

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.*

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## 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> 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<sup>6</sup> 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.<sup>7</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> 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.<sup>9</sup>

**Margaret H. McFarland.**

*Deputy Secretary.*

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<sup>4</sup> 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).

<sup>5</sup> 15 U.S.C. 78f.

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

<sup>7</sup> See Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR-CBOE-2002-18).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 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")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> 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*

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

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

<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. 48524 (September 23, 2003), 68 FR 56356 (September 30, 2003).