

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 6, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 thereto on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rules 31.79, 31.80, 31.85 and 31.96, and CBOE Form 1 under "Forms For Listing," to strengthen listing standards relating to shareholder approval for stock option plans or other equity compensation arrangements and to adopt interpretative material pertaining to shareholder approval for stock option plans or other equity compensation arrangements.

Below is the text of the proposed rule change.⁴ Proposed new language is *italicized*; proposed deleted language is [bracketed].

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Chicago Board Options Exchange, Incorporated

Rules

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Chapter XXXI

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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 Sapna C. Patel, Special Counsel, Division of Market Regulation ("Division"), Commission, dated October 29, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made a technical correction to its proposed rule language by underlining the heading "Interpretations and Policies" under CBOE Rule 31.79 to indicate that it is proposed new language. Because this is a technical amendment, it is not subject to notice and comment.

⁴ With respect to implementation of revised CBOE Rules 31.79, 31.80, 31.85 and 31.96, and CBOE Form 1 under "Forms For Listing," the Exchange notes that they become effective upon SEC approval, and that existing plans would be grandfathered. However, any material modification to plans in place or adopted after the effective date would require shareholder approval. Telephone conversation between David Doherty, Attorney, Legal Division, CBOE, and Sapna C. Patel, Special Counsel, Division, Commission, on October 28, 2003.

Shareholders' Approval

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Rule 31.79 Options to Officers, Directors, [or Key] Employees or Consultants

Approval of shareholders is required [(unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for] *with respect to the establishment of (or material amendment to) a stock option[s] or purchase plan or other equity compensation arrangement pursuant to which options or stock may be acquired by officers, directors, employees, or consultants [granted or to be granted to officers, directors or key employees], regardless of whether or not such authorization is required by law or by the company's charter, except for:.* [The Exchange requires that such shareholder's approval be solicited pursuant to a proxy statement conforming to SEC proxy rules which discloses all of the essential details of the options or of the plan pursuant to which the options will be granted.]

[**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholder's approval as a condition to listing shares reserved for the exercise of options when:]

(a) [such options are issued] *issuances to an individual, not previously an employee[d] or director of [by] the company, or following a bonafide period of non-employment, as an inducement [essential] material to entering into [a contract of] employment with the company, provided [that] (i) such issuances are approved by either a majority of the company's independent directors or the company's independent compensation committee and (ii) the company discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved, promptly following an issuance of any employment inducement grant in reliance on this exception [the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock]; or*

(b) [such options are to be granted:] [(i)] [under a] *tax qualified, non-discriminatory employee benefit plans [or arrangement] (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or*

parallel nonqualified plans, provided such plans are approved by a majority of the company's independent directors or the company's independent compensation committee, or plans that merely provide a convenient way to purchase shares on the open market or from the company at fair market value [in which all, or substantially all, of the company's employees participate, in a fair and equitable manner.]; or

(c) *Plans or arrangements relating to an acquisition or merger; or*

(d) *Warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).*

The Exchange requires that such shareholder's approval be solicited pursuant to a proxy statement conforming to SEC proxy rules which discloses all of the essential details of the options or of the plan pursuant to which the options will be granted.

[(ii) under a plan or arrangement for officers, directors or key employees provided such incentive arrangement for officers, directors or key employees do not authorize the issuance in any one year of more than the lesser of 1% of the number of shares outstanding common stock, 1% of the voting power outstanding, or 25,000 shares and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of outstanding common stock or voting power outstanding. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been canceled shall not be included.)

For purposes of the above policy, the term "options" includes not only the usual type of nontransferable options granted in consideration of continued employment but also any other arrangement under which controlling shareholders, officers, directors or key employees may acquire (other than as part of a public offering) stock or convertible securities of a company at a price below market price at the time such stock is acquired or through the use of credit extended, directly or indirectly, by the company. Thus, the sale to such a person(s) of common stock purchase warrants or rights (not part of a public offering) or the sale of stock to such person who has borrowed money from the company, will normally necessitate shareholder approval.]

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*** * * Interpretations and Policies:**