

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. SR-Amex-2004-10 and should be submitted by March 11, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-3543 Filed 2-18-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49214; File No. SR-Amex-2003-101]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to Amex Membership's Duty To Report Fraudulent or Manipulative Conduct

February 9, 2004.

On November 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change 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> to amend Rule 3 of the Amex's *General and Floor Rules* to require Amex members or member organizations to report to the Exchange fraudulent or manipulative conduct in connection with the trading of securities on the Floor.<sup>3</sup>

The proposed rule change was published for comment in the **Federal Register** on January 6, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

After careful review, 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>5</sup> and, in particular,

the requirements of section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act<sup>7</sup> which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposal is consistent with section 6(b)(1) of the Act,<sup>8</sup> which requires that the Exchange have the capacity to enforce its members' compliance with the Act, the rules and regulations thereunder, and the rules of the Exchange. The Commission believes that by requiring Amex members or member organizations to immediately report fraudulent or manipulative conduct in connection with the trading of securities on the Exchange floor to the Exchange, the proposal should enhance the Exchange's ability to prevent and sanction fraud and manipulation and to enforce its members' compliance with the Federal securities laws and with the Exchange's rules.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-Amex-2003-101) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-3579 Filed 2-18-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49213; File No. SR-CBOE-2003-35]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment Nos. 1, 2, and 3 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Its Position and Exercise Limits

February 9, 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>

proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

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

<sup>8</sup> 15 U.S.C. 78f(b)(1).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

notice is hereby given that on August 26, 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. On September 29, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change. On January 29, 2004, the CBOE submitted Amendment No. 2 to the proposed rule change. On February 9, 2004, the CBOE submitted Amendment No. 3 to the proposed rule change. 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 issue a regulatory circular that contains additional guidance for member firms seeking non-aggregation treatment for the accounts of certain trading units of the member for purposes of the Exchange's position and exercise limit rules.

The text of the proposed regulatory circular is below. Proposed additions are in *italics*.

### Chicago Board Options Exchange, Incorporated Rules

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*Regulatory Circular RG04-XX<sup>3</sup>*

*Date: 2004*

*To: Members and Member Firms*

*From: Regulatory Services Division*

*Re: Aggregation of Accounts for Position and Exercise Limit Purposes*

#### *Aggregation of Accounts*

*The purpose of this memorandum is to summarize the provisions of Exchange rules with respect to the aggregation of accounts for position and exercise limit purposes. Exchange Rules 4.11 and 4.12 require that positions maintained in accounts directly or indirectly controlled by the same individual or entity be aggregated for position and exercise limit purposes. Pursuant to Rule 4.11, control exists when an individual or entity makes investment decisions for an account or accounts, or materially influences directly or indirectly the actions of any person who makes investment decisions. Control is also presumed in the following circumstances: (a) among all participants of a joint account who have authority to act on behalf of the*

<sup>3</sup> This regulatory circular was filed with the SEC in connection with SR-CBOE-2003-35.

<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> The proposed rule change also changes the title of Rule 3 from "Excessive Dealings" to "General Prohibitions and Duty to Report."

<sup>4</sup> See Securities Exchange Act Release No. 48998 (December 29, 2003), 69 FR 708.

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the