

*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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-Amex-2003-101. 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 Amex. All submissions should refer to File No. Amex-2003-101 and should be submitted by January 27, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-48996; File No. SR-CBOE-2003-49]**

**Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Time Periods Within the Membership Process**

December 29, 2003.

On October 21, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to 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 extend the time periods (i) after which an individual's inactive nominee status will be terminated and (ii) during which a former individual member may reapply for membership through the renewal/change of status application process. The **Federal Register** published the proposed rule change for comment on November 24, 2003.<sup>3</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The proposed rule change should increase the flexibility of the Exchange's membership process without compromising its standards. In addition, the Commission believes that the proposed rule change should

<sup>6</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> Securities Exchange Act Release No. 48797 (November 17, 2003), 68 FR 65975.

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

prevent former members from trying to obtain the lower renewal applicant fee without following through on their applications or membership approvals on a timely basis.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-CBOE-2003-49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49004; File No. SR-CHX-2002-09]**

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Incorporated To Amend Its Minor Rule Violation Plan**

December 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2002, the Chicago Stock Exchange, Incorporated ("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. The CHX amended the proposed rule change on December 22, 2003,<sup>3</sup> and again on December 23, 2003.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</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 December 17, 2003 letter from Ellen J. Neely, Senior Vice President ("SVP") and General Counsel ("GC"), CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

<sup>4</sup> See December 22, 2003 letter from Ellen J. Neely, SVP and GC, CHX, to Joseph P. Morra, Special Counsel, Division, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1.

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

The CHX proposes to add to its Minor Rule Violation Plan ("Plan") certain violations of Rule 11Ac1-1 under the Act<sup>5</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 text of the proposed rule change is available at the Commission and at the CHX.

### 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 its proposal and discussed any comments it received regarding the proposal. 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 Plan provides a method for the Exchange to prosecute minor violations of rules contained in the Plan and to deter violations of those rules. Under the Plan, the Exchange may impose a monetary fine, instead of instituting a formal disciplinary proceeding, for a rule violation that the Exchange has found is minor in nature, but which the Exchange believes warrants a sanction more serious than a warning letter.<sup>6</sup> Fines under the Plan can be up to \$2,500 per violation.

The Exchange proposes to add to the Plan:

- Violations of the Firm Quote Rule that are not related to commitments sent through the Intermarket Trading System ("ITS");<sup>7</sup>

<sup>5</sup> 17 CFR 240.11Ac1-1.

<sup>6</sup> Fines under the Plan can provide an appropriate situations.

For example, where member conduct is not intentional or of such magnitude that it can be considered reckless, a fine under the Plan might be an appropriate response to a first, second or third violation by an Exchange member. The Exchange is mindful, however, that more egregious violations should not be handled through the summary proceedings authorized by the Plan.

<sup>7</sup> ITS-related violations of the Firm Quote Rule will be addressed in another filing, which the CHX will soon submit to the Commission for consideration.

- Violations of the Exchange's BEST Rule; and

- Violations of the Ability to Switch MAX to Manual Execution procedures.<sup>8</sup>

The CHX believes that the addition of these rule violations to the Plan would enhance the enforcement efforts of the Exchange's Market Regulation Department ("Department") by providing it with a broader range of enforcement options. Specifically, for these violations, the Department would be able to seek, in summary fashion, a disciplinary sanction that is more severe than a warning letter, but not as severe as the penalties that could result from the often time-consuming process of a formal disciplinary hearing.<sup>9</sup>

Under the Exchange's proposal, eligible violations of the Firm Quote Rule would face recommended fines of \$500 for the first violation, \$1,000 for the second violation, and \$2,500 for the third and subsequent violations. Violations of the Exchange's BEST Rule and the Ability to Switch MAX to Manual Execution procedures would face recommended fines of \$100 for the first violation, \$500 for the second violation, and \$1,000 for the third and subsequent violations.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange and, in particular, with the requirements of section 6(b).<sup>10</sup> In particular, the CHX believes the proposed rule change is consistent with section 6(b)(5) of the Act<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to, 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.

<sup>8</sup> One additional change to the current rule text deletes the reference to CHX Article XX, Rule 43(d), which has been merged with the BEST Rule provision of the Exchange's rulebook. See Securities Exchange Act Release No. 47811 (May 7, 2003), 68 FR 25916 (May 14, 2003)(SR-CHX-2002-20).

<sup>9</sup> The Commission notes that certain of the rules that the CHX proposes to add to the Plan relate to market making obligations, and further notes that the Commission has indicated previously that "only the most technical and non-substantive violations" of a market maker's obligations should be handled pursuant to a minor rule plan. Securities Exchange Act Release No. 27878, 55 FR 13345 (April 10, 1990)(SR-NYSE-89-44).

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

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

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

### 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 CHX consents, the Commission will:

(A) By order approve the 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 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. 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-CHX-2002-09. 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 at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.

SR-CHX-2002-09 and should be submitted by January 27, 2004.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49011; File No. SR-EMCC-2003-07]

### Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval on a Temporary Basis of a Proposed Rule Change Relating to Buy-In and Sell-Out Procedures

December 30, 2003.

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, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by EMCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval temporarily through June 30, 2004, to the proposed rule change.

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

The proposed rule change would (a) revise EMCC Rule 7, Sections 18 (Buy-Ins) and 19 (Sell-Outs) to shorten the time period when a buy-in and sell-out may be initiated and when it may be executed and (b) make conforming, technical changes to EMCC Rule 1 (Definitions and Descriptions) and Rule 7.

#### 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>

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

When EMCC was formed, it was recognized that its buy-in and sell-out procedures should be similar to those of the International Securities Market Association ("ISMA") because of EMCC's understanding that ISMA's procedures are generally followed by emerging market trading parties for transactions settled outside EMCC. The reason for this was to preclude EMCC members from being subject to a buy-in or sell-out by a non-EMCC member and not be able to retransmit the buy-in or sell-out to an EMCC member in the same time frame. Accordingly, EMCC's buy-in and sell-out rules followed the time periods that would be used by non-EMCC members for these processes.

EMCC recently learned that the ISMA buy-in and sell-out time frames will be changed effective January 1, 2004. If EMCC does not make corresponding changes to its rules by that date, it is possible that to avoid potential buy-in and sell-out exposure EMCC members will no longer submit transactions to EMCC. If EMCC members were to submit such transactions, they could be adversely affected due to the differences in buy-in time frames for ex-clearing trades. Accordingly, in order not to jeopardize the use of EMCC for trade processing and to not expose its members to risk, EMCC seeks to change its rules to conform to the industry change that is expected to become effective January 1, 2004. Basically, the change will shorten the time period when a buy-in and sell-out may be initiated and when it may be executed.<sup>3</sup> EMCC understands that the emerging markets securities industry is favorably disposed to EMCC's proposed rule change.

In addition to the above proposed changes, EMCC also seeks to make technical corrections to its Rule 1 (Definitions and Descriptions) and Rule 7 with regard to several rule and section references regarding buy-in and sell-out provisions. Rules 7 and 8 were revised in 1999,<sup>4</sup> but some references to those

<sup>2</sup> The Commission has modified the text of the summaries prepared by EMCC.

<sup>3</sup> A copy of the proposed rule language which sets out the timing for buy-ins and sell-outs is attached as an exhibit to EMCC's filing.

<sup>4</sup> Securities Exchange Act Release No. 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999) [File No. SR-EMCC-98-10].

rules and to specific sections therein were not amended to reflect those changes. This filing will correct that oversight.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will promote the prompt and accurate clearance and settlement of securities transactions.

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

EMCC does not believe that the proposed rule change will have an impact on or impose a 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 relating to the proposed rule change have been solicited or received.

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

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F)<sup>5</sup> of the Act, which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Because this proposed rule change aligns EMCC's buy-in and sell-out procedures with those of ISMA, EMCC should avoid any abrupt stoppage of the use of its services thereby enabling EMCC to continue to provide for the prompt and accurate clearance and settlement of transactions in emerging markets securities.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because by so approving EMCC will be able to conform its buy-in and sell-out procedures to the new industry guidelines generally used in transactions cleared outside EMCC when those industry guidelines become effective January 1, 2004. This will help to avoid confusion and other adverse

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

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

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