

revised the ODD to, among other things, reflect the CDCC's new automatic exercise parameters for equity and bond options, to add an Annex to the ODD setting forth the holidays and early closings of the Bourse de Montréal, to update the discussion of Canadian federal income tax considerations applicable to non-residents, and to indicate that the S&P/TSE 60 Index is now named the S&P/TSX 60 Index.

Rule 9b-1 under the Act provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date when definitive copies of the amended ODD are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the public interest and protection of investors.<sup>4</sup>

The Commission has reviewed the amended ODD and finds, having due regard to the adequacy of the information disclosed, that it is consistent with the protection of investors and in the public interest to allow the distribution of the amended ODD as of the date of this order.<sup>5</sup>

*It is therefore ordered*, pursuant to Rule 9b-1 under the Act,<sup>6</sup> that the distribution of the revised ODD (SR-ODD-2004-03) as of the date of this order, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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2) (amending the ODD to include, among other things, a discussion of Government of Canada Treasury Bill Price Index options; and 22349 (August 21, 1985), 50 FR 34956 (August 28, 1985) (File No. SR-ODD-85-1) (amending the ODD to include, among other things, a discussion of the risks and uses of stock index and bond options).

<sup>4</sup> This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

<sup>5</sup> Rule 9b-1 under the Act provides that the use of an ODD shall not be permitted unless the options class to which the documents relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933. On April 19, 2004, the Commission, pursuant to delegated authority, declared effective the CDCC's most recent Post-Effective Amendment to its Form S-20 registration statement. See File No. 2-69458.

<sup>6</sup> 17 CFR 240.9b-1.

<sup>7</sup> 17 CFR 200.30-3(a)(39)(i).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51119; File No. SR-Amex-2004-72]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC to Amend Its Minor Rule Violation Plan

February 1, 2005.

On August 23, 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 Exchange Rule 590, its Minor Rule Violation Fine Plan ("Plan"). On November 23, 2004, Amex filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.<sup>3</sup> The Commission received no comments regarding the proposal.

The Exchange proposed to make the following actions subject to its Plan:

- Failure to comply with trade reporting requirements for options (Amex Rule 992);
- Violation of Exchange rules regarding the deactivation of quote assist as it pertains to options (Amex Rules 950(g), Commentary .01 and 950-ANTE(g), Commentary .01);
- Violation of Exchange rules regarding the Options Linkage Program relating to the responding to, and receiving of, Linkage Orders (Amex Rule 941(d) and (e)), Avoidance and Satisfaction of Trade-Throughs (Amex Rule 942(a)), and Locked Markets (Amex Rule 943);
- Violation of Exchange policy regarding affirmative determination of the availability for borrowing of shares of Amex-listed issues prior to effecting short sale transactions (Circular 90-25); and
- Effecting or causing to be effected a transaction outside of business hours through the Intermarket Trading System (Amex Rules 1, 100, and 233).

The Exchange also proposed to amend the Plan as follows:

- Expand the requirement of reporting trade comparison data (Part 2(d)(3) of Amex Rule 590) to include all transactions effected on the Exchange and to relocate such rule to Part 1(g) of

Amex Rule 590 so as to subject it to Amex Enforcement Department action rather than Amex Floor Official action; and

- Revise Part 3 of Amex Rule 590 to reflect the current filing schedule for the Form 50 (Short Position), which is now also required to be filed at or about the end of the month for selected derivative products.

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> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>5</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that the proposal is consistent with Sections 6(b)(1)<sup>6</sup> and 6(b)(6)<sup>7</sup> of the Act which require that the rules of an exchange enforce compliance and provide appropriate discipline for violations of Commission and Exchange rules. In addition, because Amex Rule 590 provides procedural rights to a person fined under the Plan to contest the fine and permit a hearing on the matter, the Exchange believes the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7)<sup>8</sup> and 6(d)(1)<sup>9</sup> of the Act.

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act<sup>10</sup> which governs minor rule violation plans. The Commission believes that these changes to Amex's Plan will strengthen its ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way

<sup>4</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78f(b)(1).

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

<sup>8</sup> 15 U.S.C. 78f(b)(7).

<sup>9</sup> 15 U.S.C. 78f(d)(1).

<sup>10</sup> 17 CFR 240.19d-1(c)(2).

<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. 50871 (December 16, 2004), 69 FR 76801.

minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the Exchange's Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's Plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, whether fines of more or less than the recommended amount are appropriate for violations under the Plan, on case-by-case basis, or a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>11</sup> and Rule 19d-1(c)(2) under the Act,<sup>12</sup> that the proposed rule change (SR-Amex-2004-72), as amended, be, and hereby is, approved and declared effective.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51112; File No. SR-CBOE-2005-013]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Extend a Pilot Program Relating to Certain Limitations on Trade-Through Liability at the End of the Options Trading Day

January 31, 2005.

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 January 26, 2005, 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 and II below, which items have been prepared by the CBOE. On January 28, 2005, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> 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

CBOE proposes to extend a pilot program relating to certain limitations on trade-through liability at the end of the trading day.

The text of the proposed rule change is available on the CBOE's Web site at <http://www.cboe.com>, at the Exchange's Office of the Secretary, 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, 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 Exchange 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 filing is to conform CBOE rules to Joint Amendment No. 14 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan")<sup>7</sup> to extend the pilot provision in the CBOE rules limiting

<sup>3</sup> In Amendment No. 1 the Exchange made certain technical corrections to Exhibit 5 to the filing.

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> The CBOE 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).

<sup>7</sup> See Joint Amendment No. 14 to the Linkage Plan filed by the Exchange on January 27, 2005 in a letter from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 26, 2005.

trade-through liability at the end of the options trading day. Pursuant to the Linkage Plan pilot as currently in effect, an options exchange member's trade-through liability is limited to 25 contracts per Satisfaction Order<sup>8</sup> for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. The participant option exchanges in the Linkage Plan ("Participants") originally proposed this limitation on liability as a one-year pilot in Joint Amendment No. 4 to the Linkage Plan. The Commission temporarily put into effectiveness the Linkage Plan pilot on January 31, 2003,<sup>9</sup> followed by permanent approval on June 18, 2003.<sup>10</sup> The Commission then granted two extensions to the Linkage Plan pilot, first until June 30, 2004<sup>11</sup> and then until January 31, 2005.<sup>12</sup>

The Exchange is proposing to extend the pilot in CBOE's rules for an additional year, until January 31, 2006. In addition, the Exchange proposes to increase the limit on trade-through liability at the end of the day from 25 contracts to 50 contracts per Satisfaction Order. This increase in the limit on liability would be effective on February 1, 2005, when the current pilot expires. The period during which this limit will apply will remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>14</sup> in particular, in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market

<sup>8</sup> A "Satisfaction Order" is an order sent through the Linkage to notify a Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. See Section 2(16)(c) of the Linkage Plan.

<sup>9</sup> See Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (Temporary effectiveness of pilot program on a 120-day basis).

<sup>10</sup> See Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

<sup>11</sup> See Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

<sup>12</sup> As a part of this extension of the Linkage Plan pilot program, the Participants increased the maximum liability from 10 to 25 contracts. See Securities Exchange Act Release No. 49863 (June 15, 2004), 69 FR 35081 (June 23, 2004) (Order approving Joint Amendment No. 12).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</sup> 17 CFR 240.19d-1(c)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

<sup>14</sup> 15 U.S.C. 78s(b)(1).

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