

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act⁵ in general and furthers the objectives of section 6(b)(4) of the Act⁶ in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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 that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4 thereunder,⁸ because it establishes or changes a due, fee, or other charge imposed by the Amex. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003-68 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48237; File No. SR-CBOE-2003-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish a Limited Pilot Program Relating to Maximum Bid/Ask Differentials

July 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 27, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 25, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.³ 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 its rules to adopt a limited pilot program relating

to maximum bid/ask differentials. The text of the proposed rule change is 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, 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 IV 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

Background

The Exchange is proposing to adopt, on a pilot basis, a limited exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). More specifically, as part of accommodating compliance with the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan"),⁴ the Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Linkage Plan and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders).

Linkage orders are generally Immediate or Cancel limit orders priced at the National Best Bid or Offer ("NBBO") that must be acted upon within 15 seconds. The Linkage Plan provides several instances in which a Participant receiving a linkage order must fade its quote. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the fading process to ensure that members (and the Exchange) are in full compliance with this aspect of the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the proposed rule text to indicate that the pilot program would expire on January 30, 2004.

⁴ The Linkage Plan was originally approved on July 28, 2000. See Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000).

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

Linkage Plan. Autofade will move one side of CBOE's quote to a price that is 1-tick inferior to the NBBO.⁵ This will ensure that the Exchange will not immediately receive additional linkage orders in order to allow the member to refresh the quote (either manually or through an autoquote update).

As mentioned above, autofade also would apply anytime an automatic execution of any order via the Exchange's Retail Automatic Execution System ("RAES") has depleted the size of CBOE's quote. On March 29, 2002, the Commission approved a CBOE proposal to implement a "quotes with size" system that would enable the Exchange to disseminate options quotations with a size that reflects previous executions (decrementing quotes).⁶ A current feature of this functionality provides that when a quote is exhausted via automatic executions, the Exchange may disseminate a size of "1" for a specified "reroute" period during which time the Exchange's RAES system is disengaged.⁷ Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Reason for this Rule Filing

CBOE anticipates that there may be limited instances where the autofade functionality moves the quote in a manner that causes the quote width to widen beyond the bid/ask parameters provided pursuant to CBOE Rule 8.7(b)(iv). Accordingly, CBOE seeks to adopt (on a pilot basis) a temporary exception to the requirements of CBOE Rule 8.7(b)(iv) in cases where the Exchange automatically adjusts one side of the disseminated quote to one minimum increment below (above) the NBBO bid (offer) and this cause the quote to exceed the quote width parameters of that rule. The proposed exemption period would last for 30 seconds after any given autofade that caused a wider quote than allowed under CBOE Rule 8.7(b)(iv). Thus, to the extent a quote remained outside of the maximum width after the 30-second time period, the responsible broker or dealer disseminating the quote would be

deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes. CBOE proposes that the pilot run until January 30, 2004.

2. Statutory Basis

The proposed rule change will, among other things, allow the Exchange to comply more easily with the requirements of the Linkage Plan. Accordingly, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act⁸ in general and furthers the objectives of Section 6(b)(5)⁹ in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of 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

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 self-regulatory organization consents, the Commission will:

(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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2003-08 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48234; File No. SR-NASD-2003-93]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Increase the Trading Activity Fee

July 28, 2003.

I. Introduction

On June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to increase its Trading Activity Fee ("TAF") by adjusting the rates for covered equity securities. The proposed rule change was published for notice and comment in the **Federal Register** on June 25, 2003.³ The Commission received one comment letter on the proposal.⁴ On July 23, 2003, the NASD

⁵ The only exception is when CBOE's NBBO quote (or next best quote) is represented by a customer order in the book. In such cases, the Exchange would not fade a booked order (it would have to be traded).

⁶ See Securities Exchange Act Release No. 45676, 67 FR 16478 (April 5, 2002).

⁷ The reroute period can be set from 0 to 30 seconds.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48061 (June 19, 2003), 68 FR 37887.

⁴ See July 17, 2003 letter from Jeffrey T. Brown, Senior Vice President and General Counsel, The Cincinnati Stock Exchange ("CSE") to Jonathan G. Katz, Secretary, SEC ("CSE Letter").