

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(4) of the Act⁶ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the 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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁸ because it establishes or changes a due, fee, or other charge imposed by the Amex. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 Amex. All submissions should refer to file number SR-Amex-2003-68 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48237; File No. SR-CBOE-2003-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish a Limited Pilot Program Relating to Maximum Bid/Ask Differentials

July 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 27, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 25, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 CBOE proposes to amend its rules to adopt a limited pilot program relating

to maximum bid/ask differentials. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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. 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

Background

The Exchange is proposing to adopt, on a pilot basis, a limited exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). More specifically, as part of accommodating compliance with the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan"),⁴ the Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Linkage Plan and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders).

Linkage orders are generally Immediate or Cancel limit orders priced at the National Best Bid or Offer ("NBBO") that must be acted upon within 15 seconds. The Linkage Plan provides several instances in which a Participant receiving a linkage order must fade its quote. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the fading process to ensure that members (and the Exchange) are in full compliance with this aspect of the

⁴ The Linkage Plan was originally approved on July 28, 2000. See Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the proposed rule text to indicate that the pilot program would expire on January 30, 2004.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).