

information collection requirements are necessary to assure that the substantive provisions of the Act may be enforced as a matter of contract right in the United States or Canada by the fund's shareholders or by the Commission.

Certain information collection requirements in rule 7d-1 are associated with complying with the Act's provisions. These information collection requirements are reflected in the information collection requirements applicable to those provisions for all registered funds.

The Commission believes that one fund is registered under rule 7d-1 and currently active. Apart from requirements under the Act applicable to all registered funds, rule 7d-1 imposes ongoing burdens to maintain records in the United States, and to update, as necessary, the foreign fund's list of affiliated persons. The Commission staff estimates that the rule requires a total of three responses each year. The staff estimates that a respondent would make two responses each year under the rule, one response to maintain records in the United States and one response to update its list of affiliated persons. The Commission staff further estimates that a respondent's investment adviser would make one response each year under the rule to maintain records in the United States. Commission staff estimates that each recordkeeping response would require 6.25 hours each of secretarial and compliance clerk time at a cost of \$21.10 and \$21.50 per hour, respectively, and the response to update the list of affiliated persons would require 0.25 hours of secretarial time, for a total annual burden of 25.25 hours at a cost of \$537.78. The estimated number of 25.25 burden hours is identical to the current allocation.

If a foreign fund were to file an application under the rule, the Commission estimates that the rule would impose initial information collection burdens (for filing an application, preparing the specified charter, bylaw, and contract provisions, designations of agents for service of process, and an initial list of affiliated persons, and establishing a means of keeping records in the United States) of approximately 90 hours for the fund and its associated persons. The Commission is not including these hours in its calculation of the annual burden because no fund has applied under rule 7d-1 to register under the Act in the last three years.

After registration, a foreign fund may file a supplemental application seeking special relief designed for the fund's particular circumstances. Because rule

7d-1 does not mandate these applications and the fund determines whether to submit an application, the Commission has not allocated any burden hours for these applications.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

The Commission believes that the active registrant and its associated persons may spend (excluding the cost of burden hours) approximately \$540 per year in maintaining records in the United States. These estimated costs include fees for a custodian or other agent to retain records, storage costs, and the costs of transmitting records.

If a Canadian or other foreign fund in the future applied to register under the Act under rule 7d-1, the fund initially might have capital and start-up costs (not including hourly burdens) of an estimated \$17,280 to comply with the rule's initial information collection requirements. These costs include legal and processing-related fees for preparing the required documentation (such as the application, charter, bylaw, and contract provisions), designations for service of process, and the list of affiliated persons. Other related costs would include fees for establishing arrangements with a custodian or other agent for maintaining records in the United States, copying and transportation costs for records, and the costs of purchasing or leasing computer equipment, software, or other record storage equipment for records maintained in electronic or photographic form.

The Commission expects that a foreign fund and its sponsors would incur these costs immediately, and that the annualized cost of the expenditures would be \$17,280 in the first year. Some expenditures might involve capital improvements, such as computer equipment, having expected useful lives for which annualized figures beyond the first year would be meaningful. These annualized figures are not provided, however, because, in most cases, the expenses would be incurred immediately rather than on an annual basis. The Commission is not including these costs in its calculation of the annualized capital/start-up costs because no investment company has applied under rule 7d-1 to register under the Act pursuant to rule 7d-1 in the last three years.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or

even a representative survey or study of the costs of Commission rules.

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 OMB control number.

General comments regarding the above information should be directed to the following persons: (i) 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 or e-mail to: [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov); and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 21, 2005.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51062; File No. SR-Amex-00-27]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, and 6 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 7 and 8 Thereto by the American Stock Exchange LLC To Require the Immediate Display of Customer Options Limit Orders

January 21, 2005.

#### I. Introduction

On May 10, 2000, the American Stock Exchange LLC ("Amex" 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 to amend Amex Rules 958A and 958A-ANTE to require the immediate display of customer options limit orders. Amex filed amendments to the proposed rule change on March 13,

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

<sup>2</sup> 27 CFR 240.19b-4

2002,<sup>3</sup> April 3, 2003,<sup>4</sup> July 15, 2003,<sup>5</sup> August 19, 2003,<sup>6</sup> October 22, 2003,<sup>7</sup> and August 12, 2004.<sup>8</sup> The proposed rule change, as amended by Amendments No. 1 through 6, was published for comment in the **Federal Register** on August 19, 2004.<sup>9</sup> No comments were received regarding the amended proposal. Amex filed amendments to the proposed rule change on December 16, 2004,<sup>10</sup> and January 6, 2005.<sup>11</sup> This order approves the proposed rule change and Amendments No. 1 through 6 and grants accelerated approval to and solicits comment on Amendments No. 7 and 8.

## II. Description of Proposed Rule

Amex proposes to amend Amex Rules 958A and 958A-ANTE to require the immediate display of customer options limit orders<sup>12</sup> that better the current market quotation ("Display Obligation"). Under the proposal, Amex specialists would be required to display immediately upon receipt the price and size of each customer options limit order held by the specialist that is at a price or size that would improve the displayed bid or offer in the option that is the subject of the limit order. Amex

<sup>3</sup> On March 13, 2002, Amex filed a Form 19b-4, which replaced the original filing in its entirety ("Amendment No. 1").

<sup>4</sup> On April 3, 2003, Amex filed a Form 19b-4, which replaced the original filing and Amendment No. 1 in their entirety ("Amendment No. 2").

<sup>5</sup> On July 15, 2003, Amex filed a Form 19b-4, which replaced the original filing and all previous amendments in their entirety ("Amendment No. 3").

<sup>6</sup> On August 19, 2003, Amex filed a Form 19b-4, which replaced the original filing and all previous amendments in their entirety ("Amendment No. 4").

<sup>7</sup> See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 21, 2003 ("Amendment No. 5").

<sup>8</sup> On August 12, 2004, Amex filed a Form 19b-4, which replaced the original filing and all previous amendments in their entirety ("Amendment No. 6").

<sup>9</sup> See Securities Exchange Act Release No. 50188 (August 12, 2004), 69 FR 51495 ("Notice of the Proposal").

<sup>10</sup> See Amendment No. 7, dated December 16, 2004, submitted by Clare P. McGrath, Senior Vice President and Deputy General Counsel, Amex ("Amendment No. 7"). In Amendment No. 7, Amex proposes a minor modification to the exemptions to the Display Obligation.

<sup>11</sup> See Amendment No. 8, dated January 6, 2005, submitted by Clare P. McGrath, Senior Vice President and Deputy General Counsel, Amex ("Amendment No. 8"). In Amendment No. 8, Amex proposes a minor modification to the exemptions to the Display Obligation.

<sup>12</sup> Amex proposes to define the term "customer options limit order" as "an order to buy or sell an option at a specified price and size that is for the account of a customer as defined in paragraph (a)(26) of Rule 11Ac1-1 under the Securities Exchange Act of 1934." Proposed Amex Rules 958A(e)(3) and 958A-ANTE(e)(3).

proposes to define "immediately upon receipt" to mean, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt by the specialist.<sup>13</sup>

Amex proposes to exempt, or partially exempt, certain orders from the Display Obligation. Specifically, Amex proposes to exempt orders executed upon receipt as well as any order where the customer who placed it requests that the order not be displayed if, upon receipt of the order, the specialist announces to the trading crowd the information about the order that would be displayed absent the customer's request. Amex further proposes that orders the terms of which are delivered by the specialist to another exchange for execution be exempted from the Display Obligation. Exempt order types would also include all or none orders, at the close orders, fill or kill orders, immediate or cancel orders, stop orders, stop limit orders, and complex orders (*i.e.*, spread, straddle, switch and combination orders), orders received prior to or during the opening trading rotation whether at the beginning of the trading day or after a trading halt (although once the trading rotation ends such orders would then be subject to the Display Obligation), and orders of more than 100 contracts, unless the customer placing such order requests that it be displayed.<sup>14</sup> Amex also proposes to amend Amex Rule 590 to include violations of the Exchange's limit order display rule in the Minor Rule Violation Fine System.

## III. Commission Findings and Order Granting Approval

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>15</sup> and, in particular, the requirements of section 6(b)(5) of the Act,<sup>16</sup> which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to

<sup>13</sup> In its filing, Amex states that "receipt" means the time the order enters the Amex Order File system ("AOF"), which is consistent with its surveillance standard for other rules, such as the firm quote rule, wherein the Exchange measures compliance with the rule using the time the order enters the AOF. This means that the time of receipt is when the order is received in the AOF, even if the specialist does not happen to see it for several seconds.

<sup>14</sup> For a complete discussion of these exempt order types, see Notice of the Proposal, *supra* note 3.

<sup>15</sup> 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).

<sup>16</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Commission believes that the display of customer options limit orders that improve the price or size of the best disseminated Amex quote should promote transparency and enhance the quality of executions of customer options limit orders on Amex. The proposed amendments to Amex Rules 958A and 958A-ANTE introduce requirements for customer limit order display that are comparable to the requirements of the Commission's Display Rule, Rule 11Ac1-4 under the Act,<sup>17</sup> which is applicable to customer limit orders received in the equity market. In addition, the Commission believes that the Exchange's proposal to exempt all or none, fill or kill, immediate or cancel, and large sized orders from the Display Obligation is reasonable since these order types are either identical or substantially similar to order types exempt from the Commission's Display Rule.

The Commission also believes that it is consistent with the Act for Amex to exempt stop orders and stop limit orders from the Display Obligation under its rules. These orders are contingent orders that are subject to a particular triggering event and, thus, are not available for execution until the triggering event occurs. A stop order becomes a market order when triggered and thus is not subject to the Display Obligation because such an order would then be immediately executable. A stop limit order becomes a limit order when the triggering event occurs. This limit order would be subject to the Display Obligation.

At the close orders may not be represented, displayed or booked until as near as possible to the close of trading, and, therefore, the Commission believes it is reasonable to exempt such orders from the Display Obligation. Spread, combination, straddle, stock-option, and one-cancels-the-other orders are complex orders with more than one component and, thus, the Commission believes, are not suitable for display.

During a trading rotation, Amex systems attempt to set an opening price for the series. Until that opening price is established, there is no disseminated market. Therefore, the Commission believes it is reasonable to exempt

<sup>17</sup> 17 CFR 240.11Ac1-4.

orders received during a trading rotation from the Display Obligation. The Commission notes, however, that once the trading rotation ends, any orders not executed would then be subject to the Display Obligation.

Finally, customer orders the terms of which are delivered by the specialist to another exchange for execution are exempt from the Exchange's Display Obligation. The Commission believes it is reasonable to exempt such orders since they are subject to execution upon receipt at the other options exchange. Moreover, the Exchange represents that if the order delivered to the other options exchange were canceled, in whole or in part, by the other exchange, then the original customer order would be subject to the Display Obligation immediately upon receipt of the cancellation notice by the Exchange.

The Commission finds good cause for approving Amendments No. 7 and 8 to the proposed rule change prior to the thirtieth day after their publication in the **Federal Register**, pursuant to section 19(b)(2) of the Act.<sup>18</sup> Amendments No. 7 and 8 made minor modifications to the exemption for customer orders the terms of which are immediately delivered to another exchange for execution. Acceleration of Amendments No. 7 and 8 will permit the Exchange to implement the proposal in an expeditious manner. The Commission, therefore, believes that good cause exists, consistent with section 6(b)(5)<sup>19</sup> and section 19(b)<sup>20</sup> of the Act, to accelerate approval of Amendments No. 7 and 8.

#### IV. Solicitation of Comments Concerning Amendments No. 7 and 8

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 7 and 8, including whether they are consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-00-27 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-Amex-00-27. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-00-27 and should be submitted on or before February 18, 2005.

#### V. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change (File No. SR-Amex-00-27), as amended, be approved, and that Amendments No. 7 and 8 thereto be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-317 Filed 1-27-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51063; File No. SR-CBOE-2004-35]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto by the Chicago Board Options Exchange, Inc. To Require the Immediate Display of Customer Limit Orders

January 21, 2005.

#### I. Introduction

On June 17, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 to amend CBOE Rule 8.85 to require the immediate display of customer limit orders. The proposed rule change was published for comment in the **Federal Register** on July 2, 2004.<sup>3</sup> No comments were received regarding the proposal. CBOE filed Amendments No. 1 and 2 with the Commission on August 31, 2004,<sup>4</sup> and January 6, 2005,<sup>5</sup> respectively. This order approves the proposed rule change, grants accelerated approval to Amendment No. 2, and solicits comment on Amendment No. 2.

#### II. Description of Proposed Rule

CBOE proposes to amend CBOE Rule 8.85(b)(i) to codify an immediate display requirement with respect to eligible customer limit orders<sup>6</sup> ("Display Obligation"). Under the proposal, each DPM would be required

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

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

<sup>3</sup> See Securities Exchange Act Release No. 49916 (June 25, 2004), 69 FR 40422 ("Notice of the Proposal").

<sup>4</sup> See letter from Steve Youhn, Assistant Secretary, CBOE, to Nancy Sanow, Assistant Director, Commission, Division of Market Regulation, dated August 30, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE corrected a typographical error in the proposed rule text. Because Amendment No. 1 is a technical amendment, it is not subject to notice and comment.

<sup>5</sup> See Amendment No. 2, dated January 6, 2005, submitted by Steve Youhn, Assistant Secretary, CBOE ("Amendment No. 2"). In Amendment No. 2, CBOE proposes a minor modification to the exemptions to the Display Obligation.

<sup>6</sup> CBOE proposes to define the term "customer limit order" as "an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer." Proposed CBOE Rule 8.85(b)(i).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78s(b).

<sup>21</sup> *Id.*

<sup>22</sup> 17 CFR 200.30-3(a)(12).