

needs or accommodations is appreciated.

Daniel C. Schnieder,
Advisory Committee, Management Officer.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47733; File No. 4-208]

Intermarket Trading System; Order Granting Approval of the Twentieth Amendment to the ITS Plan Relating to the Recognition of the Use by the Chicago Board Options Exchange, Inc. of the Regional Computer Interface and the Description of Commitment Acceptance Applicable to Specialists of the Boston Stock Exchange, Inc.

April 24, 2003.

On March 14, 2003, the Intermarket Trading System Operating Committee ("ITSOC") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 11A of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 11A3a3-2 thereunder,² a proposed amendment ("Twentieth Amendment") to the restated ITS Plan.³ The proposed amendment recognized the use by the Chicago Board Options Exchange, Inc. ("CBOE") of the Regional Computer Interface ("RCI"); and revised the description of commitment acceptance applicable to specialists of the Boston Stock Exchange, Inc. ("BSE"). Notice of the proposed amendment appeared in the **Federal Register** on April 3, 2003.⁴ The Commission received no comments on the proposed amendment. This order approves the proposed amendment.

The Commission finds that the proposed amendment is consistent with the Act and the rules and regulations thereunder applicable to the ITS and, in particular, Sections 11A(a)(1)(C)(ii) and

(D) of the Act,⁵ and Rule 11A3-2(c)(2) thereunder,⁶ which require among other things, that a plan amendment must be necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and shall remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that the plan amendment should enable the CBOE to use the communications network that links all the Participant markets. Further, the Commission believes that the proposed amendment clarifies in the ITS Plan those instances where an ITS transaction will be represented by one or more BSE Registered specialists.

It is therefore ordered, pursuant to section 11A(a)(3)(B) of the Act,⁷ that the proposed Twentieth Amendment be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47753; File No. SR-CBOE-2001-60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 by the Chicago Board Options Exchange, Inc. To Initiate a Pilot Program That Allows the Listing of Strike Prices at One-Point Intervals for Stocks Trading Under \$20

April 29, 2003.

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 12, 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 Exchange. The Exchange filed Amendments No. 1, 2, 3, 4, 5, 6, 7, and 8 to the proposed rule change on March 13, 2002,³ June

21, 2002,⁴ December 6, 2002,⁵ March 7, 2003,⁶ March 25, 2003,⁷ April 16, 2003,⁸ April 24, 2003,⁹ and April 25, 2003,¹⁰ respectively. The Commission is publishing this notice, as amended, 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 initiate a one-year pilot program that would allow the listing of strike prices at one-point intervals where the underlying stock trades under \$20 ("1 Strike Pilot Program" or "Pilot Program"). The text of the proposed rule change appears below. Additions are in *italics*. Deleted text is in [brackets].

* * * * *

Market Regulation ("Division"), Commission, dated March 12, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange provides additional information on the proposal, including information regarding Options Price Reporting Authority ("OPRA") capacity.

⁴ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Elizabeth King, Associate Director, Division, Commission, dated June 20, 2002 ("Amendment No. 2"). Amendment No. 2 discusses the need for \$1 strikes and provides information regarding market data vendor capacity.

⁵ See letter from Steve Youhn, Attorney, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated December 5, 2002 ("Amendment No. 3"). In Amendment No. 3, the Exchange proposed to reduce the number of underlying stocks included in the pilot program to 25 and list only \$1 strikes that fall within a \$5 range of the underlying stock price.

⁶ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated March 6, 2003 ("Amendment No. 4"). In Amendment No. 4, the Exchange proposed to: (1) Reduce the number of underlying stocks included in the pilot program to five stocks; (2) list \$1 strike prices on options classes include in the \$1 strike price program of other options exchanges; and (3) provide that the CBOE would not list Long Term Equity Option Series ("LEAPS") in equity option classes at \$1 strike price intervals.

⁷ On March 25, 2003, the Exchange filed Amendment No. 5, which supercedes the original filing and Amendments No. 1, 2, 3, and 4 in their entirety.

⁸ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 15, 2003 ("Amendment No. 6"). In Amendment No. 6, the Exchange made a correction to the proposed rule text and to the purpose section of the proposal.

⁹ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 22, 2003 ("Amendment No. 7"). In Amendment No. 7, the Exchange submitted a revised Exhibit A to the proposed rule change, which replaces all previous versions of Exhibit A.

¹⁰ See letter from James M. Flynn, Attorney II, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division, Commission, dated April 25, 2003 ("Amendment No. 8"). In Amendment No. 8, the Exchange submitted a revised Exhibit A to the proposed rule change, which replaces all previous versions of Exhibit A.

¹ 15 U.S.C. 78k-1.

² 17 CFR 240.11Aa3-2.

³ The ITS is a National Market System plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938 (February 3, 1983).

The ITS Participants include the American Stock Exchange LLC ("Amex"), BSE, CBOE, the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively, "Participants").

⁴ See Securities Exchange Act Release No. 47578 (March 26, 2003), 67 FR 16319.

⁵ 15 U.S.C. 78k-1(a)(1)(C)(ii) and (D).

⁶ 17 CFR 240.11A3-2(c)(2).

⁷ 15 U.S.C. 78k-1(a)(3)(B).

⁸ 17 CFR 200.30-3(a)(29).

⁹ 15 U.S.C. 78s(b)(1).

¹⁰ 17 CFR 240.19b-4.

³ See letter from Steve Youhn, Attorney, CBOE, to Deborah Flynn, Assistant Director, Division of

CBOE Rule 5.5: Series of Option Contracts Open for Trading

* * * Interpretations and Policies

.01: The interval between strike prices of series of options on individual stocks [will] may be: a. \$1.00 or greater ("1 Strike prices") provided the strike price is \$20.00 or less, but not less than \$3. The listing of \$1 strike prices shall be limited to options classes overlying no more than 5 individual stocks ("The \$1 Strike Pilot Program") as specifically designated by the Exchange. The Exchange may list \$1 strike prices on any other option classes if those classes are specifically designated by other securities exchanges that employ a similar \$1 Strike Pilot Program under their respective rules.

To be eligible for inclusion into the \$1 Strike Pilot Program, an underlying stock must close below \$20 in its primary market on the previous trading day. After a stock is added to the \$1 Strike Pilot Program, the Exchange may list \$1 strike prices from \$3 to \$20 that are no more than \$5 from the closing price of the underlying on the preceding day. For example, if the underlying stock closes at \$13, the Exchange may list strike prices from \$8 to \$18. The Exchange may not list series with \$1.00 intervals within \$0.50 of an existing \$2.50 strike price (e.g., \$12.50, \$17.50) in the same series. Additionally, the Exchange may not list long-term option series ("LEAPS®") at \$1 strike price intervals for any option class selected for the \$1 Strike Pilot Program.

A stock shall remain in the \$1 Strike Pilot Program until otherwise designated by the Exchange. The \$1 Strike Pilot Program shall expire on (insert date one-year from approval).

[a].b. \$2.50 or greater where the strike price is \$25.00 or less, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under rule 5.3 and where the strike price is \$200.00 or less; provided, however, that the Exchange may not list \$2.50 intervals below \$20 (e.g., \$12.50, \$17.50) for any class included within the \$1 Strike Pilot Program if the addition of \$2.50 intervals would cause the class to have strike price intervals that are \$0.50 apart.

[b].c. \$5.00 or greater where the strike price is greater than \$25.00, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is more than \$200.[,]00;

[c].d. \$10.00 or greater where the strike price is greater than \$200.00.

* * * * *

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, the Proposed Rule Change

1. Purpose

CBOE rule 5.5 establishes the guidelines regarding the addition of series for trading on the Exchange. Under CBOE rule 5.5, the Exchange currently has the ability to list \$2.50 intervals for strike prices under \$25, \$5.00 intervals for strikes between \$25 and \$200, and \$10 intervals for strikes above \$200.¹¹ The CBOE notes that stock prices in general have dropped over the past couple of years, with many individual listings registering precipitous declines. As a result, the CBOE currently lists options on more than 800 stocks trading under \$20, including Cisco, Oracle, Sun Microsystems, Lucent, Nortel, JDS Uniphase, Amazon, Nextel, AT&T, Motorola, and Compaq. According to the CBOE, these stocks are among the most widely held and actively traded equities listed on the New York Stock Exchange, Inc. ("NYSE") or Nasdaq and the options overlying these stocks also trade actively.

The CBOE notes that when a stock underlying an option trades at a lower price, it takes a larger percentage gain in the stock for an option to become in-the-money. For example, when a stock trades at \$8 an investor who wants to buy a slightly out-of-the-money call option would have to buy the \$10 call. At these levels, the stock price would need to register a 25% change before it reached \$10 (i.e., in-the-money status). According to the CBOE, a 25% gain in

the underlying is especially large given the lessened degree of volatility that has accompanied many stocks and options over the past several months. Due to the recent preponderance of low priced stocks, member firms have expressed an interest in listing additional strike prices on these classes so that they can provide their customers with greater flexibility in their investment choices. For this reason, the Exchange proposes to implement a one-year Pilot Program, as described below.

Pilot Program Eligibility: The Exchange proposes to amend Interpretation and Policy .01 to CBOE rule 5.5 to allow the CBOE to list series with \$1 strike price intervals on equity option classes that overlie up to five individual stocks, provided that the strike prices are \$20 or less, but not less than \$3. The appropriate Exchange committee would make the determination of which underlying stocks are to be included in the Pilot Program. A class becomes eligible for inclusion in the Pilot Program when the underlying stock price closes below \$20 in its primary market on the previous business day. Underlying stocks trading under \$20 that are not a part of the Pilot Program would continue to be eligible for trading in \$2.50 and \$5.00 intervals.

Although CBOE may select only up to five individual stocks to be included in the Pilot Program, the Exchange would not be precluded from also listing options on other individual stocks at \$1 strike price intervals if other options exchanges listed those series pursuant to their respective \$1 strikes pilot programs.

Procedures for Adding \$1 Strike Price Intervals: The procedures for adding \$2.50 or \$5.00 strikes currently are provided in Exchange rule 5.5.¹² The Exchange proposes to amend CBOE rule 5.5 to delineate these standards to accommodate the addition of \$1 strike price intervals. Under this proposal, the closing price of the underlying stock serves as the reference point for determining which \$1 strike prices the Exchange may open for trading.

To minimize the unnecessary proliferation of series, the Exchange will only list \$1 strike prices that fall within a \$5 range of the underlying stock price, and no strike prices will be added outside of the \$5 range. For example, if

¹¹ Interpretation and Policy .01 to CBOE rule 5.5. Additionally, Interpretation and Policy .05 to CBOE rule 5.5 establishes guidelines for listing \$2.50 strikes for a set number of classes with series trading between \$25 and \$50.

¹² CBOE rule 5.5(c) provides for the addition of series "when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying stock moves substantially from the initial exercise price or prices." If the Exchange initiates options trading on a new class whose underlying stock is below \$20, rule 5.5(b) governs the establishment of strike prices.

the underlying stock trades at \$6, the Exchange could list \$1 strikes from \$3 to \$11.¹³ The CBOE believes that this proposed range-format will significantly restrict the number of series that may be added at any one time.

Under existing Interpretation and Policy .01(a) to CBOE rule 5.5, the Exchange may list strike prices with \$2.50 intervals when an underlying stock trades below \$25. Accordingly, several option classes have \$7.50, \$12.50, and \$17.50 strike prices (the "\$2.50 series" or "\$2.50 intervals"). To further avoid the proliferation of series, the Exchange does not intend to list \$1 strike prices at levels that "bracket" existing \$2.50 intervals (e.g., \$7 and \$8 strikes around a \$7.50 strike). Accordingly, the Exchange does not intend to list \$7, \$8, \$12, \$13, \$17, and \$18 levels in an expiration month where there is a corresponding \$2.50 level. As the \$2.50 intervals are "phased-out," as described below, the Exchange would introduce the \$1 levels that bracket the phased-out price. For example, when the \$7.50 series expires, the Exchange would replace it by issuing a new month with \$7 and \$8 intervals.

Procedures for Phasing-out \$2.50 Strike Price Intervals: When a stock becomes part of the \$1 Strike Pilot Program, the Exchange will begin the corresponding process of phasing-out the existing \$2.50 intervals on the same stock in favor of \$1 intervals. To phase-out the \$2.50 intervals, the Exchange would first delist those \$2.50 series for which there is no open interest. Second, the Exchange would no longer add new expiration months at \$2.50 intervals below \$20 when the existing months expire. This would cause the \$2.50 strike price intervals below \$20 to be phased-out when the farthest-out month with a \$2.50 interval eventually expires.

\$1 Strikes for LEAPS: CBOE will not list LEAPS in equity option classes at \$1 strike price intervals.

Procedures for Adding Expiration Months: Interpretation and Policy .03 to CBOE rule 5.5 will govern the addition of expiration months for \$1 strike series. Pursuant to this rule, the Exchange generally opens up to four expiration months for each class upon initial listing of an options class for trading. Upon expiration of the near-term month, the Exchange may list an additional expiration month provided, however, that the underlying stock price closes below \$20 on its primary market on expiration Friday. If the underlying closes at or above \$20 on expiration

Friday, the Exchange would not list an additional month for a \$1 strike series until the stock again closes below \$20.

Procedures for Deleting \$1 Strike Price Intervals: At any time, the Exchange may cease listing \$1 strike prices on existing series by submitting a cessation notice to the Options Clearing Corporation ("OCC").¹⁴ As discussed above, if the underlying closes at or above \$20 on expiration Friday, the Exchange would not list any additional months with \$1 strike prices until the stock subsequently closed below \$20. If the underlying does not subsequently close below \$20, thereby precluding the listing of additional strike prices and months, the existing \$1 series will eventually expire. When the near-term month is the only series available for trading, the Exchange may submit a cessation notice to OCC. Upon submission of that notice, the underlying stock would no longer count towards the 5 stock Pilot Program, thereby allowing the Exchange to list classes on an additional stock. Once the Exchange submits the cessation notice, it would not list any additional months for trading with strikes below \$20 (unless the underlying once again closed below \$20).¹⁵

OPRA Capacity: CBOE represents that OPRA has the capacity to accommodate the increase in the number of series added pursuant to the Pilot Program. The Exchange notes that in December 2000 it listed approximately 109,000 series. By September 2001, this number declined almost 10% to approximately 100,000. The increase in the number of series quoted would be substantially below the 9,000 series decrease the CBOE experienced.

2. Statutory Basis

The Exchange believes that the addition of \$1 strike prices would stimulate customer interest in options overlying lower-priced stocks by creating greater trading opportunities and flexibility. The Exchange further believes that \$1 strike prices would provide customers with the ability to more closely tailor investment strategies to the precise movement of the

underlying security. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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 not necessary or appropriate in 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.

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, as amended, 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

¹³ As indicated above, strike prices for options included in the Pilot Program may not be greater than \$20 or less than \$3.

¹⁴ Among the reasons for submitting a cessation notice are the expiration of available \$1 strikes (i.e., underlying stock price remains at or above \$20), series proliferation concerns, and delisting because of low price, merger, takeover, or other events. In any event, with prior notice to the membership and customers, CBOE would continue to have the ability to cease trading series that become inactive and have no open interest.

¹⁵ If the underlying stock trades below \$20 after submission of the cessation notice by the Exchange, CBOE could list \$1 strike prices again provided it included the class as one of the five classes permitted under the Pilot Program.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78(f)(5).

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 at 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-CBOE-2001-60 and should be submitted by May 27, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-10957 Filed 5-2-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47735; File No. SR-NASD-2003-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Clarifying the Operation of the Daily Opening Process in Nasdaq's SuperMontage System

April 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on March 13, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. On April 24, 2003, Nasdaq filed Amendment No. 1 to the proposed rule change.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

Nasdaq proposes to clarify the current operation of the daily opening process in Nasdaq's Order Display and Collector Facility ("NNMS" or "SuperMontage") when the market is locked and/or crossed immediately prior to 9:30 a.m. Eastern Time.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security, as well as NNMS Order Entry Firms, shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant or NNMS Order Entry Firm in queue to receive an order is (based on the algorithm selected by the entering participant, as described in subparagraph (b)(B)(i)–(iii) of this rule), and shall deliver an execution to Quoting Market Participants or NNMS Order Entry Firms that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be delivered to or automatically executed against Quoting Market Participants' or NNMS Order Entry Firms' Displayed Quotes/Orders and Reserve Size, in strict price/time priority, as described in the algorithm contained in subparagraph (b)(B)(i) of this rule. Alternatively, an NNMS Market Participant can designate that its Non-Directed Orders be executed based on a price/time priority that considers ECN quote-access fees, as described in subparagraphs (b)(B)(ii) of this rule, or executed based on price/size/time priority, as described in subparagraph (b)(B)(iii) of this rule. The individual time priority of each Quote/Order submitted to NNMS shall be assigned by the system based on the date and time such Quote/Order was received.

Remainders of Quote/Orders reduced by execution, if retained by the system, shall retain the time priority of their original entry. For purposes of the execution algorithms described in

paragraphs (i), (ii) and (iii) below, "Displayed Quotes/Orders" shall also include any odd-lot, odd-lot portion of a mixed-lot, or any odd-lot remainder of a round-lot(s) reduced by execution, share amounts that while not displayed in the Nasdaq Quotation Montage, remain in system and available for execution.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Effective February 10, 2003, until March 17, 2003, this processing shall also apply to Non-Directed Orders of NNMS Order Entry Firms. Thereafter, this exception shall not apply to Non-Directed Orders Entered by NNMS Order Entry Firms. Nasdaq Quoting Market Participants may, and NNMS Order Entry Firms must, avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: "Y" or "I", subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of *Nasdaq* Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ "Y" flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ "Y" flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ "I" flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

The I value described above shall be available for the use of NNMS Order Entry Firms on March 17, 2003, and available for use by Nasdaq Quoting Market Participants on May 12, 2003.

(b) through (c) No Change.

(C) through (D) No Change.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original Rule 19b-4 filing in its entirety. For purposes of determining the effective date of the filing and calculating the 60-day abrogation period, the Commission considers the period to commence on April 24, 2003, the date that Nasdaq filed Amendment No. 1.