

and regulations thereunder.⁹ Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3-2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may occur between now and March 4, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed

Plan amendment is appropriate and consistent with Section 11A of the Act.¹⁰

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3-2 of the Act,¹¹ that the proposed Plan amendment (SR-OPRA-00-02) is approved on an accelerated basis through March 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42371; File No. SR-CBOE-99-63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals for FLEX Equity Options

January 31, 2000.

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 December 10, 1999, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

CBOE proposes to delete Interpretation .01 of CBOE Rule 24A.4(c)(2)³ which limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options. The text of the proposed rule change is

¹⁰ 15 U.S.C. 78k-1.

¹¹ 17 CFR 240.11Aa3-02.

¹² 17 CFR 200.30-3(a)(29).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission approved this Interpretation in 1996. See Release No. 34-37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

available at the Office of the Secretary, CBOE 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 III 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

The purpose of the proposed rule change is to delete Interpretation .01 under CBOE Rule 24A.4(c)(2). This interpretation limits the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options pursuant to Interpretation and Policy .01 under CBOE Rule 5.5. This policy was intended to eliminate uncertainty concerning what constitutes a "qualified" covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise or "strike" price is no lower than the "lowest qualified benchmark price," which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, for example, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

⁹ In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

The Internal Revenue Service ("IRS") reviewed this issue and proposed rulemaking that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.⁴ The IRS approved this proposal on January 25, 2000.⁵ The effect of the IRS rulemaking and the Exchange's proposed withdrawal of the limitation on the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

The Exchange believes that the proposed rule change, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanism of a free and open market in FLEX Equity Options, and thus is consistent with the objectives of Section 6(b)(5)⁶ of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)⁷ of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is

consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-99-63 and should be submitted by February 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.⁸ In particular, the Commission finds the proposal is consistent with Section 6(b)(5)⁹ of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission believes that the proposal allows sophisticated, high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow investors to manage their risks by having the ability to negotiate strike prices, contract terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the potential adverse tax effect on qualified covered calls, the Exchange limited FLEX call strike prices to those available for standardized equity calls. Now that the tax issue has been clarified, this limitation is being removed. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX options.¹⁰

⁸ In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78b(5).

¹⁰ The Commission expects that the Options Disclosure Document ("ODD") will promptly be amended to reflect the removal of the risk strike

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. A virtually identical proposal, SR-CBOE-98-39, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comment.¹¹ CBOE later withdrew SR-CBOE-98-39 because the IRS had not yet acted on its proposed rulemaking. The current proposal mirrors the changes that were originally proposed in SR-CBOE-98-39. In addition, the proposal allows FLEX options to be used as they were originally intended to be used, and therefore raises no new regulatory issues. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.¹²

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-98-39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42365; File No. SR-Phlx-99-46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration of Trading Floor Personnel

January 28, 2000.

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 November 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

price limitation for FLEX equity call options. See October 1996 Supplement to the ODD. Telephone call between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Katherine A. England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2000.

¹¹ See Release No. 34-40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR-CBOE-98-39.)

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12)

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁴ Department of the Treasury, IRS REG-104641-97, 63 FR 34616 (June 25, 1998).

⁵ Department of the Treasury, IRS REG-104641-97, 65 FR 3812 (January 25, 2000).

⁶ 15 U.S.C. 78f(b)(5).

⁷ *Id.*