

previously approved,⁹ the proposed rule change does not present any regulatory issues that the Commission has not previously considered. Furthermore, the Exchange believes that early implementation of the proposed rule change would benefit the public interest and the interests of investors by clarifying member compliance responsibilities and conforming the Exchange's rules to those of other markets.

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-2001-96 and should be submitted by March 6, 2002.

V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b).¹⁰ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 6(b)(5) of the Act in that it is 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.

In its proposal, Amex proposes to amend section (b) of Amex Rule 933 (entitled "Automatic Execution of Options Orders") to limit entry of Auto-Ex eligible orders, in a call class and/or put class for the same option issue, for accounts in which the same person is directly or indirectly interested, to intervals of no less than 15 seconds. In addition, Amex proposes that members and member organizations be responsible for establishing procedures to prevent orders in a call class and/or put class for the same option issue from being entered at intervals of less than 15 seconds for any account in which the same person is directly or indirectly interested. Finally, Amex proposes to delete Commentary .03 to Rule 933.

The Commission finds that paragraph (b) makes explicit the responsibilities and requirements of Amex members and member organizations with respect to the entry of multiple orders by the same person within intervals of less than 15 seconds. The Commission recognizes that the Exchange's proposal will place an explicit prohibition against members or member organizations entering multiple orders in a call class and/or put class for the same option issue within any period of less than 15 seconds for an account in which the same person is directly or indirectly interested. The Commission finds that this prohibition is similar to, although not exactly identical to, provisions that it has already approved for other options exchanges.¹¹ The Commission also believes that the Exchange's establishment of a prohibition on members and member organizations entering multiple orders for an account in which the same person is directly or indirectly interested within a period of less than 15 seconds, in lieu of a presumption regarding the unbundling of such orders, will add certainty and consistency to the enforcement of the Rule and provide members and member organizations with clarity as to what

conduct violates the Rule.¹² In addition, the Commission believes that it is appropriate for the Exchange to delete Commentary .03 to Rule 933. The Commission therefore finds that the proposed rule change is consistent with the provisions of the Act and rules thereunder.¹³

Furthermore, the Commission believes that accelerated approval of this proposal is appropriate to ensure that the Exchange's market makers are not placed at a competitive disadvantage to those market makers who are trading at an exchange where a substantially similar requirement is currently in place. For these reasons, the Commission finds good cause, consistent with section 19(b)(2) of the Act,¹⁴ to approve the proposed rule change prior to the thirtieth day after publication in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁵ that the proposed rule change (SR-Amex-2001-96) is hereby approved on an accelerated basis.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45412; File No. SR-Amex-2001-68]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Adopt Sanctioning Guidelines for the Exchange's Order Handling Rules

February 7, 2002.

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 September 4, 2001, the American Stock

¹² The Commission notes that the Amex proposal allows the Exchange solely to prohibit conduct expressly set forth in Amex Rule 933(b). If in the future, the Exchange seeks to prohibit members from entering multiple orders for the same person outside of the time interval set by the rule, it must file such a revision as a proposed rule change with the Commission.

¹³ In this regard, the Commission notes that the Exchange may not take punitive action against the customer of a particular Amex member in the event that the member violates Amex Rule 933(b).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ *Id.*

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹ In this connection, the Amex cites Amex Rule 128A (Automatic Execution for Exchange-Traded Funds), CBOE Rule 6.8(e) (RAES Operations—Order Entry Firms), and New York Stock Exchange ("NYSE") Rule 1005 (Automatic Execution—NYSE Direct+™).

¹⁰ 15 U.S.C. 78f(b). 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).

¹¹ See Securities Exchange Act Release Nos. 43971 (February 15, 2001), 66 FR 11344 (February 23, 2001) (order partially approving File No. SR-PCX-00-05); 44017 (February 28, 2001), 66 FR 13820 (March 7, 2001) (order approving File No. SR-ISE-00-20); and 44104 (March 26, 2001), 66 FR 18127 (April 5, 2001) (order approving File No. SR-CBOE-00-47). The Commission approved proposals by the Pacific Exchange ("PCX"), the International Securities Exchange ("ISE"), and the Chicago Board Options Exchange ("CBOE") that prohibit members from entering multiple orders for the same beneficial account within a 15-second period.

Exchange LLC ("Amex" 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 Exchange. 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 Exchange proposes to adopt sanctioning guidelines for violation of its options order handling rules. The text of the proposed rule change is available at the Amex's Office of the Secretary, and at the Commission.

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 Exchange 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, Proposed Rule Change

(1) Purpose

The Exchange proposes to adopt sanction guidelines for violations of its options rules related to firm quotes (Exchange Rule 958A), limit order display (Exchange Rule 958A),³ priority, parity, and precedence (Exchange Rules 111, 126, 155, 950, and 958),⁴ and trade reporting (Exchange Rule 992).⁵ The

Exchange also proposes to adopt sanction guidelines for its rule regarding anti-competitive behavior and harassment (Exchange Rule 16).

The Exchange has developed the proposed sanctions guidelines for use by the various bodies adjudicating disciplinary matters in determining appropriate sanctions. These bodies include Disciplinary Panels, the Amex Adjudicatory Council and the Amex Board of Governors ("Adjudicators").⁶ The guidelines also may be used by parties to a disciplinary action in entering into a stipulation of facts and consent to penalty.

The proposed sanction guidelines contain an introductory section that explains the overall purpose of the guidelines and sets forth general principles that apply to all sanctions determinations. The introductory section also includes principal considerations for determining sanctions that may be considered as aggravating or mitigating factors. The proposed sanction guidelines contain Individual Guidelines that provide specific monetary and non-monetary sanctions generally applicable to the violations at issue and list additional principal considerations for the specific violations.

The Exchange believes that the proposed sanction guidelines would provide members of Disciplinary Panels, the Amex Adjudicatory Council, and the Board with guidance in determining appropriate remedial sanctions that may be applied flexibly. Because the guidelines do not prescribe fixed sanctions for particular misconduct, they encourage Adjudicators to exercise discretion while maintaining consistency and uniformity in the imposition of disciplinary sanctions.⁷

Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order").

⁶ The composition and function of Disciplinary Panels, the Amex Adjudicatory Council, and the Amex Board in disciplinary matters is set forth in the following rules of the Exchange: Article II, Section 6 of the Exchange Constitution ("Amex Adjudicatory Council"), Article V of the Exchange Constitution ("Discipline of Members"), Exchange Rule 345 ("Determinations Involving Employees and Prospective Employees"), and the Rules of Procedure Applicable to Exchange Disciplinary Proceedings. Disciplinary Panels, the Adjudicatory Council and the Amex Board (when it reviews disciplinary decisions) all function independently of the Exchange's regulatory staff. Adjudicators determine whether the aggregation of violations for purposes of determining sanctions is appropriate in any situation.

⁷ The Exchange submitted to the Commission a letter, for which it requested confidential treatment, proposing how its regulatory staff would aggregate violations of the order handling rules, where the violations are identified through the Exchange's automated surveillance system. See letter from Richard T. Chase, Executive Vice President, Amex,

For these reasons, the Exchange believes that the proposed sanction guidelines would enhance its disciplinary processes.

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁸ of the Act, in general, and furthers the objectives of Section 6(b),⁹ in particular, in that it provides that members and persons associated with members will be appropriately disciplined for violations of the Exchange's rules.

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

The Exchange states that the proposed rule change will impose no burden on competition.

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 Exchange 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

³ The Exchange has an option limit order display rule filing pending with the Commission. See SR-Amex-00-27.

⁴ According to the Exchange, it does not have an explicit definition of its members' obligation of "best execution" owed to its customer. The Exchange states that its rules regarding firm quotes, limit order display, priority, parity and precedence, however, collectively define the obligations of members with respect to orders and, therefore, embody the concept of best execution.

⁵ The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See

to John McCarthy, Associate Director, Office of Compliance, Inspections and Examinations, Commission, dated December 24, 2001.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(6).

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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2001-68 and should be submitted by March 6, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45419; File No. SR-CBOE-2001-63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Lead Market-Makers and Supplemental Market-Makers

February 7, 2002.

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 December 17, 2001, 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 Exchange filed an amendment to the proposed rule change on February 7, 2002.³ 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 CBOE proposes to amend its CBOE Rule 8.15 to make clear that Lead Market-Makers and Supplemental

Market-Makers may determine a formula for generating automatically updated market quotations during the trading day. The text of the proposed rule change is set forth below. Additions are in italics; deletions are in brackets.

* * * * *

Rule 8.15. Lead Market-Makers and Supplemental Market-Makers

The appropriate Market Performance Committee (the "Committee") may appoint one or more market-makers in good standing with an appointment in *an option class* [the S&P 100 options or in options on the DJIA] *for which a DPM has not been appointed* as Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") to participate in the modified opening rotation described in Interpretation .02 to Rule 24.13, including participating in opening rotations using the Exchange's Rapid Opening System., *and/or to determine a formula for generating automatically updated market quotations during the trading day as described in paragraph (d) below.*

(a) LMMs and SMMs shall be appointed on the first day following an expiration for a period of one month ("expiration month") and shall be assigned to a zone with one or more LMMs or SMMs. The Committee shall select the series to be included in a zone.

1. Factors to be considered by the Committee in selecting LMMs and SMMs include: Adequacy of capital, experience in trading index options, presence in the [S&P] trading crowd, adherence to Exchange rules and ability to meet the obligations specified below. An individual may be appointed as an LMM in only one zone for an expiration month but may also be appointed as an SMM in other zones. An individual may be appointed to be an SMM in more than one zone. When individual members are associated with one or more other members, only one member may receive an LMM appointment.

2.-4. No change.

(b) The obligations of an LMM are as follows:

1.-3. No change.

4. to perform the above obligations for a period of one expiration month commencing on the first day following an expiration. Failure to perform such obligations for such time may result in suspension of up to three months from trading in all series of the [S&P 100] option *class* [or in options on the DJIA as appropriate].

(c) No change.

(d) Each LMM or SMM appointed in accordance with this Rule to determine a formula for generating automatically

*updated market quotations shall for the period in which its acts as LMM or SMM use the Exchange's AutoQuote system or a proprietary automated quotation updating system to update market quotations during the trading day. In addition, the LMM or SMM shall disclose the following components of the formula to the other members trading at the trading station at which the formula is used: option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying. Notwithstanding the foregoing, the appropriate Market Performance Committee shall have the discretion to exempt LMMs and SMMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems.*⁴

* * * * *

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 amend CBOE Rule 8.15 to make explicit in the rule that the appropriate Market Performance Committee ("MPC") may appoint Lead Market-Makers ("LMMs") and Supplemental Market-Makers ("SMMs") to determine a formula for generating automatically updated market quotations and to use the Exchange's Autoquote system or to provide a proprietary automated quotation updating system to monitor and automatically update market quotations

⁴ The Exchange has agreed to submit an amendment adding a cross-reference to Interpretation and Policy .07 to CBOE Rule 8.7 to clarify that all of the requirements of Interpretation and Policy .07 apply to proposed CBOE Rule 8.15(d). Telephone call between Patrick Sexton, Assistant General Counsel, CBOE, and Deborah Flynn, Assistant Director, Division, Commission (February 6, 2002).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Amendment No. 1 requests the Commission to designate the proposed rule change as having been filed pursuant to Section 19(b)(2) of the Act.