

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,¹⁶ that the proposed rule change (SR-AMEX-2003-75) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48525; File No. SR-CBOE-2003-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Firm Quote Rule

September 23, 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 September 12, 2003 the Chicago Board Options Exchange, Inc. ("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. 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 Exchange proposes to make a clarifying amendment to its firm quote rule (CBOE Rule 8.51). The text of the rule change is available at the Office of the Secretary of the Exchange 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, the 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

CBOE Rule 8.51(d)(6)(i)(B) generally provides that a responsible broker or dealer ("BD") shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in "such class and/or series" of option and immediately thereafter communicates a revised quotation size. Similarly, CBOE Rule 8.51(d)(6)(ii)(B) generally provides that a responsible BD shall not be obligated to execute a transaction for any listed option if at the time an order is presented, the responsible BD was in the process of effecting a transaction in "such class or series" of option and immediately thereafter communicates a revised bid or offer.

The literal language of these two rules indicates that it would be permissible for a responsible BD after a transaction in an option class to revise its quotations in all series of that class prior to effecting subsequent transactions pursuant to paragraph (6) of CBOE Rule 8.51(d). The Exchange proposes to amend these two provisions to clarify that transactions in one series will enable a responsible BD to avail itself of the exception provided in paragraph (6) of CBOE Rule 8.51(d) in that same series only. Accordingly, the Exchange removes the language "such class or" from these two sections.

Despite this seemingly permissive language, the Exchange feels compelled to note that it has always interpreted CBOE Rule 8.51(d)(6) such that each series of option was deemed a separate security. As such, the responsible BD on CBOE was not allowed to rely on transactions in one series of a class to revise its quotations in a separate series within the same class and still avail itself of the paragraph (6) exception. This SEC-requested amendment brings the rule language into conformity with the practice on the floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.³

Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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

The CBOE believes that the proposed rule change does not 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

Because the foregoing rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date of filing; and (iv) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6)⁶ thereunder.

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

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).