

that input from the registered options traders to the specialist regarding the variables used in the X-TOPS formula is necessary and appropriate. Proposed Commentary .02 to Exchange Rule 950(n) and proposed paragraph (h) to Exchange Rule 958 reflect this by stating that the specialist (i) shall disclose to all registered option traders in an option class the variables of the formula used to generate automatically updated market quotations for each option class and/or series, and (ii) may receive input from the registered options traders on any one or all of these variables provided, however, that it is within the specialist's sole discretion to make the final independent decision in determining the variables to be used in the X-TOPS formula. Those specialists using an Exchange-approved proprietary system to calculate and generate quotes may be exempt by the Exchange from having to disclose proprietary information concerning the variables (but not the variables themselves) used by their systems.

#### Joint Responses to Requests for Markets

When a request for a market to buy or sell option contracts in sizes larger than the greater of the Auto-Ex eligible size or the size communicated or disseminated pursuant to Exchange Rule 958A is submitted to the specialists and traders,<sup>8</sup> the Exchange believes that it is typically the case that the customer on whose behalf the request is made would want to know promptly at what single price all of the options represented by the request can be bought or sold. Often in order to compete effectively with other marketplaces also trading the option and with the over-the-counter market in similar products, the Exchange believes that the specialist and traders must collectively provide a response to this kind of request. Proposed Commentary .02 to Exchange Rule 950(n) and proposed new paragraph (h) to Exchange Rule 958 would expressly permit a collective response to the member provided the member requests such a collective response. With respect to orders sent through the Exchange's order routing systems that are larger than the size disseminated pursuant to Exchange Rule 958, it would be presumed that the member has requested a collective response.

In addition, the specialist will sometimes agree to transact the full size of the options order at a specific price and subsequently allocate portions of the order to participating registered options traders. If or when a trade is

executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.<sup>9</sup>

#### Firm Quote Guarantees

Currently, Amex Rule 958A obligates specialists and traders to be firm for (i) customer orders up to the quotation size being disseminated, and (ii) broker-dealer orders, up to the size established and periodically published by the Exchange. Rule 11Ac1-1 under the Act anticipates that exchanges will disseminate one automatically generated quote for a trading crowd, which necessitates collective action on behalf of the specialist and traders to communicate size to the Exchange. If or when a trade is executed, the contracts will be allocated in accordance with the Exchange's specialist and registered options traders participation policy.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>10</sup> in general and furthers the objectives of Section 6(b)<sup>11</sup> in particular in that it is designed to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change, as amended, 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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

<sup>9</sup> See Securities Exchange Act Release No. 42964 (June 20, 2000) 65 FR 39972 (June 28, 2000) which proposes to codify current practices regarding the participation in option trades executed on the Exchange by registered options traders and specialists.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-2001-76 and should be submitted by March 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45417; File No. SR-Amex-00-47]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Amendment of Exchange Rule 933

February 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 17, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange

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

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

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

<sup>8</sup> See *supra* note 5.

Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Amex proposes to amend Exchange Rule 933 to new Commentary .01. Below is the text of the proposed rule change. Proposed new language is italicized.

*.01 If a member or member organization grants a non-member electronic access to the Exchange's order routing or executions systems through the member's or member organization's order routing systems, and if the non-member uses that access to violate Exchange rules or other applicable regulations, including, but not limited to, the Exchange's "unbundling" prohibition, the member or member organization is in violation of Exchange rules if it has either knowingly facilitated the violation or has failed to establish procedures reasonably designed to prevent access to the member or member organization's order routing systems from being used to effect such violation.*

### **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 Amex 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 Amex 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 Exchange represents that it established the Auto-Ex system to provide small customer orders with an immediate single price execution. In 1996, the Exchange adopted Rule 933 to prohibit the "unbundling" (*i.e.*, the splitting or dividing-up) of customer option orders to make them fit within

the size parameters of the Exchange's Auto-Ex system.<sup>3</sup>

The new Commentary would make explicit the existing implicit obligations of members and member organizations under Rule 933. Thus, members and member organizations that provide their customers with electronic access to the Exchange's order routing and execution systems would be explicitly required to take reasonable steps to ensure that their customers do not unbundle their orders to satisfy Auto-Ex eligibility criteria and to otherwise comply with the Exchange's rules and other applicable regulations. The new Commentary would further provide that members and member organizations may not knowingly facilitate a violation of the Exchange rules (including the unbundling rule) and other applicable regulations by non-members that have electronic access to the Trading Floor through the member organization's order routing systems. The Exchange represents that the Chicago Board Options Exchange ("CBOE") has already adopted a similar rule,<sup>4</sup> and the Exchange believes that the proposed clarification of Rule 933 will assist members and member organizations in understanding their compliance responsibilities.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>6</sup> in particular, in that it is 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 37429 (July 12, 1996), 61 FR 37782 (July 19, 1996) (SR-Amex-96-26).

<sup>4</sup> See Securities Exchange Act Release No. 38974 (August 26, 1997), 62 FR 46528 (September 3, 1997) (SR-CBOE-97-32). See also CBOE Regulatory Bulletin 00-27, "Access to Retail Automatic Execution Systems ('RAES')," (January 27, 2000).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act<sup>7</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>8</sup> Although at any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act,<sup>9</sup> the Commission notes that the abrogation period for this proposed rule change has expired. The Commission also notes that concurrently with this notice, it is publishing an order granting accelerated approval to a proposed rule change by the Amex that, among other things, deletes the Commentary that is proposed herein.<sup>10</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 at the Commission's Public Reference Room. Copies of such filing will also be

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>10</sup> See Securities Exchange Act Release No. 45418 (February 7, 2002) (SR-Amex-2001-96).

available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR-Amex-00-47 and should be submitted by March 7, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45427; File No. SR-CBOE-2001-71]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Incorporate Certain Principal Considerations in Determining Sanctions and to Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules

February 8, 2002.

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 December 26, 2001, the Chicago Board of 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Exchange Rule 17.11 (Judgment and Sanction) to adopt sanctioning guidelines that the Exchange believes will promote consistency and uniformity in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the Exchange proposes to amend Exchange Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its Minor Rule Violation Plan violations of the Exchange's order handling rules. The text of the proposed

rule change is available at the CBOE's Office of the Secretary 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 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

The purpose of the proposed rule change is to amend CBOE Rule 17.11 (Judgment and Sanction) to incorporate certain Principal Considerations in Determining Sanctions ("Principal Considerations") to promote consistency and uniformity in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings. In addition, the proposed rule change would amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) to incorporate in its Minor Rule Violation Plan violations of the Exchange's order handling rules, including violations of firm quote requirements pursuant to Exchange Rule 8.51; failure to promptly book and display limit orders that would improve the disseminated quote pursuant to Exchange Rules 7.7 and 8.85(b); failure to honor the priority of marketable customer orders maintained in the Customer Limit Order Book pursuant to Exchange Rule 6.45; and failure to use due diligence in order execution pursuant to Rules 6.73 and 8.85(b).

The Exchange filed this proposed rule change in accordance with Section IV.B.i of the Commission's September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934 ("Order"),<sup>3</sup> which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they

are reasonably designed to effectively enforce compliance with options order handling rules. The Exchange believes that the Principal Considerations, as set forth in proposed Exchange Rule 17.11, codify the historical considerations the Exchange's Business Conduct Committee ("BCC") has applied in determining appropriate sanctions.

With respect to violations of the Exchange's order handling rules, the Exchange proposes that these violations covered under the plan should be included in a rolling twenty-four month "look-back" period. With respect to the failure to submit trade information on time and failure to submit trade information to the price reporter pursuant to Exchange Rule 6.51, the Exchange does not propose to amend the current "look-back" period or fine schedule as set forth in Exchange Rule 17.50(g)(4) at this time.<sup>4</sup> With respect to fines imposed upon Market-Makers or Floor Brokers for the conduct resulting in violations of the order handling rules as set forth in Exchange Rule 17.50(g)(5), the following fine schedule would be applied:

Number of offenses in any rolling twenty-four-month period	Fine amount
1st Offense ....	\$500 to \$1,500.
2nd Offense ...	\$1,000 to \$3,000.
3rd Offense ....	\$2,000 to \$5,000.
Subsequent Offenses.	\$3,500 to \$5,000 or Referral to Business Conduct Committee <sup>5</sup> .

The Exchange intends to use an automated surveillance program in the detection of order handling violations and a rolling twenty-four month look-back period in the determination of recidivist conduct.<sup>6</sup> As a result, the

<sup>4</sup> For violations of any of the Exchange's order handling rules, the BCC would consider the party's entire disciplinary history for purposes of determining whether violations should constitute a first, second or subsequent disciplinary action as set forth in CBOE's Internal BCC Sanction Guidelines. See letter from Pat Sexton, Assistant General Counsel, CBOE, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 8, 2002.

<sup>5</sup> The Exchange has agreed to submit an amendment to clarify that after a maximum of 6 offenses, subsequent offenses would be referred to the BCC. See telephone conversation between Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, and Deborah Flynn, Assistant Director, Division, Commission, on February 6, 2002.

<sup>6</sup> The Exchange has agreed to submit an amendment to proposed Rule 17.50(a) to clarify this point. See telephone conversation between Mary L. Bender, Senior Vice President and Chief Regulatory Officer, CBOE, and Deborah Flynn, Assistant

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.