

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50853; File No. SR-CBOE-2004-50]

### Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Limitations on Designated Primary Market-Makers Putting Into Effect Stop and Stop-Limit Orders

December 14, 2004.

On July 29, 2004, the Chicago Board Options Exchange, Inc. ("CBOE") 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 rules regarding limitations on Designated Primary Market-Makers ("DPMs") putting into effect stop and stop-limit orders. On October 8, 2004, the Exchange filed amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 21, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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 association.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,<sup>6</sup> which requires that the Exchange's rules promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

The Exchange proposes to automate the handling of stop and stop-limit orders on CBOE's Hybrid trading system such that stop and stop limit orders would be handled automatically by the Hybrid system rather than by the DPM.

In addition, the Exchange proposes to eliminate the restrictions which generally prohibit a DPM from initiating a transaction for its own account that would put into effect any stop or stop-limit orders which may be in the book or which the DPM represents as an agent. Under the proposal, stop and stop-limit orders would reside on the Hybrid system invisibly so that the DPM would not know whether a transaction would trigger a stop or stop-limit order. Further, the DPM would no longer handle the stop order at any point or have any influence to purposefully affect triggering the stop or the ultimate execution price of the order. The Commission believes that the restrictions on DPM transactions for stop and stop-limit orders are no longer necessary for orders that are handled by the Hybrid system because such orders are not visible to or handled by the DPM. Accordingly, the Commission finds that the proposal is consistent with the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>7</sup> the proposed rule change (SR-CBOE-2004-50), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-27863 Filed 12-20-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50848; File No. SR-NASD-2004-133]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change To Amend NASD Rule 9522 ("Initiation of Eligibility Proceeding; Member Regulation Consideration") To Give Member Regulation the Authority To Approve the MC-400 Applications of Statutorily Disqualified Persons Who Will Be Engaged Solely in Clerical and/or Ministerial Activities

December 14, 2004.

On September 1, 2004, the National Association of Securities Dealers, Inc., ("NASD") 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 NASD Rule 9522 ("Initiation of Eligibility Proceeding; Member Regulation Consideration") to give Member Regulation the authority to approve the MC-400 applications of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities. The proposed rule change was published for notice and comment in the **Federal Register** on November 10, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The Commission has reviewed carefully the proposed rule change and 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 association<sup>4</sup> and, in particular, the requirements of section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission also finds the proposed rule change is consistent with section 15A(b)(8) of the Act,<sup>6</sup> which requires that NASD rules provide a fair procedure for the denial of membership to any person seeking membership therein.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change (SR-NASD-2004-133) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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

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

<sup>3</sup> See letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to John Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated October 6, 2004 ("Amendment No. 1").

<sup>4</sup> See Securities Exchange Act Release No. 50542 (October 14, 2004), 69 FR 61879.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 50626 (November 3, 2004), 69 FR 65238.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

<sup>6</sup> 15 U.S.C. 78o-3(b)(8).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).