

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.

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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.