of the 1933 Act provides that “[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities) * * *” 15 U.S.C. 77r(b)(1)(A). The term “covered security,” for operation of the proposed amendment to ISE Rule 502(b)(5), would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

This proposed rule change is identical to a change by the Chicago Board Options Exchange, Inc. (“CBOE”) to its initial listing standards that became effective January 15, 2003.⁴ The ISE seeks to amend its initial listing standards to be consistent with those of the CBOE so that the ISE is not at a competitive disadvantage with respect to the options classes it may list. In addition, changing the pricing standard to the proposed \$3.00 market price per share requirement would allow the Exchange to evaluate whether to list options on a greater number of classes without compromising investor protection. In determining to list any number of new option classes, the Exchange must ensure that its own systems and those of the Options Price Reporting Authority (“OPRA”) have the capacity to handle the potential increased capacity requirements.

The Exchange believes that the proposed \$3.00 market price per share standard is consistent with the guideline contained in ISE Rule 503(b)(4) related to the withdrawal of approval of underlying securities, which sets a \$3.00 market price per share as the threshold for determining whether the Exchange may continue listing and trading options on an underlying security. In addition, the Exchange believes that a “look back” period of five consecutive days would provide a sufficient measure of protection from any attempts to manipulate the market price of the underlying security. The proposed \$3 price standard and the five-day look-back period would provide a reliable test for stability and, at the same time, presents a more reasonable time period for qualifying the price of an underlying security. The Exchange further believes that this proposed abbreviated qualification period, in combination with the Exchange’s existing quarterly delisting program,⁵ would contribute to reducing unnecessary quote traffic.

(2) Statutory Basis

The Exchange’s basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act⁶ that an exchange have rules to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in

⁴ See Securities Exchange Act Release No. 47190 (January 15, 2003), 68 FR 3072 (January 22, 2003).

⁵ The Exchange states that it maintains an active delisting program that requires the quarterly delisting of multiply listed option classes that do not trade more than 20 contracts per day on the Exchange.

⁶ 15 U.S.C. 78f(b)(4).