

and uniform standards for shareholder approval of equity compensation plans. The Commission notes that, even with the availability of the proposed limited exceptions to shareholder approval under the Amex's proposal, as amended, shareholder approval under the new standards would be required in more circumstances than under existing Amex rules. The Commission further notes that the Amex proposes to adopt a requirement that an issuer must notify it in writing when it uses one of the exceptions from the shareholder approval requirements. The Commission believes that such a requirement, coupled with the additional disclosure requirements for inducement grants, should reduce the potential for abuse of any of the exceptions.²⁷

The Commission believes that the Amex's proposal, as amended, which is similar to the NYSE's shareholder approval rule and almost identical to Nasdaq's shareholder approval rule,²⁸ sets a consistent, minimum standard for shareholder approval of equity compensation plans. The Commission believes that the Amex's proposal, as amended, should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans and should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the Amex's proposal, as amended, should help to protect investors, are in the public interest, and do not unfairly discriminate among issuers, consistent with Sections 6(b) of the Act.²⁹ The Commission therefore finds the Amex's proposal, as amended, to be consistent with the Act and the rules and regulations thereunder.

V. Accelerated Approval of the Amex's Proposal and Amendment Nos. 1, 2 and 3

The Commission finds good cause for approving the Amex's proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal, as amended, is similar to the NYSE's proposal and almost identical to the Nasdaq's proposal requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq proposals were published for comment in the **Federal Register** and

recently approved by the Commission.³⁰ The Commission believes that it already considered and addressed the issues that may be raised by the Amex's proposal in its approval of the NYSE and Nasdaq's proposals.³¹

The Commission believes that accelerated approval of the Amex's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans between the Amex, the NYSE, and Nasdaq. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Amex's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act³² to approve the Amex's proposal, as amended, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,³³ that the proposed rule change (SR-Amex-2003-42) and Amendment Nos. 1, 2 and 3 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Margaret H. McFarland,

Deputy Secretary.

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³⁰ See Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. See Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). See Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). See *supra* note 9.

³¹ Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Amex, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. See *supra* note 9.

³² 15 U.S.C. 78f(b)(5) and 78s(b)(2).

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48609; File No. SR-CBOE-2003-22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

October 9, 2003.

I. Introduction

On May 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add an interpretation to its Rule 6.7. On August 12, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.⁴ On September 10, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.⁵ On October 6, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.⁶

The Commission received no comments on the proposed rule change,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated August 11, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE replaced the phrase "persons associated therewith" with the phrase "associated persons" in proposed Interpretation .04 to CBOE Rule 6.7.

⁴ Securities Exchange Act Release No. 48320 (August 12, 2003), 68 FR 49827.

⁵ See letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that the Options Intermarket Linkage ("Linkage") is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7. Further, the CBOE proposed that the Exchange would have no liability to its members with respect to the use, non-use or inability to use the Linkage.

⁶ See letter from David Doherty, Attorney, Legal Division, CBOE to Jennifer Colihan, Special Counsel, Division, Commission, dated October 3, 2003 ("Amendment No. 3"). In Amendment No. 3, which superseded and replaced Amendment No. 2 in its entirety, CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that Linkage is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7.

²⁷ See also *supra* note 19 and accompanying text.

²⁸ See *supra* note 9.

²⁹ 15 U.S.C. 78f(b)(5).