

satisfies the applicable standards set forth in Section 107B.<sup>6</sup>

The Amex submits that its proposal to increase the number of equity securities that may be linked to an ELN to thirty (30) will better reflect the competitive nature of attracting listings to the Amex. The Amex believes that expanding the basket of equity securities that may be linked to an ELN will enhance competition and benefit investors and the marketplace through additional product choices and alternatives. Amex also believes that there would be no investor protection concerns with expanding the number of equity securities that may be linked to an ELN from twenty (20) to thirty (30).

#### (2) Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>7</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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

The Amex does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

<sup>6</sup> The Amex notes that a recent proposal by UBS AG to list and trade Enhanced Appreciation Securities (the "Notes") on the Amex would be prohibited under current Section 107B because of the limitation of twenty (20) equity securities. These Notes, issued in amounts of \$1,000 under the symbol "EAN.B," will consist of a basket of thirty (30) common stocks each of which are component stocks of the Dow Jones Industrial Average ("DJIA"). Each component of the basket is equally weighted and will represent approximately 3.33% of the basket. The payment that an investor will receive at maturity is based on the return of each basket stock. For each positive return, the basket stock will be doubled subject to a maximum gain amount. Therefore, the maximum total return at maturity for each \$1,000 principal amount of the Notes will be such maximum or ceiling amount. The Notes are also subject to full downside risk with a negative return reducing the cash payment at maturity. The Amex believes that the limitation of twenty (20) equity securities to be linked to an ELN such as these Notes is unduly restrictive because each linked security is highly capitalized and actively-traded. In addition, the Amex submits that it lists and trades options, exchange-traded funds and index-linked notes based on the DJIA. These Notes are essentially linked to the DJIA with a different payout scenario at maturity.

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

#### 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4<sup>10</sup> thereunder because the Amex has designated the proposed rule change as one that does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,<sup>11</sup> the proposed rule change does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Amex is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Amex has requested that the Commission waive the 30-day operative date and the five-day pre-filing notice requirement in order for it to implement the proposed rule change on December 19, 2002 to allow the Amex to list and trade UBS AG Enhanced Appreciation Securities ("EAN.B") immediately. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period as well as the five-day pre-filing notice requirement,<sup>12</sup> and, therefore, the proposal is effective

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

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the five-day pre-filing notice requirement and the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

and operative upon filing with the Commission.

#### 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 No. SR-Amex-2002-110 and should be submitted by January 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47085; File No. SR-CBOE-2002-46]

#### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating Its AutoQuote Triggered Ebook Execution System

December 23, 2002.

On August 21, 2002, the Chicago Board Options Exchange, Inc. ("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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to its AutoQuote Triggered Ebook Execution ("Trigger") system. Notice of the proposed rule

<sup>13</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.

change was published for comment in the **Federal Register** on September 30, 2002.<sup>3</sup> No comments were received on the proposed rule change.

The Commission originally approved the rule governing the Trigger system in 2001.<sup>4</sup> Trigger allows orders resting in the limit order book to be automatically executed, at their limit prices, in the limited situation where the bid or offer for a series of options generated by the Exchange's AutoQuote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's AutoQuote system) crosses or locks the Exchange's best bid or offer for that series as established by a booked order. Such orders are executed against market makers participating in the Exchange's Retail Automated Execution System ("RAES").<sup>5</sup>

In general, where Trigger has been activated, when the quote generated by Autoquote either touches or crosses an order in the book, the booked order is automatically executed up to the maximum number of contracts permitted to be entered into RAES. The applicable RAES contract limit is set by the appropriate Floor Procedure Committee ("FPC"), but may not be more than 100 contracts.<sup>6</sup> When the number of contracts in the book is greater than the applicable RAES contract limit, the trading crowd will manually execute the remainder. In the limited circumstance where contracts remain in the book after a Trigger execution and a disseminated quote remains locked or crossed, orders in RAES for options of that series are "kicked-out" of RAES, and immediately and automatically routed to the Public Automated Routing ("PAR") terminal (absent contrary instructions of the firm) for manual execution. Because these orders remain RAES eligible, they will be entitled to receive firm quote treatment when represented in the crowd.<sup>7</sup>

After the Trigger rules were approved, CBOE proposed, and the Commission approved, rule changes to permit the implementation of an options quotation with size system with an automatic decrementation feature ("Dynamic

Quotes with Size").<sup>8</sup> Where this new system has been implemented, it has permitted the Exchange to raise the maximum eligible size for RAES orders from 100 contracts to the size disseminated by the Dynamic Quotes with Size system. The Exchange represents that in some cases, the RAES-eligible order size has been raised up to 250 contracts. The Exchange further asserts that, because the Trigger rules are tied to the RAES eligible order size, the size of booked orders that Trigger removes is now much larger than was contemplated when Trigger was first implemented in 2001.

Therefore, the Exchange proposes to amend the Trigger rule to provide that the Trigger system will automatically remove orders in the Exchange's limit order book up to the "Trigger Volume" amount. This amount could be lower than, but could not exceed, the RAES-eligible size for the particular series of options. The appropriate Floor Procedure Committee ("FPC") would be responsible for setting the Trigger Volume for a particular series of options.

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>9</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the rules of an exchange 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 to protect investors and the public interest.

The Commission believes that allowing the Trigger Volume to be set at a size up to, but not more than, the RAES-eligible order size for the particular series of options will not adversely affect the execution price of the booked orders because whether removed by Trigger or executed manually in the trading crowd, these orders may only be executed at their limit prices. The Commission points out that the proposed rule change does not alter CBOE members' duty to comply

with the Commission's rule relating to the firmness of quotations.<sup>11</sup>

Additionally, the Commission approves the amended Trigger rule to provide that the appropriate FPC shall be responsible for setting the Trigger Volume for a particular series of options. Currently, the Trigger rule provides only that the appropriate FPC has the authority to determine those classes of options that are eligible for Trigger. The Commission believes that it is appropriate to set forth in the rule that the appropriate FPC also has the authority to set the maximum number of contracts eligible for Trigger, not to exceed the maximum size of RAES-eligible orders.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (File No. SR-CBOE-2002-46) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47068; File No. SR-CHX-2002-37]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Primary Market Block-Size Trade-Through

December 20, 2002

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 December 11, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder,

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

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

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

<sup>4</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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>3</sup> See Securities Exchange Act Release No. 46519 (September 20, 2002), 67 FR 61358 (September 30, 2002).

<sup>4</sup> See Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2001). See also Securities Exchange Act Release No. 45992 (May 29, 2002), 67 FR 38530 (June 4, 2002) (approving SR-CBOE-2002-12).

<sup>5</sup> CBOE Rule 6.8(d).

<sup>6</sup> CBOE Rule 6.8(c)(v).

<sup>7</sup> CBOE Rule 6.8(d)(v); see Securities Exchange Act Release No. 44462 (June 21, 2002), 66 FR 34495 (June 28, 2002) (approving implementation of Trigger system).

<sup>8</sup> See Securities Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (approval); Securities Exchange Act Release No. 45490 (March 1, 2002), 67 FR 10778 (March 8, 2002) (proposal).

<sup>9</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>10</sup> 15 U.S.C. 78f(b)(5).