

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2004-55 and should be submitted on or before September 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50209; File No. SR-CBOE-2004-43]

### Self Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto To Amend the Exchange's Membership Rules To Accommodate e-DPMs

August 18, 2004.

On July 12, 2004, the Chicago Board Options Exchange, Incorporated ("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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to

amend its Chapter III membership rules to accommodate a new category of CBOE market-making participant—electronic Designated Primary Market-Makers ("e-DPMs"). On July 12, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup>

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 19, 2004.<sup>4</sup> The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Commission believes that the CBOE's proposed amendment to CBOE Rule 3.8(a)(ii) to allow a member organization acting as an e-DPM to have one individual be the nominee for multiple memberships that are designated for use in an e-DPM capacity would not be inappropriate given that e-DPMs operate from locations outside of the trading crowds for their applicable option classes, thereby making it possible for a member to act as a nominee on more than one membership.<sup>8</sup> The Commission notes, however, that such individual cannot be the designated nominee for any of the organization's other memberships in any other market making capacity other than that of an e-DPM.

The Commission further believes that the CBOE's proposal to change the

<sup>3</sup> See letter from David Doherty, Attorney, Legal Division, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 12, 2004 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 50007 (July 13, 2004), 69 FR 43034.

<sup>5</sup> In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> The Commission notes that it would not be possible for an in-crowd market participant to act as nominee on more than one membership because such participant would be unable to physically be present in more than one trading crowd.

reference to "floor functions" in CBOE Rules 3.2, 3.8, and 3.9 to "trading functions" should help to clarify the applicability of these rules to e-DPMs, who would not necessarily have a floor presence.<sup>9</sup> In addition, Commission believes that the proposed amendment to CBOE Rule 3.2 to clarify that a member is deemed to have an authorized "trading function" if the member is approved by the CBOE's Membership Committee to act as a nominee or person registered for an e-DPM organization should help to ensure that e-DPMs, like other Market-Makers and CBOE Floor Brokers, would be required to comply with the CBOE Rule 3.9(g) member orientation and qualification exam requirements. Lastly, the Commission notes that the CBOE's proposed Rule 3.28 requirement that e-DPMs provide the Exchange with a letter of guarantee from a clearing member is similar to ISE Rule 808 and PCX Rule 6.36(a) requirements, previously approved by the Commission.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CBOE-2004-43) and Amendment No. 1 thereto be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50215; File No. SR-CHX-2004-14]

### Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to the Handling of Preopening Orders in Nasdaq/NM Securities

August 18, 2004.

On May 19, 2004, The Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission

<sup>9</sup> The Commission notes that it is possible for e-DPMs to stream quotes into the Exchange from locations on the trading floor other than the trading crowds where their allocated option classes are traded. In addition, for an 18-month period, e-DPMs are permitted to have no more than one Market-Maker affiliated with the e-DPM to trade on the trading floor in any specific options classes allocated to the e-DPM. CBOE Rule 8.93(vii).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</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.