

disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1-1(c) 17 CFR 11Ac1-1(c). This reporting requirement obligates each "responsible broker or dealer," as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1-1(b) 17 CFR 11Ac1-1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.<sup>1</sup> Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,005 total annual responses pursuant to Rule 11Ac1-1, resulting in an annual aggregate burden of approximately 205,486 hours.

Rule 11Ac1-1 does not impose a retention period for any recordkeeping requirements. Compliance with the rule is mandatory and the information collected is made available to the public. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to the Office of

Management and Budget within 30 days of this notice.

Dated: December 2, 2003.

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48865; File No. SR-CBOE-2003-48]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Determination of the Closing Exercise Settlement Value for Interest Rate Options and to the Designation of the Reporting Authorities for Interest Rate Options

December 2, 2003.

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 November 19, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 CBOE. 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 CBOE proposes to amend Interpretation and Policy .01 and .02 under CBOE Rule 23.1 with respect to the determination of the closing exercise settlement value for interest rate options when the designated reporting authority is unable to provide that value and with respect to the designation of the reporting authorities for interest rate options. The text of the proposed rule change is available at the Office of the Secretary, the 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 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

The proposed rule change amends Interpretation and Policy .02 to CBOE Rule 23.1, which provides for an alternate method of determining the closing exercise settlement value for the last business day of trading prior to the expiration of any interest rate option should the appropriate reporting authority<sup>3</sup> be unable to do so. Currently, Interpretation and Policy .02 provides that the Exchange would be responsible for determining the applicable closing value by conducting a random poll of a minimum of ten primary government bond dealers. In place of this provision, the Exchange proposes that, in the event the reporting authority does not generate a closing value for the last business day of trading prior to expiration of any interest rate option, the closing value would be determined in accordance with the Rules and By-Laws of the Options Clearing Corporation ("OCC"). The CBOE believes that this change is appropriate because OCC's rules are predominant to the CBOE's rules in the context of determining settlement values when such values are unavailable.

To illustrate, OCC By-Laws, Article XVI (Yield-Based Treasury Options), Section 4 (Unavailability or Inaccuracy of Settlement Value of Underlying Yield), governs the situation in which the settlement value of the underlying yield for series of yield-based options is unreported or otherwise unavailable for the purposes of calculating the settlement amount for exercised option contracts. Section 4(a) provides for methods that would allow OCC to determine the settlement amount(s) for affected series. Specifically, Section 4(a)(2) provides that OCC may fix the settlement amount for exercised contracts of affected series by using the best information available as to the correct settlement value of the underlying yield.

<sup>3</sup> CBOE Rule 23.1(h) provides that "[t]he term 'reporting authority' in respect of a particular interest rate measure means the institution or reporting service designated by the Exchange as the official source for securing and disseminating the value underlying an interest rate measure."

<sup>1</sup> A third requirement under Rule 11Ac1-1, as amended at 17 CFR 11Ac1-1(c)(5), gives electronic communications networks ("ECNs") the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1-1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

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

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

Additionally, this rule change proposes to delete references to specific reporting authorities for interest rate options in the appropriate Exchange rules. Currently, Interpretation and Policy .01 to CBOE Rule 23.1 identifies the companies that are the official sources for collecting and disseminating the values that underlie an interest rate measure.<sup>4</sup> The Exchange proposes to amend Interpretation and Policy .01 so that specific entities are not enumerated. As such, the Exchange proposes that Interpretation and Policy .01 be changed to reflect that the Exchange may, from time to time, designate a reporting authority to report the values necessary to calculate and disseminate yields for each security or to determine the closing exercise settlement values of expiring interest rate options.

The CBOE believes that this rule change would allow the CBOE to quickly designate a new reporting authority if a situation were to arise in which an approved reporting authority becomes unable to perform the required calculations. The CBOE believes that incidents such as the tragic events of September 11, 2001 or the expansive blackouts of recent weeks illustrate the need for flexibility to take appropriate action in these situations. The Exchange also believes that it may find it operationally beneficial to change a reporting authority for other reasons. The Exchange represents that any reporting authority chosen would need to have demonstrated to the Exchange that it would be operationally capable of performing the required functions. Although the Exchange would have the ability to change the designated reporting authorities for interest rate options under this proposed rule change, the Exchange has represented that it does not intend nor anticipate changing reporting authorities on a regular basis. The Exchange will issue notification of the designation of any new reporting authority for interest rate options in the form of a regulatory circular.

## 2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and is in furtherance of the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that

providing a reliable source for determining the exercise settlement values of interest rate options, including when the reporting authority previously relied upon for this purpose has discontinued reporting such values, will facilitate exercise transactions in these securities and will thereby serve 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 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) of the Act<sup>7</sup> and Rule 19b-4(f)(6)<sup>8</sup> thereunder, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of filing. The CBOE provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least 5 business days prior to the filing date.

At any time within 60 days of the filing of such 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 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.

Comments may also be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-CBOE-2003-48. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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-2003-48 and should be submitted by December 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48868; File No. SR-NASD-2003-165]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the National Association of Securities Dealers, Inc. To Establish a New "Discretionary" Order in Nasdaq's SuperMontage System**

December 3, 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 November 7, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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

<sup>4</sup> Interpretation and Policy .01 to CBOE Rule 23.1 identifies Telerate, Inc. as the designated reporting authority of each interest rate option's "current value" and identifies Gov PX as the designated reporting authority of each interest rate option's "closing exercise settlement value."

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

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

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

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</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.