

regard to any "time-out" between entry of those orders, while affording the Exchange the option to reinstate the 10-second speed-bump if circumstances warrant such reintroduction. The Commission believes that 30 days is an appropriate period of time for members and member organizations to accommodate potential reinstatement of the 10-second speed bump.

## VI. Accelerated Approval of Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>14</sup> In Amendment No. 3, Amex addresses the concern raised in the comment letter by increasing the required notice of reinstatement of the 10-second speed bump from ten business days to 30 calendar days. As noted above, the Commission believes that this time period is appropriate. The Commission further believes that acceleration of the amendment will allow the Amex to remove the speed-bump without delay, thereby enabling entry of multiple Auto-Ex eligible orders on the same side of the market without a 10-second "time-out."

## VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.<sup>15</sup> *It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that Amendment No. 3 be approved on an accelerated basis, and that the proposed rule change (SR-Amex-2003-28) be approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48827; File No. SR-CBOE-2001-04]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 4 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Adopt a New Rule Regarding Nullification and Adjustment of Transactions

November 24, 2003.

#### I. Introduction

On February 14, 2001, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to adopt an obvious error trading rule, CBOE Rule 6.25. On August 15, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On September 12, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> On September 26, 2003, the Exchange submitted Amendment No. 3 to the proposed rule change.<sup>5</sup> On September 29, 2003, the proposed rule change, as amended, was granted partial accelerated approval on a pilot basis and published for comment in the **Federal Register** on October 6, 2003.<sup>6</sup> The Commission did not receive

<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, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 14, 2003 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

<sup>4</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 11, 2003 ("Amendment No. 2"). In Amendment No. 2, the CBOE replaced proposed subparagraph (a)(5) of CBOE Rule 6.25, relating to erroneous quotes in the underlying market, with language substantially similar to CBOE Rule 43.5(b)(4).

<sup>5</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated September 26, 2003 ("Amendment No. 3"). In Amendment No. 3, the CBOE requested accelerated effectiveness of paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25. The CBOE also requested that paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 operate as a pilot program until December 1, 2003.

<sup>6</sup> See Securities Exchange Act Release No. 48556 (September 29, 2003), 68 FR 57716 ("Notice and Partial Approval Order"). In the Notice and Partial Approval Order, the Commission granted accelerated approval to paragraphs (a)(3), (b), (c), (d), and (e) of proposed CBOE Rule 6.25 on a pilot basis.

any comments on the proposed rule change. On November 17, 2003, the CBOE filed Amendment No. 4 to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, as amended; grants accelerated approval to Amendment No. 4; and solicits comments from interested persons on Amendment No. 4.

## II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>8</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)<sup>9</sup> of the Act, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>10</sup>

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an "obvious error" may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an "obvious error" has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that the CBOE's

<sup>7</sup> See Letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated November 14, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange: (1) Amended paragraphs (a)(1)(i) and (c) of proposed CBOE Rule 6.25 to include a reference to the Hybrid Opening System ("HOSS"); (2) defined the term "average trade" in proposed CBOE Rule 6.25(a)(4) based on the definition currently used in CBOE Rule 43.5; (3) requested permanent approval of paragraphs (a)(3), (b), (c), (d), and (e) of CBOE Rule 6.25; (4) deleted CBOE Rule 6.8(d)(iii); (5) amended CBOE Rule 6.20, Interpretation .05 to clarify that trades subject to adjustment or nullification pursuant to CBOE Rule 6.25 shall be subject to the procedures set forth in CBOE Rule 6.25; and (6) made technical corrections to the proposed rule text.

<sup>8</sup> For a description of the proposed rule change, see Notice and Partial Approval Order, *supra*, n. 6.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).