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Dated at Rockville, Maryland this 17th day of December, 2003.

For the U.S. Nuclear Regulatory Commission.

**Martin J. Virgilio,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 03-31874 Filed 12-24-03; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 1.138, "Laboratory Investigations of Soils and Rocks for Engineering Analysis and Design of Nuclear Power Plants," describes field investigations and testing practices acceptable to the NRC staff for determining soil and rock properties and characteristics needed for engineering analysis and design for foundations and earthworks for nuclear power plants.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. Y. Li, (301) 415-4141; email [yxl1@nrc.gov](mailto:yxl1@nrc.gov).

Regulatory guides are available for inspection or downloading at the NRC's Web site at <http://www.nrc.gov> under

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Dated at Rockville, Maryland, this 16th day of December 2003.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 03-31873 Filed 12-24-03; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of December 22, 2003:

A Closed Meeting will be held on Tuesday, December 23, 2003 at 2 p.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), and (10) and 17 CFR 200.402(a) (5), (7), and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the item listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December 23, 2003 will be: Settlement of an injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: December 23, 2003.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 03-32027 Filed 12-23-03; 1:44 pm]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48948; File No. SR-Amex-2003-105]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Exceptions to the Exchange's Firm Quote Rule

December 18, 2003.

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 December 1, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Amex proposes to amend Rule 958A to eliminate the application of the Rule's exceptions to different series within the same option class. The text of the proposed rule change is set forth below in its entirety. Proposed deletions are in brackets.

\* \* \* \* \*

#### Rule 958A Application of the Firm Quote Rule

(a) through (b) No change  
(c) *Obligations of a Responsible Broker or Dealer*—(i) No change.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any listed options as provided in paragraph (c)(i) when:

(A)(1) Prior to the presentation of an order to sell (buy), a responsible broker

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

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

or dealer has communicated to the exchange, a revised quotation size;

(2) At the time an order to sell (buy) is presented, a responsible broker or dealer is in the process of effecting a transaction in such [class and/or] series of option, and immediately after the completion of such transaction it communicates to the Exchange a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(i) of this Rule to sell (buy) that option in an amount greater than such revised quotation size;

(3) Before the order sought to be executed is presented, a responsible broker or dealer has communicated to the Exchange a revised bid or offer; or

(4) At the time the order sought to be executed is presented, a responsible broker or dealer is in the process of effecting a transaction in such [class and/or] series of option, and, immediately after the completion of such transaction, a responsible broker or dealer communicates to the exchange a revised bid or offer; provided, however, that the responsible broker or dealer shall nonetheless be obligated to execute any such order as provided in paragraph (c)(i) at its revised bid or offer in any amount up to its published quotation size or revised quotation size; or

(B) No change.

(d) No change.

\* \* \* \* \*

## 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 the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

In November 2000, the Commission determined to impose market-wide firm quote obligations on the options markets effective April 1, 2001.<sup>3</sup> Rule 11Ac1-1 under the Act (known as the Quote Rule) requires all national securities

exchanges to establish procedures for collecting from their members and making available to quotation vendors, bids, offers and quotation sizes with respect to reported securities. It also requires that quotation information be "firm" for the disseminated size, subject to certain exceptions. In applying the Quote Rule to the options markets, the SEC required the options exchanges to amend their rules to conform to the requirements of the Quote Rule. The Amex amended Rule 958A as required and received final SEC approval of the amendments in June 2001.<sup>4</sup>

The purpose of the Quote Rule is to make information on prices, volume and quotes for securities in all markets available to all investors so that they can make informed investment decisions. However, the SEC also recognized that the rule needs to prevent responsible brokers or dealers from being required to execute more than one order on the basis of the disseminated bid or offer and that the responsible brokers or dealers need sufficient time to update their quotations following completion of a transaction. Thus, in conforming Amex Rule 958A to the Quote Rule, the Amex included two exceptions, among others, from SEC Rule 11Ac1-1, with revisions to clarify the manner in which the Amex planned to interpret and enforce the Quote Rule in its options market.

The Quote Rule exceptions provide that the specialist would be relieved of his obligation to effect transactions at his published bid or published offer if (i) before an order is presented for execution, the specialist has communicated to the Exchange a revised bid or offer superseding his published bid or offer (a "revised bid or offer") or, (ii) at the time an order is presented, the specialist is in the process of effecting a transaction in that security, and, immediately after the completion of such transaction, he communicates a revised bid or offer to the Exchange.<sup>5</sup>

The exceptions to the Quote Rule as set forth in Rule 11Ac1-1(c)(3) apply to "subject security" and it was unclear at the time the Amex amended Rule 958A whether the exceptions applied to an option class, option series or both. The

definition of subject security found in Rule 11Ac1-1 suggests both.<sup>6</sup> As a result, in order to clarify its understanding of the scope of the exceptions, the Amex specified in its amendment to Rule 958A that the exceptions would apply to the entire class as well as each individual series in an option class. Thus, pursuant to the exceptions set forth in Amex Rule 958A(c)(ii), the specialist and registered options traders, as responsible brokers or dealers, are not required to execute more than one order at their published bid or offer in that series or in any series within that option class. The period of time within which the specialist and registered options traders are relieved of their obligation to effect additional transactions at the published bid or offer would begin to run for all series in a given option class whenever a transaction was being effected in any one of the series in that option class.

The Exchange believed at the time it filed its amendments to Rule 958A and continues to believe that the exceptions should apply to the entire class as well as each individual series in a given option class. It is appropriate to allow the exceptions to apply to the entire class as an effective way for specialists and registered options traders to manage their overall risk in an option class. In determining competitive quotes and sizes for each series, specialists and registered options traders take into consideration their overall risk in the option class. If there is a change in the price of the underlying stock or an execution in one series, the specialist and registered options trader will seek to re-quote all series in that class. The exceptions provide specialists with the ability to update quotes on a timely basis without having to be firm to multiple orders in different series within the same class submitted simultaneously by one or more market participants. Given the numerous series within each option class that are traded by the Exchange,<sup>7</sup> the requirements for specialists to make two-sided markets

<sup>6</sup> The term subject security is defined in subparagraph (a)(25) of Rule 11Ac1-1 as an "exchange-traded security" meeting certain executed volume thresholds. An "exchange-traded security" is defined in subparagraph (a)(10) as any "covered security" or "class of covered securities" listed or registered on an exchange. A "covered security" is defined in subparagraph (a)(6) and means any "reported security," which is defined in subparagraph (a)(20) and means any security or class of securities.

<sup>7</sup> For a typical equity option class, the Exchange initially lists 24 series, that is, both puts and calls in four expiration months with three strike prices within each expiration month. As the underlying stock price moves, additional series are added. Options on volatile stocks can have well over 100 different series trading at any given time.

<sup>3</sup> See Securities Exchange Act Release No. 43591 (November 17, 2000), 65 FR 75450 (December 1, 2000).

<sup>4</sup> See Securities Exchange Act Release No. 44383 (June 1, 2001), 66 FR 30959 (June 8, 2001).

<sup>5</sup> In the Quote Rule adopting Release the SEC further clarified the second exception by stating "[a] responsible broker or dealer should be deemed to be in the process of effecting a transaction from the moment an order is presented to him for execution until the completion of communication of all information necessary to complete the transaction." See Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978), at footnote 33.

with size in each series, and the dependence upon a limited supply of stock available to hedge risk taken by specialists and registered options traders who submit narrow quotes in large size for each series within an option class it was believed to be appropriate for the Exchange to apply the exception to the class as well as the series. In addition, the Exchange's surveillance and enforcement program for the options Quote Rule was designed based upon the rule text as approved and the interpretation that would allow specialists and registered options traders to avail themselves of the exceptions to the Quote Rule for all series within a class after having received an order in one series in that option class.

However, in recent discussions with SEC staff regarding the Amex's enforcement of the Quote Rule for options, the Exchange has been advised that the exceptions should only be applied on a series-by-series basis. The SEC staff has, therefore, requested that the Amex amend Rule 958A to eliminate the exception for the entire class. The Amex is submitting this proposed rule change in compliance with that request.

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of section 6(b)(5) of the Act<sup>9</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

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

The Exchange does not believe that the proposed rule change will impose any 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. Comments should be submitted electronically at the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-Amex-2003-105. 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, comments should be sent in hard copy or by e-mail but not by both methods. 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 Exchange. All submissions should refer to File No. SR-Amex-2003-105 and should be submitted by January 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-31803 Filed 12-24-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48950; File No. SR-CBOE-2003-55]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Provisions of its Constitution and Rules Pertaining to the Governance of the Exchange**

December 18, 2003.

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 November 19, 2003, 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. On December 11, 2003, CBOE submitted Amendment No. 1 to the proposed rule change. 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 amend various provisions of its Constitution and Rules pertaining to the governance of the Exchange. The text of the proposed rule change appears below. Added text is in *italics*. Deleted text is in *brackets*.

### **Chicago Board Options Exchange, Incorporated Constitution**

#### **Article I**

#### **Definitions**

Section 1.1 When used in this Constitution, except as expressly otherwise provided or unless the context otherwise requires:

(a) The term "Exchange" means the Chicago Board Options Exchange, Incorporated or its exchange market.

(b) The term "member" means an individual member or a member organization of the Exchange (or a registered nominee of such a member organization) that is a regular member in good standing described in Section 2.1(b) of Article II of the Constitution.

(c) The term "member organization" means a partnership or corporation which owns *or leases* a membership, or a partnership or corporation for which a membership is registered in

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

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

<sup>10</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.