

the eligibility of such units for listing, Amex staff requires that each component of the unit satisfy the listing standards applicable to the particular type of security involved. Thus, in the case of a unit consisting of common stock and bonds, the common stock component would be required to satisfy the standards applicable to common stock and the bond would be required to satisfy the standards applicable to bonds. Typically, such a unit will list and trade for a limited period of time (e.g., thirty days) and then automatically separate into its component parts which will be listed and traded.

The Exchange has recently received applications for the listing of Income Deposit Securities (IDSs), which are units comprised of common stock and subordinated notes. In contrast to a typical unit, IDSs will trade as a unit for an extended period of time, although holders will have limited rights to separate the IDS into its component parts (or to combine the components into an IDS).

In order to provide greater clarity and transparency with respect to the listing standards applicable to IDSs and similar securities, the Exchange is proposing to amend section 101 of the *Company Guide* to specifically provide that each component of a unit must meet the applicable listing standards. Comparable amendments would be made to section 1003 with respect to the continued listing standards applicable to units.

Additionally, the Exchange is proposing changes to section 401 of the *Company Guide* to specify that the issuer of a unit is required to immediately publicize any change in the terms of a listed unit, such as changes to the terms and conditions of any of the components or to the ratio of the components within the unit, and to provide current information in this regard on its Web site.<sup>3</sup> Such changes would include those resulting from a stock split or an automatic exchange of one or more components of the unit (e.g., as a result of a secondary offering of units comprised of debt securities with original issue discount). The issuer would be expected to provide such public disclosure as soon as practicable in relation to the nature and effective date of the change. For example, changes resulting from a stock split should be subject to prior disclosure, while changes with respect to original

issue discount should be disclosed as soon as such information is available. The Exchange believes that this expanded disclosure requirement is necessary in order to insure that sufficient information regarding the attributes of these securities is publicly available and readily accessible on a timely basis.

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>5</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 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, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The proposed rule change will impose no burden on competition 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 Amex 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 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. 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 number SR-Amex-2003-83 and should be submitted by October 7, 2003.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48471; File No. SR-CBOE-2003-08]

### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish a Limited Pilot Program Relating to Maximum Bid/Ask Differentials**

September 10, 2003.

On February 27, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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> a proposed rule change to adopt, on a pilot basis, a limited exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). On July 25, 2003,

<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> An issuer which does not maintain a website would be required to include a description of the current terms and conditions of the components of the unit, and the ratio of the components comprising the unit, in its annual report pursuant to section 610 of the Amex *Company Guide*.

<sup>4</sup> 15 U.S.C. 78f(b).

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

the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on August 4, 2003.<sup>4</sup> The Commission received no comments on the proposed rule change. This Order approves the proposed rule change, as amended.

The Commission has reviewed carefully the CBOE's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>5</sup> and with the requirements of section 6(b).<sup>6</sup> In particular, the Commission finds 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 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.

The Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage ("Linkage Plan")<sup>8</sup> and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders). The Exchange has represented that in certain circumstances it might be necessary for the autofade functionality to move one side of the quote beyond the bid/ask parameters provided for in CBOE Rule 8.7(b)(iv), and therefore, has proposed a temporary exception to this Rule. Under the proposed rule change, until January 30, 2004, if the autofade functionality widens a quote beyond that permitted by CBOE Rule 8.7(b)(iv) for 30 seconds, a responsible broker or dealer disseminating that quote will not be considered in violation of the rule. However, if a quote remains outside of

the maximum width after the 30 second time period, the responsible broker or dealer disseminating that quote will be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes.

The Commission believes that because the CBOE's autofade functionality will automate the process, it will help ensure that members comply with the Linkage Plan. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the process to ensure that members are in full compliance with this provision of the Linkage Plan.

Further, the proposed rule change will allow the Exchange to modify how quotes are handled following automatic executions. Currently, if a quote is exhausted via automatic executions, the Exchange may disseminate a size of "1" for a specified "reroute" period during which time the Exchange's Retail Automatic Execution System ("RAES") is disengaged. Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Commission believes that implementation of the autofade functionality will facilitate compliance with the Linkage Plan and will result in more efficient executions through RAES, as described above. Therefore, the Commission believes that it is appropriate, on a pilot basis, to suspend the requirements of CBOE Rule 8.7(b)(iv) to allow the autofade functionality to widen one side of a quote beyond that permitted by the Rule for 30 seconds.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2003-08), as amended, is approved on a pilot basis, to expire January 30, 2004.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48466; File No. SR-NASD-2003-125]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890

September 9, 2003.

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 August 8, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On September 4, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.<sup>3</sup> Pursuant to sections 19(b)(3)(A)(i) and (iii) of the Act<sup>4</sup> and Rules 19b-4(f)(1) and (3) thereunder,<sup>5</sup> Nasdaq has designated this proposal as one that, in part, constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule and that, in the remaining part, is concerned solely with the administration of the self-regulatory organization, which renders the proposed rule change effective upon the Commission's receipt of this filing. 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 the Substance of the Proposed Rule Change

The proposed rule change seeks to reflect the administrative shift of certain responsibilities under NASD Rules 4614, 4619, 4620, 4624, 4625, 5106, 6350 and 11890 from Nasdaq Market Operations to Nasdaq MarketWatch and

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

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

<sup>3</sup> See letter from Alex Kogan, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 3, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq corrected rule text, clarified the application of Rule 19(b)(3)(A) to the proposed rule change, and clarified its description of NASD Rules 5265 and 11890.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(i) and (iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(1) and (3).

<sup>3</sup> See letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 48237 (July 28, 2003), 68 FR 45869.

<sup>5</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

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

<sup>8</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).