

investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c-1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. It is possible that someone might view the Insurance Companies' recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c-1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Rule 22c-1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, the Insurance Companies will redeem interests in an Amended Contract owner's Contract value at a price determined on the basis of the current net asset value of the Separate Accounts. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that the Insurance Companies paid out of their general account assets. Although Amended Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the Separate Accounts. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c-1 was designed to address, namely, speculative trading practices calculated to take advantage of

backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Applicants assert that, because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c-1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c-1, Applicants request an exemption from the provisions of Rule 22c-1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Amended Contracts.

10. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the application.

Applicants further submit, for the reasons stated herein, that their exemptive request meets the standards set out in section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04-5547 Filed 3-10-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49367; File No. SR-CBOE-2004-14]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. to Adopt Rules and Procedures Governing the Execution of Complex Orders Involving Options and Security Futures

March 5, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 23, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 4, 2004, CBOE submitted Amendment No. 1 to the proposed rule change. 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

CBOE proposes to adopt rules and procedures governing the execution of complex orders involving options and security futures. The text of the proposed rule change follows. Additions are in italics. Deleted text is in brackets.

#### Chicago Board Options Exchange, Incorporated Rules

\* \* \* \* \*

#### CHAPTER I—Definitions

\* \* \* \* \*

#### Rule 1.1. Definitions

\* \* \* \* \*

#### Stock-Option Order

(ii) A stock-option order is an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) [of the same series] on the opposite side of the market representing *either* the same number of units of the underlying or related security *or the number of units of the underlying security necessary to*

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

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

create a delta neutral position or (b) the purchase [and] or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of units of [the underlying or related security] stock as, and on the opposite side of the market from, [representing in aggregate twice the number of units of] the underlying or related security portion of the order.

\* \* \* \* \*

**Security Future-Option Order**

(zz) A security future-option order, which shall be deemed a type of Inter-regulatory Spread Order as that term is defined in Rule 1.1(ll), is an order to buy or sell a stated number of units of a security future or a related security convertible into a security future (“convertible security future”) coupled with either (a) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of the underlying for the security future or convertible security future or the number of units of the underlying for the security future or convertible security future necessary to create a delta neutral position or (b) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and each representing the same number of the underlying for the security future or convertible security future, as and on the opposite side of the market from, the underlying for the security future or convertible security future portion of the order.

\* \* \* \* \*

**CHAPTER VI—Doing Business on the Exchange Floor**

\* \* \* \* \*

**Rule 6.9. Solicited Transactions**

A member or member organization representing an order respecting an option traded on the Exchange (an “original order”), including a spread, combination, or straddle order as defined in Rule 6.53, [or] a stock-option order as defined in Rule 1.1(ii) or a security future-option order as defined in Rule 1.1(zz), may solicit a member or member organization or a non-member customer or broker-dealer (the “solicited person”) to transact in-person or by order (a “solicited order”) with the original order. In addition, whenever a floor broker who is aware of, but does not represent, an original order solicits one or more persons or orders in response to an original order, the persons solicited and any resulting orders are solicited persons or solicited

orders subject to this Rule. Original orders and solicited orders are subject to the following conditions.

(a)–(f) No change.

\* \* \* \* \*

**Rule 6.45. Priority of Bids and Offers—Allocation of Trades**

Except as provided by Rules, including but not limited to Rule 6.2A, 6.8, 6.9, 6.13, 6.45A, Rule 6.47, Rule 6.74, Rule 8.87, and CBOE Regulatory Circulars approved by the SEC concerning Participation Rights, the following rules of priority shall be observed with respect to bids and offers:

(a)–(d) No change.

(e) Complex Order Priority Exception: A member holding a spread, straddle, combination, or ratio order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a), respectively, have priority over bids (offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

\* \* \* \* \*

**Rule 6.45A. Priority and Allocation of Trades for CBOE Hybrid System**

Generally: The rules of priority and order allocation procedures set forth in this rule shall apply only to option classes designated by the Exchange to be traded on the CBOE Hybrid System.

(a) No change.

(b)(i)–(ii) No change.

(b)(iii) Exception: Complex Order Priority: A member holding a spread, straddle, or combination order (or a stock-option order or security future-option order, as defined in Rule 1.1(ii)(b) and Rule 1.1(zz)(b), respectively) and bidding (offering) on a net debit or credit basis (in a multiple of the minimum increment) may execute the order with another member without giving priority to equivalent bids (offers) in the trading crowd or in the electronic book provided at least one leg of the order betters the corresponding bid (offer) in the book. Stock-option orders and security future-option orders, as defined in Rule 1.1(ii)(a) and Rule 1.1(zz)(a), respectively, have priority over bids

(offers) of the trading crowd but not over bids (offers) of public customers in the limit order book.

(c)–(e) No change.

\* \* \* \* \*

**Rule 6.48. Contract Made on Acceptance of Bid or Offer**

(a) No change.

(b) Stock-option orders and security future-option orders. (i) A bid or offer that is identified to the Exchange trading crowd as part of a stock-option order, as defined in Rule 1.1(ii), or a security future-option order, as defined in Rule 1.1(zz), is made and accepted subject to the following conditions:

(A) At the time the stock-option order or security future-option order is announced, the member initiating the order must disclose to the crowd all legs of the order and must identify the specific market(s) on which and the price(s) at which the non-option leg(s) of the order is to be filled, and

(B) Concurrent with the execution of the options leg of the order, the initiating member and each member that agrees to be a contra-party on the non-option leg(s) of the order must take steps immediately to transmit the non-option leg(s) to the identified market(s) for execution.

(ii) A trade representing the execution of the options leg of a stock-option order or a security future-option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.

(c) No change.

\* \* \* \* \*

**Rule 6.74. “Crossing” Orders**

(a)–(e) No change.

\* \* \* \* \*

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

.01–.02 No change.

.03 Spread, straddle, stock-option (as defined in Rule 1.1(ii)), inter-regulatory spread as defined in Rule 1.1([kk]ll) (including security future-option orders as defined in Rule 1.1(zz)) or combination orders on opposite sides of the market may be crossed, provided that the Floor Broker holding such orders proceeds in the manner described in paragraphs (a) or (b) above as appropriate. Members may not prevent a spread, straddle, stock-option, inter-regulatory spread (including a security future-option order) or combination cross from being completed by giving a competing bid or offer for one component of such order.

.04 [With the exception of inter-regulatory spreads, where] *Where* a related [transaction] *order* must be effected in another market, *the member must take steps to transmit the related order(s) concurrently with the execution of the options leg(s) of the order* [the transaction must be effected prior to effecting the options transaction]. *A trade representing the execution of the options leg of a stock-option order or a security future-option order may be cancelled at the request of any member that is a party to that trade only if market conditions in any of the non-Exchange market(s) prevent the execution of the non-option leg(s) at the price(s) agreed upon.*

\* \* \* \* \*

## CHAPTER XXVII—Buy-Write Option Unitary Derivatives (“BOUNDS”)

\* \* \* \* \*

### Rule 27.1. Definitions

\* \* \* \* \*

#### Security Future-Option Order

(m) *Security Future-Option Order*—A security future-option order as used in respect of a BOUND means an order to buy or sell a stated number of units of a security future or a related security convertible into a security future (“convertible security future”) coupled with a transaction in a BOUND contract on the opposite side of the market representing the same number of underlying units for the security future or convertible security future.

\* \* \* \* \*

## 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 Commodity Futures Modernization Act of 2000<sup>3</sup> lifted the

ban on the trading of single stock futures and futures on narrow-based security indices (together, “security futures”) in the United States. This proposed rule change addresses complex orders involving options and security futures and also revises the definition of stock-option order. Specifically, the proposed rule change (i) amends the definition of stock-option order, (ii) creates a new definition for a security futures option order (“security future-option order”) based on the proposed definition of stock-option order and grants certain execution priorities to security future-option orders, (iii) authorizes the execution of security future-option orders according to procedures that are identical to CBOE’s current execution procedures for stock-option orders and (iv) incorporates the security future-option order concept into other CBOE rules where stock-option orders are addressed.

The Exchange’s current definition of stock-option order<sup>4</sup> does not provide for the execution of stock-option orders to create delta neutral positions. The Exchange states that complex orders that create delta neutral positions are effective hedging strategies that would permit Exchange members to initially offset the risk of price movements in an option position with a corresponding purchase or sale of stock underlying the option position. The Exchange notes that the language in the proposed amendment to the definition of stock-option order mirrors the corresponding language contained in International Securities Exchange, Inc. (“ISE”) Rule 722—Complex Orders.<sup>5</sup>

<sup>4</sup> Current CBOE Rule 1.1(ii) defines stock-option order as “an order to buy or sell a stated number of units of an underlying or a related security coupled with either (a) the purchase or sale of option contract(s) of the same series on the opposite side of the market representing the same number of units of the underlying or related security or (b) the purchase and sale of an equal number of put and call option contracts, each having the same exercise price, expiration date and number of units of the underlying or related security, on the opposite side of the market representing in aggregate twice the number of units of the underlying or related security.”

<sup>5</sup> ISE Rule 722(a)(5)(i) defines a stock-option order as “an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (“convertible security”) coupled with either (A) the purchase or sale of option contract(s) on the opposite side of the market representing either the same number of units of the underlying stock or convertible security or the number of units of the underlying stock necessary to create a delta neutral position; or (B) the purchase or sale of an equal number of put and call option contracts, each having the same exercise price, expiration date, and each representing the same number of units of stock, as and on the opposite side of the market from, the stock or convertible security portion of the order.”

The proposed rule change creates a new definition of security future-option order for a complex order involving security futures and options that is based on the proposed definition of stock-option order. Therefore, complex orders consisting of security futures and options legs that fall within the proposed definition of security future-option order will be entitled to the same priorities that the proposed definition of stock-option order affords to certain complex orders involving stocks and options. The Commission approved the definition of a single stock future-option order for ISE that the Exchange states is substantially similar to its proposed definition of a security future-option order.<sup>6</sup>

The proposed rule change amends CBOE Rules 6.45(e) and 6.45A(b)(iii) to permit Exchange members to execute security future-option orders, the options legs of which will have priority over bids or offers of the trading crowd but not over bids or offers of public customers in the book. The proposed rules also provide that members holding security future-option orders and bidding or offering on a net debit or credit basis may execute the order with another member without giving priority to equivalent bids or offers in the trading crowd or the book, provided at least one option leg of the order betters the corresponding bid or offer in the book. The priority rules in the previous two sentences are identical to the current Exchange priority rules governing stock-option orders.

The proposed rule change also amends CBOE Rule 6.48(b) to provide execution procedures for security future-option orders. Proposed CBOE Rule 6.48(b) provides that the initiating member and the contra-parties with respect to a security future-option order must take steps to transmit the security futures leg to a futures exchange concurrent with the execution of the options leg(s) of the order.<sup>7</sup> Because security futures products may not be fungible between markets, the member initiating the security future-option order must identify the specific market of execution. As with stock-option orders, if the security futures leg of the security future-option order cannot be

<sup>6</sup> See Securities Exchange Act Release No. 46390 (August 21, 2002), 67 FR 55290 (August 28, 2002) (Order Approving SR-ISE-2002-18). See also Securities Exchange Act Release No. 48894 (December 8, 2003), 68 FR 70328 (December 17, 2003) (Notice of Filing and Immediate Effectiveness of SR-PCX-2003-42).

<sup>7</sup> The proposed rule change amends Interpretation .04 to CBOE Rule 6.74 to reflect the execution procedures for stock-option orders and security future-option orders provided in proposed CBOE Rule 6.48(b).

<sup>3</sup> Pub. L. No. 106-554, Appendix E, 114 Stat. 2763.

executed at the price(s) agreed upon due to market conditions, a trade representing the execution of the options leg of the transaction may be cancelled at the request of any member that is a party to that trade.

CBOE also proposes to amend CBOE Rule 6.9 to permit member solicitation of a security future-option order, and CBOE Rule 27.1, which would create a new definition of a security future-option order with respect to an order involving a Buy-Write Option Unitary Derivative ("BOUND"),<sup>8</sup> as that term is defined in CBOE Rule 27.1(a).<sup>9</sup> The proposed rules also make clear in the text of Interpretation .03 to CBOE Rule 6.74 that as a type of inter-regulatory spread order, a security future-option order may be crossed. A typographical error is also fixed in the text of Interpretation .03 to CBOE Rule 6.74.

## 2. Statutory Basis

Since the proposed rule change offers execution priorities for certain orders that CBOE believes are of a similar degree of complexity to those approved by the Commission for special priority rules and would offer investors additional opportunities to manage risks while protecting priority of orders of public customers, CBOE 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)(5)<sup>11</sup> 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*

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.

<sup>8</sup> CBOE Rule 27.1(a) defines a BOUND as "a security issued, or subject to issuance, by The Options Clearing Corporation pursuant to the Rules of The Options Clearing Corporation which gives holders and writers thereof such rights and obligations as may be provided for in the Rules of the Options Clearing Corporation."

<sup>9</sup> The proposed definition of security future-option order with respect to a BOUND is based on the definition of stock-option order with respect to a BOUND. CBOE Rule 27.1(l) defines stock-option order with respect to a BOUND as "an order to buy or sell a stated number of units of an underlying or a related security coupled with a transaction in a BOUND contract on the opposite side of the market representing the same number of units of the underlying or a related security."

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

<sup>11</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*

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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and subparagraph (f)(6) of Rule 19b-4<sup>13</sup> thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.<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 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-2004-14. 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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on March 4, 2004, the date CBOE filed Amendment No. 1.

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 available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2004-14 and should be submitted by April 1, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04-5550 Filed 3-10-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49357; File No. SR-CHX-2004-09]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees**

March 3, 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 hereby is given that on January 30, 2004, the Chicago Stock Exchange, Inc. ("CHX" 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. On March 2, 2004, the Exchange filed 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**

The Exchange proposes to amend its membership dues and fees schedule (the

<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.

<sup>3</sup> See letter from Ellen Neely, Senior Vice President & General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 1, 2004 ("Amendment No. 1"). Amendment No. 1 replaces the proposed rule change in its entirety.