

19(b)(3)(A) of the Act<sup>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The BSE has requested that the Commission accelerate the thirty-day operative date so that the Exchange may remain competitive with other exchanges that currently have similar rules in effect.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest.<sup>12</sup> Accelerating the operative date will allow the BSE to immediately implement rules similar to ones already in place at the other options exchanges,<sup>13</sup> and will simplify and clarify the process by which BOX Participants accept exercise decisions from options holders and submit such decisions to the Exchange. For these reasons, the Commission designates the proposed rule change, as amended, as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such proposed 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>14</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, 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. 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-BSE-2004-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 Exchange. All submissions should refer to File No. SR-BSE-2004-04 and should be submitted by March 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

Margaret H. McFarland,

Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49194; File No. SR-CBOE-2003-59]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Exchange's Obvious Error Rule

February 5, 2004.

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 22, 2003, the Chicago Board 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 CBOE. On January 20, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

CBOE proposes to extend portions of its obvious error rule to open outcry transactions. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 6.25 Nullification and Adjustment of [Electronic] Transactions

This Rule governs the nullification and adjustment of options trades [executed electronically and has no application to options trades executed in open outcry]. *Paragraphs (a)(1), (2), and (6) of this Rule have no applicability to trades executed in open outcry.*

(a)-(e) No change.

#### Interpretations and Policies \* \* \*

.01—.02 No change.

\* \* \* \* \*

#### 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.

<sup>3</sup> See letter from Steve Youhn, Legal Division, CBOE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 16, 2004. Amendment No. 1 amended the introductory paragraph of CBOE Rule 6.25 to clarify that existing paragraphs (b)-(e) of CBOE Rule 6.25 will apply to the adjustment and nullification of open outcry transactions in the exact same manner that they apply to electronic transactions. Amendment No. 1 also amended the title of CBOE Rule 6.25 to eliminate the word "Electronic."

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation.<sup>15</sup> U.S.C. 78c(f).

<sup>13</sup> See Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR-Amex-2001-92); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR-ISE-2003-20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR-PCX-2003-47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR-Phlx-2003-65).

<sup>14</sup> For purposes of calculating the sixty-day abrogation period, the Commission considers the period to commence on February 4, 2004, the date at which the Exchange filed Amendment No. 1.

<sup>15</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.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On November 24, 2003, the Commission approved CBOE's obvious error rule,<sup>4</sup> which establishes six specific objective guidelines that may be used as the basis for adjusting or nullifying a transaction. The Exchange specifically limited application of the obvious error rule to trades executed electronically, the premise being, according to CBOE, that parties to an open outcry trade would have an opportunity to evaluate whether to enter into a transaction prior to actually consummating that transaction. Therefore, if the market maker determined to make the trade after evaluating all available information, he shouldn't be able to reconsider the decision after the trade occurred. Recent events have proved that while this is generally a sound premise, instances outside of the control of the Exchange and the parties to a trade necessitate a different conclusion. For this reason, the Exchange proposes to amend its obvious error rule to make certain limited portions of the rule applicable to open outcry trades.

Specifically, CBOE proposes to extend the application of CBOE Rule 6.25(a)(3), (4), and (5) to open outcry trades. CBOE also proposes that existing paragraphs (b)–(e) of CBOE Rule 6.25 would apply to the adjustment and nullification of open outcry transactions in the exact same manner that they apply to electronic transactions.

CBE Rule 6.25(a)(3), (4), and (5) cover: Verifiable Disruptions or Malfunctions of Exchange Systems, Erroneous Print in the Underlying, and Erroneous Quote in the Underlying. Market makers base their quotes off of the underlying and each of these provisions covers instances where the information the market maker is using to price options is erroneous, through no fault of their own. For instance, with respect to sections (4) and (5) of CBOE Rule 6.25, an erroneous quote or print in the underlying means that the market maker is receiving erroneous information from the underlying market, which he then incorporates into his quotes. In these instances, CBOE represents that the market maker has little if any chance of pricing options accurately. CBOE believes that the same rationale as to why these provisions apply to electronic

trades should apply to open outcry trades.

CBOE offers the following example: assume that the Nasdaq Stock Market reports bad trades and then, pursuant to its NASD Rule 11890, either nullifies or adjusts them. During this period, assume 10 trades execute on CBOE, eight of which occur electronically, and two of which occur in open outcry. The Exchange, pursuant to CBOE Rule 6.25(a)(4), can adjust or nullify the electronic trades; however, it can do nothing regarding the open outcry trades. CBOE believes that this is certainly an unintended and inequitable result.

The Exchange does not propose to extend the application of sections (a)(1) (Obvious Price Error), (a)(2) (Obvious Quantity Error), and (a)(6) (Trades Below Intrinsic Value) of CBOE Rule 6.25 to open outcry trading. With respect to subparagraph (a)(1) (Obvious Price Error), CBOE believes that if a market maker receives accurate underlying pricing information and gives an inaccurate quote, he must live with the consequences of his actions. This also applies to instances in which the market maker gives a verbal quote with a bigger size than intended or where he inadvertently prices an option under parity.

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 for a free and open market and a national market system, and, in general, to protect investors and the public interest. CBOE believes that the proposal provides for the adjustment or nullification of trades executed at clearly erroneous prices due to the receipt by the market maker of inaccurate pricing information that he uses to price his markets. CBOE notes that the exact same provisions have already been approved in the context of electronic trading.<sup>7</sup>

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

CBOE 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**

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 Exchange 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. Comments should 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–2003–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should be submitted by March 4, 2004.

<sup>4</sup> See Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003) (File No. SR–CBOE–2001–04).

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

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

<sup>7</sup> See *supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49203; File No. SR-CHX-2002-09]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated, Adding Certain Rules to the CHX Minor Rule Violation Plan

February 6, 2004.

On April 11, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("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 that would add to the CHX Minor Rule Violation Plan ("Plan") certain violations of Rule 11Ac1-1 under the Act<sup>3</sup> ("Firm Quote Rule"), as well as violations of CHX Article XX, Rule 37(a) ("BEST Rule") and CHX Article XX, Rule 37, Interpretation and Policy .04 ("Ability to Switch MAX to Manual Execution" procedures). The CHX amended the proposed rule change on December 17, 2003, and again on December 22, 2003.<sup>4</sup> Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on January 6, 2004.<sup>5</sup> The Commission received no comments on the proposal.

The Commission has reviewed the proposed rule change, as amended, and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).<sup>6</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with

section 6(b)(5)<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Additionally, the Commission finds the proposal is consistent with Rule 19d-1(c)(2) under the Act,<sup>8</sup> which governs minor rule violation plans. For these reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with section 6(b)(5)<sup>9</sup> in particular.

The Commission believes that the proposed rule change should enable the Exchange to appropriately discipline its members and others associated with its members for violation of these rules. In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Plan. The violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Exchange will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan on a case by case basis, or if a violation requires formal disciplinary action.

In addition, the Commission notes that the rules that the CHX is adding to the Plan through the proposed rule change relate to specialists' market making obligations. The Commission believes that only the most technical and non-substantive violations of a specialist's market making obligations should be handled pursuant to the Plan.<sup>10</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CHX-2002-09), as amended, be and hereby is approved.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 17 CFR 19d-1(c)(2).

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

<sup>10</sup> See, e.g., Securities Exchange Act Release No. 27878 (April 14, 1990), 55 FR 13345 (April 10, 1990) (SR-NYSE-89-44).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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. 34-49196; File No. SR-EMCC-2003-06]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Admission Criteria for Members

February 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 2003, Emerging Markets Clearing Corporation ("EMCC") 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 primarily by EMCC. 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 proposed rule change amends EMCC's Rule 2, Section 6, Admission Criteria for Members.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>8</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> 17 CFR 240.11Ac1-1.

<sup>4</sup> Each amendment completely replaced and superseded the previous filing.

<sup>5</sup> Securities Exchange Act Release No. 49004 (December 29, 2003), 69 FR 00709.

<sup>6</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).