

periods will immediately become payable to all participants and will be paid within 30 days after the change in control.

The Committee may, unless the relevant award agreement otherwise specifies, cancel, rescind, or suspend an award in the event that the LTIP participant engages in competitive activity, discloses confidential information, solicits employees, customers, partners or suppliers of Allegheny, or undertakes any other action determined by the Committee to be detrimental to Allegheny.

The LTIP contains provisions intended to ensure that certain restricted share awards and performance awards to "covered employees" under Section 162(m) of the Internal Revenue Code are exempt from the \$1 million deduction limit contained in that section of the code. Those exemptive provisions, by their terms and under the applicable IRS regulations, expired as of May 14, 2003. Any pending, but unvested, awards issued under these provisions are unaffected by the provisions' expiration, but any future restricted stock or performance awards to covered employees will not be eligible for the exemption from the Section 162(m) limit unless the provisions are reapproved by the shareholders. Allegheny may seek stockholder reauthorization of the LTIP with respect to these provisions, but has no present intention to do so. Allegheny may choose alternative methods to compensate covered employees who would have received compensation under the terminated provisions of the LTIP had these provisions not terminated.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48771; File No. SR-CBOE-2003-25]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Chicago Board Options Exchange, Inc. Relating to Bid-Ask Differentials

November 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 20, 2003, the Chicago Board Options Exchange, Inc. ("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. The CBOE filed Amendments Nos. 1, 2, and 3 to the proposal on July 3, 2003,<sup>3</sup> September 10, 2003,<sup>4</sup> and October 29, 2003,<sup>5</sup> respectively. 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 CBOE Rule 8.7, "Obligations of Market Makers," to allow the appropriate Market Performance Committee ("MPC") to establish bid-ask differentials that are no more than \$0.50 wide ("double-width") for options where the bid price is less than \$2 when the primary market for the underlying security: (1) Reports a trade outside of its disseminated quote, including any Liquidity Quote;<sup>6</sup> or (2) disseminates an

inverted quote. The double-width relief must terminate automatically when the triggering event ceases.

The text of the proposed rule change appears below. Additions are in *italics*.

#### Rule 8.7 Obligations of Market Makers

- (a) No change.
- (b) No change.
- (i)-(iii) No change.
- (iv) No change.

*(A) Without limiting the authority provided to it in Rule 8.7(b)(iv), the appropriate MPC may, with respect to options trading with a bid price less than \$2, establish bid-ask differentials that are no more than \$0.50 wide ("double-width") when the primary market for the underlying security: (a) Reports a trade outside of its disseminated quote (including any Liquidity Quote); or (b) disseminates an inverted quote. The imposition of double-width relief must automatically terminate when the condition that necessitated the double-width relief (i.e., condition (a) or (b)) is no longer present. Market makers that have not automated this process may not avail themselves of the relief provided herein (i.e., they may not manually adjust prices).*

#### 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 Exchange 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 Exchange 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 8.7(b)(iv) establishes bid-ask differentials and allows the appropriate MPC to establish differences for one or more options series.<sup>7</sup> The

best bid (in the case of a Liquidity Bid) or at a specific price interval above the best offer (in the case of a Liquidity Offer). See Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (File No. SR-NYSE-2002-55).

<sup>7</sup> CBOE Rule 8.7(b)(iv) requires market makers to bid and/or offer so as to create differences of no more than \$0.25 between the bid and the offer for each option contract for which the bid is less than \$2; no more than \$0.40 where the bid is at least \$2

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Steve Youhn, CBOE, to Deborah Flynn, Division of Market Regulation ("Division"), Commission, dated July 2, 2003, and accompanying Form 19b-4 ("Amendment No. 1"). Amendment No. 1 converts the proposal from a filing submitted pursuant to Section 19(b)(3)(A) of the Act to a proposal filed pursuant to Section 19(b)(2) of the Act. In addition, Amendment No. 1 clarifies that the CBOE's autoquote systems automatically will widen quotes to double the applicable bid-ask differential upon the occurrence of one of the triggering events and automatically will return the quotes to the normal bid-ask differential when the triggering event ceases.

<sup>4</sup> See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated September 9, 2003 ("Amendment No. 2"). Amendment No. 2 provides examples illustrating the need for the proposed relief, clarifies that CBOE market makers will not be able to widen their quotes when the New York Stock Exchange, Inc. ("NYSE") prints a trade at or within its Liquidity Quote, and states that neither the CBOE's Retail Automated Execution System ("RAES") nor the CBOE's Hybrid System will automatically execute incoming orders at prices inferior to the national best bid or offer ("NBBO").

<sup>5</sup> See letter from Steve Youhn, CBOE, to Deborah Flynn, Division, Commission, dated October 28, 2003 ("Amendment No. 3"). Amendment No. 3 revises the proposal to limit the application of the quote width relief to options that trade with a bid price of less than \$2 and clarifies that the quote width relief provided in the proposal will be available only to a market maker who has an automated quotation system that will return his or her quotes to the normal bid-ask differential when the triggering event ceases.

<sup>6</sup> The rules of the NYSE permit the dissemination, in selected securities, of a "Liquidity Bid" and a "Liquidity Offer" which reflect aggregated NYSE trading interest at a specific price interval below the