

with the proposed transactions (including costs associated with the solicitation of proxies). Exelon states that no state or federal commission, other than this Commission, has jurisdiction over the transactions proposed in the Application.

Exelon has filed its proxy solicitation materials and requests that its proposal to solicit proxies be permitted to become effective immediately, as provided in rule 62(d) under the Act. It appears to the Commission that the Declaration, with respect to the proposed solicitation of proxies, should be permitted to become effective immediately under rule 62(d).

It is ordered, under rule 62 under the Act, that the Declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective immediately, subject to the terms and conditions contained in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51770; File No. SR-Amex-2005-040]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 to Extend Until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below \$20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 14, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Amex filed Amendment Nos. 1 and 2 to the proposal on May 10, 2005, and May 18, 2005, respectively.³ The Amex filed the

proposal, as amended, pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon the filing with the Commission of Amendment No. 2 to the proposal.⁶ 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 Amex proposes to amend Commentary .05 to Amex Rule 903, "Series of Options Open for Trading," to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below \$20 at one-point intervals ("Pilot Program"). The text of the proposed rule change is available on the Amex's Web site (<http://www.amex.com>), at the Amex's principal office, and at the Commission's Public Reference Room.

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 Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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

The Pilot Program was established in June 2003,⁷ with a one-year extension through June 5, 2005, granted by the

change it from a filing made pursuant to Section 19(b)(2) of the Act to a filing made pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. In addition, Amendment No. 2 requests a one-year extension of the \$1 strikes pilot program, through June 5, 2006, rather than permanent approval of the pilot.

¹ 15 U.S.C. 78s(b)(3)(A).

² 17 CFR 240.19b-4(f)(6).

³ As noted above, Amendment No. 2 changed the proposal from a filing made pursuant to Section 19(b)(2) of the Act to a filing made pursuant to Section 19(b)(3)(A) of the Act. The Amex has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

⁴ See Securities Exchange Act Release No. 48024 (June 12, 2003), 68 FR 36617 (June 18, 2003) (order approving File No. SR-Amex-2003-36) ("Pilot Approval Order").

Commission in June 2004.⁸ The Amex believes that the Pilot Program has operated as designed, providing investors with greater flexibility in achieving their investment strategies in connection with stocks trading below \$20. Accordingly, the Amex believes that a one-year extension, through June 5, 2006, is reasonable and consistent with the intent of the Pilot Program.

The Pilot Program permits the Exchange to select a total of five individual stocks on which options series may be listed at \$1 strike price intervals. To be eligible for the Pilot Program, an underlying stock must close below \$20 on its primary market on the previous trading day. If selected, the Exchange may list \$1 strike prices at \$1 intervals from \$3 to \$20, consistent with the terms of the Pilot Program. Under the Pilot Program, a \$1 strike price may not be listed that is greater than \$5 from the underlying stock's closing price on its primary market on the previous day. The Exchange may also list \$1 strikes on any other options class designated by another options exchange that employs a similar pilot program approved by the Commission.

The Pilot Program prohibits the Exchange from listing \$1 strikes on any series of individual equity options classes that have greater than nine months until expiration. In addition, the Exchange is restricted from listing any series that would result in strike prices being \$0.50 apart.

To date, the Exchange believes that the Pilot Program has been beneficial to investors and the options market by providing investors with greater flexibility in the trading of equity options that overlie stocks trading below \$20. In this manner, options investors are able to better tailor their strategies through the availability of \$1 strikes. The Pilot Program Report, attached as Exhibit 3, provides data regarding the Pilot Program as required in the Pilot Program Extension Notice.⁹ The Amex notes that, as the data indicates, the \$1 strikes exhibited higher volume and open interest than the "standard" strike price intervals. Specifically, the five options classes selected by the Amex for \$1 strikes had a trading volume of 595,836 contracts, while the "standard" strikes for the same options classes had a trading volume of 342,553 contracts. Of even greater significance is the difference in open interest between the \$1 strikes and "standard" strikes. As of

⁸ See Securities Exchange Act Release No. 49813 (June 4, 2004), 69 FR 33088 (June 14, 2004) (notice of filing and immediate effectiveness of File No. SR-Amex-2004-45) ("Pilot Program Extension Notice").

⁹ See note 8, *supra*.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 2 replaced and superseded the original filing and Amendment No. 1 in their entirety. Amendment No. 2 revises the proposal to

March 8, 2005, \$1 strikes open interest totaled 883,471 contracts versus 677,553 contracts for "standard" strikes. Given the limited nature of the Pilot Program, the Exchange submits that the impact on systems has been minimal. Accordingly, the Amex believes that an extension of the Pilot Program for one year through June 5, 2006, is warranted.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with the Section 6(b) of the Act,¹⁰ in general, and furthers the objective of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market.

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

The Amex believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in the 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

The Amex has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³ Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action

is consistent with the protection of investors and the public interest. In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Amex has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay so that the proposal will be effective on June 5, 2005.

The Commission waives the five-day pre-filing notice requirement. In addition, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Pilot Program to continue without interruption through June 5, 2006.¹⁴ For this reason, the Commission designates that the proposal become operative on June 5, 2005.¹⁵

At any time within 60 days of the filing of the 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.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ As set forth in the Commission's initial approval of the Pilot Program, if the Amex proposes to: (1) extend the Pilot Program; (2) expand the number of options eligible for inclusion in the Pilot Program; or (3) seek permanent approval of the Pilot Program, it must submit a Pilot Program report to the Commission along with the filing of its proposal to extend, expand, or seek permanent approval of the Pilot Program. The Amex must file any such proposal and the Pilot Program report with the Commission at least 60 days prior to the expiration of the Pilot Program. The Pilot Program report must cover the entire time the Pilot Program was in effect and must include: (1) Data and written analysis on the open interest and trading volume for options (at all strike price intervals) selected for the Pilot Program; (2) delisted options series (for all strike price intervals) for all options selected for the Pilot Program; (3) an assessment of the appropriateness of \$1 strike price intervals for the options the Amex selected for the Pilot Program; (4) an assessment of the impact of the Pilot Program on the capacity of the Amex's, the Options Price Reporting Authority's, and vendors' automated systems; (5) any capacity problems or other problems that arose during the operation of the Pilot Program and how the Amex addressed them; (6) any complaints that the Amex received during the operation of the Pilot Program and how the Amex addressed them; and (7) any additional information that would help to assess the operation of the Pilot Program. See Pilot Approval Order, *supra* note 7.

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. 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. Please include File No. SR-Amex-2005-040 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 No. SR-Amex-2005-040. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. 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 No. SR-Amex-2005-040 and should be submitted on or before June 28, 2005.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5-2897 Filed 6-6-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51771; File No. SR-CBOE-2005-37]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend until June 5, 2006, a Pilot Program for Listing Options on Selected Stocks Trading Below \$20 at One-Point Intervals

May 31, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 9, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The CBOE filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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 Commentary .01 to CBOE Rule 5.5, "Series of Option Contracts Open for Trading," to extend until June 5, 2006, its pilot program for listing options series on selected stocks trading below \$20 at one-point intervals ("Pilot Program"). The text of the proposed rule change is available on the CBOE's Web site (<http://www.cboe.com>), at the CBOE's principal office, and at the Commission's Public Reference Room.

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 the proposed rule change and discussed any comments it received on the proposed rule change. 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

The purpose of the proposed rule change is to extend the Pilot Program for an additional year.⁶ The Pilot Program allows the CBOE to select a total of five individual stocks on which option series may be listed at \$1 strike price intervals. To be eligible for inclusion in the Pilot Program, the underlying stock must close below \$20 on its primary market on the previous trading day. If selected for the Pilot Program, the Exchange may list strike prices at \$1 intervals from \$3 to \$20, but no \$1 strike price may be listed that is greater than \$5 away from the underlying stock's closing price on its primary market on the previous day. The Exchange also may list \$1 strikes on any other options class designated by another options exchange that employs a similar pilot program under its rules. Under the terms of the Pilot Program, the Exchange may not list long-term option series ("LEAPS"® at \$1 strike price intervals for any class selected for the Pilot Program. The Exchange also is restricted from listing any series that would result in strike prices being \$0.50 apart.

As stated in its previous filings establishing and extending the Pilot Program,⁷ the CBOE believes that \$1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower-priced

stocks⁸ by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.⁹ As reflected in the Pilot Extension Notice, the trading volume in a wide majority of the classes selected for the Pilot Program increased significantly within the first year after being selected for the Pilot Program.¹⁰ In ten of the 22 classes originally selected, average daily trading volume ("ADV") increased over 100%, and in some classes ADV more than tripled.¹¹ Now, almost two years since the inception of the Pilot Program, the CBOE notes that ADV in several options classes remains significantly higher than immediately prior to their selection for the Pilot Program.¹² It should be noted that, as reflected in the Pilot Program Report, ADV also has dropped in several options classes since their selection for the Pilot Program, although it is difficult to identify the specific market factors that may contribute to the increase or decrease in options trading volume from one particular class to another, especially considering the time removed since the inception of the Pilot Program. However, the Exchange still believes that the practice of offering customers strike prices for lower-priced stocks at \$1 intervals contributes to the overall volume of the participating options classes.

With regard to the impact on system capacity, the CBOE's analysis of the Pilot Program also suggests that the impact on the CBOE's, the Options Price Reporting Authority's ("OPRA"), and market data vendors' respective automated systems has been minimal. Specifically, the CBOE notes that in February 2005, the 21 classes participating in the Pilot Program accounted for 8,482,369 quotes per day or 2.26% of the industry's 374,547,949 average quotes per day. These 21 classes averaged 285,509 contracts per day or 5.11% of the industry's 5,589,841 average contracts per day. The classes involved totaled 881 series or 2.47% of all series listed.¹³ It should be noted that these quoting statistics may overstate

⁸ To be eligible for inclusion in the Pilot Program, the underlying stock must close below \$20 per share on its primary market on the previous trading day.

⁹ See Pilot Approval Order and Pilot Extension Notice, *supra* note 6.

¹⁰ See Pilot Extension Notice, *supra* note 6.

¹¹ See Pilot Extension Notice, *supra* note 6.

¹² Pursuant to the Pilot Extension Notice, the CBOE is submitting a report (the "Pilot Program Report"), as Exhibit 3 to the proposal. Among other things, the Pilot Program Report contains analyses of the ADV and open interest ("OI") for the options classes that have been selected for the Pilot Program since its inception.

¹³ See Pilot Program Report, *infra* Exhibit 3.

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The CBOE has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

⁶ The Commission approved the Pilot Program on June 5, 2003. See Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR-CBOE-2001-60) ("Pilot Approval Order"). The Pilot Program was extended for an additional year on June 3, 2004. See Securities Exchange Act Release No. 49799 (June 3, 2004), 69 FR 32642 (June 10, 2004) (notice of filing and immediate effectiveness of File No. SR-CBOE-2004-34) ("Pilot Extension Notice"). Under Interpretation and Policy .01(a) to CBOE Rule 5.5, the Pilot Program is scheduled to expire on June 5, 2005.

⁷ See Pilot Approval Order and Pilot Extension Notice, *supra* note 6.