

transactions in the Company's securities by certain individuals associated with the Company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 16, 2004, through 11:59 p.m. EST, on March 29, 2004.

By the Commission.

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49411; File No. SR-CBOE-2004-17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Establishing a Process for Approving Remote Electronic Designated Primary Market-Makers

March 12, 2004.

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 March 11, 2004, 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 March 11, 2004, the CBOE 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

The CBOE proposes to adopt new rules establishing a process for approving remote electronic Designated Primary Market-Makers ("e-DPMs").

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

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Chicago Board Options Exchange,
Incorporated Rules

* * * * *

Rule 8.92 Electronic DPM Program

(a) [Reserved]

(b) *Approval to Act as an e-DPM. Determinations regarding granting or withdrawing approval to act as an e-DPM shall be made by the Board of Directors or a committee designated by the Board of Directors. A member organization desiring to be approved to act as an e-DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe. The Exchange shall determine the appropriate number of approved e-DPMs per option class. Factors to be considered in approving an e-DPM may include any one or more of the following:*

- (i) *adequacy of resources including capital, technology, and personnel;*
- (ii) *history of stability, superior electronic capacity, and superior operational capacity;*
- (iii) *market-making and/or specialist experience in a broad array of securities;*

(iv) *ability to interact with order flow in all types of markets;*

(v) *existence of order flow commitments;*

(vi) *willingness to accept allocations as an e-DPM in options underlying at least 400 securities; and*

(vii) *willingness and ability to make competitive markets on the Exchange and otherwise to promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the options it trades.*

In selecting an applicant for approval as an e-DPM, the Exchange may place one or more conditions on the approval concerning the operations of the applicant and the number of option classes which may be allocated to the applicant. Each e-DPM shall retain its approval to act as an e-DPM until the Exchange relieves the e-DPM of its approval and obligations to act as an e-DPM or the Exchange terminates the e-DPM's approval to act as an e-DPM pursuant to Exchange Rules. An e-DPM may not transfer its approval to act as an e-DPM unless approved by the Exchange.

(c)-(e) [reserved]

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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

During 2004, CBOE will propose significant enhancements to its Hybrid Trading System. Among those will be the addition of a proposed new category of CBOE market making participants—e-DPMs. e-DPMs, if approved by the Commission, will be member organizations appointed to operate on CBOE as competing DPMs in a broad number of option classes. Rules governing e-DPMs' trading procedures and obligations are being submitted to the Commission as part of a separate rule filing. The purpose of this filing is to establish rules and criteria to allow CBOE to appoint e-DPMs. Any such appointments would be contingent on Commission approval of CBOE rules governing e-DPM trading procedures and obligations.

The CBOE expects to approve/appoint a limited number of e-DPMs. The Exchange's Board of Directors has established a special appointments committee to select the firms that would be designated as e-DPMs, and to make initial e-DPM option class allocations. The committee consists of the Lessor Director, two Public Directors, the Vice Chairman, and the President. Candidates seeking appointment as an e-DPM will be evaluated on the basis of how well they meet the following criteria:

- Significant market-making and/or specialist experience in a broad array of securities;
- Superior resources, including capital, technology and personnel;
- Demonstrated history of stability, superior electronic capacity, and superior operational capacity;
- Proven ability to interact with order flow in all types of markets;
- Existence of order flow commitments;

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaces and supercedes the CBOE's original 19b-4 filing in its entirety.

- Willingness to accept allocations as an e-DPM in options overlying 400 or more securities; and

- Willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE in a manner that is likely to enhance the ability of CBOE to compete successfully for order flow in the options it trades.

The purpose of the final factor listed above is to permit the Exchange to take into consideration in the selection process which of the applicants will best be able to enhance the competitiveness of the Exchange. "Willingness to promote CBOE" includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other like activities. Further, this factor will not be applied by the Exchange to restrict, directly or indirectly, e-DPMs' activities as a market maker or specialist elsewhere, or to restrict how e-DPMs handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The factor relating to the existence of order flow commitments would be used to evaluate existing order flow commitments between the applicant and order flow providers. A future change to, or termination of, any such commitments considered by the Exchange during the review process could not be used by the Exchange at any point in the future to terminate or take remedial action against an e-DPM. Further, the Exchange could not take remedial action solely because orders are not subsequently routed to the Exchange but elsewhere pursuant to any such commitments. Whether actual commitments result in orders being routed to the Exchange is a separate matter from the criteria for which an e-DPM's performance would be evaluated.

The proposed rules also provide that (i) as part of the approval of an e-DPM, the Exchange may place conditions on the approval based on the operations of the applicant and the number of option classes which may be allocated to the applicant; (ii) each e-DPM shall retain its approval unless such approval is removed by the Exchange pursuant to appropriate rules; and (iii) an e-DPM may not transfer its approval to act as an e-DPM unless allowed by the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is

consistent with section 6(b) of the Act⁴ in general and furthers the objectives of sections 6(b)(5)⁵ of the Act in particular in that it serves to remove impediments to and perfect the mechanism of a free and open market because it will help the Exchange manage its proposed initial launch of e-DPM trading.

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

The CBOE believes that the proposed rule change does not impose any burden on competition that is 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 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, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CBOE-2004-17. 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 hardcopy 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 CBOE. All submissions should refer to File No. SR-CBOE-2004-17 and should be submitted by April 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-6107 Filed 3-17-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49406; File No. SR-NASD-2003-173]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., Through Its subsidiary, The Nasdaq Stock Market, Inc., Relating to the Nasdaq Closing Cross

March 11, 2004.

I. Introduction

On November 25, 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"), 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 establish a Nasdaq closing cross for certain Nasdaq national market securities ("Nasdaq Closing Cross").

The proposed rule change was published for comment in the **Federal Register** on December 11, 2003.³ The Commission received two comment letters on the proposal.⁴ Nasdaq

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48878 (December 4, 2003), 68 FR 69098.

⁴ See letter from Kim Bang, Bloomberg Tradebook LLC, to Jonathan G. Katz, Secretary, Commission,

Continued

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).