

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50214; File No. SR-Amex-2004-49]

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change To Allow Amex Hearing Officers to Preside Over Default and Settlement Proceedings Without Empanelling Members of the Hearing Board To Serve on an Amex Disciplinary Panel

August 18, 2004.

On June 28, 2004, 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 Section 1(b)9 of article V of the Amex Constitution, and Rule 2(b) of the Amex Rules of Procedure in Disciplinary Matters, to allow Amex hearing officers to preside over default and settlement proceedings without empanelling members of the Hearing Board to serve on an Amex Disciplinary Panel. The proposed rule change was published for comment in the **Federal Register** on July 15, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

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> and, in particular, the requirements of Section 6(b) of the Act,<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(7) of the Act,<sup>6</sup> in that it is designed to provide a fair and efficient procedure for the disciplining of members and persons associated with members. Moreover, the Commission finds the proposed rule change furthers the objectives of Section 6(b)(5) of the Act<sup>7</sup> 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.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-Amex-2004-49) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor**,

*Assistant Secretary*.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50212; File No. SR-CBOE-2004-55]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Incorporate Electronic DPMs

August 18, 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 is hereby given that on August 3, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" 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 CBOE. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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

The CBOE proposes to amend its marketing fee to incorporate newly

established electronic DPMs ("e-DPMs") as part of the existing marketing fee.<sup>5</sup> Below is the text of the proposed rule change. Proposed new language is *italicized*.

#### CHICAGO BOARD OPTIONS EXCHANGE, INC. FEE SCHEDULE

1. No Change.
2. MARKET MAKER, *e-DPM* & DPM MARKETING FEE (in option classes in which a DPM has been appointed) (6) \$.40
- 3.-4. No Change.

Notes:

(1)-(5) No Change.  
(6) The Marketing Fee will be assessed only on transactions of Market-Makers, *e-DPMs* and DPMs resulting from customer orders from payment accepting firms with which the DPM has agreed to pay for that firm's order flow, and with respect to orders from customers that are for 200 contracts or less.

(7)-(13) No change.

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#### 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 CBOE included statements concerning the purpose of and basis for its proposal and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

Effective June 1, 2003, the Exchange reinstated its marketing fee program in order for the CBOE to compete with other markets in attracting options order flow in multiply traded options from firms that include payment as a factor in their order routing decisions in designated classes of options.<sup>6</sup> The Exchange proposes to incorporate e-DPMs in the existing marketing fee program. The CBOE states that, in all other respects, the marketing fee

<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. 49991 (July 9, 2004), 69 FR 42472.

<sup>4</sup> In approving this proposed rule change, the Commission 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).

<sup>6</sup> 15 U.S.C. 78f(b)(7).

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

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> On July 12, 2004, the Commission approved the establishment of e-DPMs. See Securities Exchange Act Release No. 50003 (July 12, 2004), 69 FR 43028 (July 19, 2004) (SR-CBOE-2004-24).

<sup>6</sup> See Securities Exchange Act Release No. 47948 (May 30, 2003), 68 FR 33749 (June 5, 2003) (SR-CBOE-2003-19).