sales of Equipment to unaffiliated third parties (''Inventory Services''). DEI will be the sole stockholder of DWI, acquiring all of its outstanding capital stock or other ownership interests directly. DEI would make an initial capital contribution to DWI of $1,000 and working capital needs of DWI would be funded through a combination of equity investments, capital advances or loans from DRI and/or DEI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–28594 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48754; File No. SR–CBOE–2003–34]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating To Modifying the Designated Primary Market-Maker Membership Ownership Requirement

November 6, 2003.

On August 11, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Designated Primary Market-Maker (''DPM'') membership ownership requirement. Specifically, the proposed rule change would add new Commentary .04 to CBOE Rule 8.85 to allow a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization if the senior principal is a natural person owner of the DPM organization who: (i) Owns at least 45% equity interest in the DPM organization; (ii) maintains at least a 45% profit participation in the DPM organization; (iii) is actively involved in the management of the DPM operation; and (iv) maintains a constant presence on the Exchange floor as a DPM designee of the DPM organization.

The proposed rule change was published for notice and comment in the **Federal Register** on September 30, 2003.[3] The Commission received no comments. This order approves the proposed rule change.

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[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission notes that the proposed rule change will permit individuals who have significant involvement in the day-to-day operation of a DPM and significant financial stake, as well as an Exchange membership, to satisfy the DPM membership requirements of CBOE Rule 8.85(e). The Commission believes that the proposed amendment to the DPM seat ownership requirement should provide incentives to DPMs that are allocated existing CBOE options, or seeking allocations in established option classes, to maintain sufficient capital to operate as a DPM. The proposal could further CBOE's interest in securing long-term commitments to the Exchange.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2003–34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–28598 Filed 11–14–03; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48524 (September 23, 2003), 68 FR 56356 (September 30, 2003).

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR–CBOE–2002–18).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48761; File No. SR–NASD–2003–147]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the NASD Delegation Plan To Remove the Nasdaq Stock Market, Inc.'s Representation of NASD in the UTP Plan

November 7, 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 October 3, 2003, the National Association of Securities Dealers, Inc. (''NASD''), 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 NASD. 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

NASD is proposing to amend NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') to remove The Nasdaq Stock Market, Inc.'s (''Nasdaq'') representation of NASD in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''UTP Plan'').

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

A. Delegation of Functions and Authority.

1. Subject to section I.B.11., [the] NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. through g. No Change.

h. To administer [the Association's] *NASD's* involvement in National Market System Plans related to [Nasdaq/Unlisted Trading Privileges or] trading in the third market for securities listed on a registered exchange. *The scope of this administrative authority extends*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solely to the exercise of NASD's voting authority.

i. through o. No Change.

2. No Change.

B. through C. 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, NASD 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. NASD 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

In 1996, NASD delegated authority to Nasdaq to administer NASD's involvement in the National Market System Plans relating to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.[3] This delegation was appropriate at the time because Nasdaq was the only facility for quoting and trade reporting in Nasdaq securities operated by NASD. Today, NASD also operates the Alternative Display Facility (''ADF''). The SEC, as a condition to the approval of Nasdaq's SuperMontage rule filing, required NASD to operate the ADF to ensure the existence of an alternative venue for NASD members to quote and trade report in Nasdaq securities. While the ADF is operating as a separate NASD facility for Nasdaq securities, NASD has delegated its participation rights, including the right to vote in the UTP Plan, to Nasdaq. Accordingly, the ADF is not separately represented in the UTP Plan and has no voting authority.

On April 22, 2003, the Director of the SEC's Division Market Regulation ''Director'' wrote to NASD's Chairman and Chief Executive Officer and requested that NASD exercise its own participation rights in the UTP Plan.[4] The SEC staff also requested that the UTP Plan be amended to recognize Nasdaq as a separate UTP Plan participant, thereby ensuring separate independent participation by both NASD and Nasdaq in the UTP Plan.[5]

This proposed rule change effectuates the Director's request by proposing to amend the Delegation Plan to retract the delegation of its UTP participation rights to Nasdaq. In addition, the proposed rule change replaces several references to ''the Association'' and ''the NASD'' in the text of the proposed rule change with ''NASD.'' NASD no longer refers to itself using its full corporate name, ''the Association'' or ''the NASD.'' Instead, NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. NASD is taking action to ensure it exercises its own participation rights in the Nasdaq UTP Plan.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor 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 NASD 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 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 NASD. All submissions should refer to file number SR–NASD–2003–147 and should be submitted by December 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28599 Filed 11–14–03; 8:45 am]

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[3] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (SR–NASD–96–16).

[4] Letter to Robert R. Glauber, Chairman and CEO, NASD, from Annette L. Nazareth, Director, Divison of Market Regulation, SEC, dated April 22, 2003.

[5] Two amendments to the UTP Plan were proposed, that would allow Nasdaq to be recognized as a separate UTP Plan participant. The UTP Operating Committee voted on both proposed amendments on September 16, 2003. Neither amendment received the affirmative and unanimous vote necessary to constitute action by the Operating Committee to seek an amendment to the UTP Plan. Nasdaq also is required to pursue an exemption from SEC Rule 11Aa3–2 (17 CFR 240.11Aa3–2). The Director indicated in her letter to NASD that SEC staff is ''prepared to approve the necessary UTP Plan amendments (or to initiate them on our own if the Nasdaq UTP Committee does not approve them) and to issue the necessary exemption.''

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).