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NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 11th day of August 2003.

For The Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48319; File No. SR-Amex-2003-54]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Limitation of Liability under the Options Intermarket Linkage

August 12, 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 May 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to 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 Amex. 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 add Amex Rule 945 for the purpose of limiting liability for the Options Clearing Corporation ("OCC") with respect to members' use of the Options Intermarket Linkage (the "Linkage").

The text of the proposed rule change is below. Proposed additions are in *italics*.

\* \* \* \* \*

#### Rule 945. Liability for the Options Intermarket Linkage

*Rule 945. (a) The Linkage as used to send orders and other information to or from the Exchange is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. It is the responsibility of each member, member organization or*

*associated person of such member or member organization to verify the accuracy of transactions sent and received through the Linkage.*

*(b) The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively, "OCC") shall not be liable to members, member organizations or associated persons of members or member organizations for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades or otherwise.*

\* \* \* \* \*

#### 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 had 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 Exchange is proposing to add a new rule, Amex Rule 945, for the purpose of limiting the liability of OCC with respect to member and member organization use of the Linkage. Proposed Amex Rule 945(a) provides that the Linkage, as used to send orders and option information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. In addition, the proposed Amex Rule 945(b) provides that OCC will have no liability to members of the Exchange or to persons associated with such members with respect to the use, non-use or inability to use the Linkage, including without limitation, the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information

transmitted through the Linkage or otherwise.

##### 2. Statutory Basis

The Amex believes that its proposal is consistent with Section 6(b) of the Act<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>4</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

##### 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.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Amex neither solicited nor received written comments concerning 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 Amex 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

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

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

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

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 filings will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-2003-54 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48324; File No. SR-CBOE-2003-27]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

August 12, 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 July 7, 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. 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 CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The text of the proposed rule change is set forth below.

#### Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)-(b) No change.

#### (c) Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book

Market participants, as defined in Rule 6.45A(a)(i), may submit quotes or orders electronically to trade with orders in the electronic book. A floor broker market participant may only represent as agent customer orders or orders from unaffiliated broker-dealers. When a market participant's quote or order interacts with the order in the book, a trade occurs, CBOE will disseminate a last sale report, and the size of the book order will be decremented to reflect the execution. Allocation of the book order shall be as follows:

(i)-(iv) 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 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

CBOE Rule 6.45A(c) governs the interaction of market participants' quotes/orders with orders in the electronic book.<sup>3</sup> In short, under the rule, multiple market participants submitting orders to access the book within a period of time not to exceed N-seconds (the "N-second group") are entitled to receive an allocation of the book order pursuant to an allocation algorithm.<sup>4</sup> CBOE Rule 6.45A(c) limits the orders that floor brokers may represent as agent to customer orders. In adopting this restriction, the Exchange recognized that allowing floor brokers to represent certain broker-dealer orders

could raise issues under section 11(a) of the Act.<sup>5</sup>

The Exchange proposes to delete this restrictive language from the text of CBOE Rule 6.45A and instead allow floor brokers to represent as agent broker-dealer orders from unaffiliated parties (in addition to customer orders) as part of the N-second group. By limiting floor brokers' representation of broker-dealer orders to non-affiliated entities, the CBOE believes that the requirements of section 11(a) of the Act will be satisfied by reason of the exemption provided in Rule 11a2-2(T) under the Act.<sup>6</sup>

The Exchange believes that the proposed rule change is consistent with the manner in which "Electronic Book Executions" occur in PCX Plus.<sup>7</sup> Pursuant to PCX Rule 6.76(b)(4), when a market maker's quote interacts with a public customer order in the book, that market maker receives an allocation of the book order while the balance of that order is allocated on a size pro rata basis to all "crowd participants" who respond within a designated time. The term "crowd participants" includes floor brokers representing orders for both customers and broker-dealers.<sup>8</sup> Accordingly, the PCX rule allows floor brokers to submit orders to buy (sell) the book on behalf of public customers and broker-dealers, as proposed by the CBOE.

The CBOE believes that this proposal enhances the ability of floor brokers to represent unaffiliated broker-dealer orders, which will serve to increase depth and liquidity in those affected classes.

##### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of

<sup>5</sup> 15 U.S.C. 78k(a).

<sup>6</sup> 17 CFR 240.11a2-2(T).

<sup>7</sup> See Securities Exchange Act Release 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

<sup>8</sup> PCX Rule 6.1(b)(38) defines "crowd participants" as "market makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series." It is the CBOE's understanding that Floor Brokers on PCX acting under this Rule are limited by section 11(a) to representing broker-dealer orders from non-affiliated entities.

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

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

<sup>5</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.

<sup>3</sup> The Commission recently approved CBOE Rule 6.45A as part of the Hybrid filing. See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

<sup>4</sup> See CBOE Rule 6.45A(c)(ii).