Expenses incurred in connection with the liquidation were borne by Tiger Management L.L.C., an affiliate of applicant's investment adviser.

Filing Dates: The application was filed on March 25, 1998, and amended on May 11, 1998.

Applicant's Address: 101 Park Avenue, New York, New York 10178.

Merrill Lynch KECALP Growth Investments Limited Partnership 1983 [File No. 811–3389] and Merrill Lynch KECALP L.P. 1984 [File No. 811–3909]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 23, 1997, each applicant distributed its assets to its securityholders at the net asset value per share. Expenses of approximately $30,000 are expected to be incurred in connection with each applicant's liquidation and will be borne by KECALP, Inc., the general partner of applicants.

Filing Dates: Each application was filed on February 23, 1998, and amended on April 29, 1998.

Applicants' Address: South Tower, World Financial Center, 225 Liberty Street, New York, New York 10080.

The Laidlaw Covenant Fund [811–7602]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 1996, applicant transferred all of its assets and liabilities to Value Fund, a series of The Vintage Funds, based on the relative net asset values per share. Laidlaw Holdings Asset Management, Inc., applicant's investment adviser, incurred expenses in connection with the merger of $25,000, with any expenses exceeding that amount borne by Vintage Advisers, Inc., The Vintage Funds' investment adviser.

Filing Dates: The application was filed on November 18, 1997 and amended on May 14, 1998.

Applicant's Address: 100 Park Avenue, New York, NY 10017.

Allmerica Funds [File No. 811–6308]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1997, applicant made a liquidating distribution to its sole shareholder at net asset value. No expenses were incurred in connection with the liquidation. Applicant retained $9,201 to cover outstanding liabilities relating to advisory fees, printing fees, custody fees and tax services.

Filing Dates: The application was filed on November 12, 1997, and amended on May 19, 1998.

Applicant's Address: 440 Lincoln Street, Worcester, Massachusetts 06153.

Putnam Adjustable Rate U.S. Government Fund [File No. 81–4531]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 8, 1996, applicant transferred its assets and liabilities to the Putnam Intermediate U.S. Government Income Fund (''Putnam Intermediate'') based on the relative net asset values per share. Applicant paid approximately $78,604 in expenses related to the reorganization. Putnam Intermediate paid approximately $41,620 in reorganization expenses.

Filing Dates: The application was filed on March 17, 1998 and amended on May 11, 1998.

Applicant's Address: One Post Office Square, Boston, MA 02109.

Consultants Trust [811–7542]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant abandoned its intention to operate before it received any assets. Applicant never issued securities.

Filing Dates: The application was filed on April 21, 1998 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 2303 Yorktown Avenue, Lynchburg, Virginia 24501.

Midcap Growth Portfolio [811–7638]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on May 11, 1998 and applicant has agreed to file an amendment during the notice period.

Applicant's Address: 777 Mariners Island Blvd., P.O. Box 7777, San Mateo, CA 94403–7777.

John Hancock Sovereign Investors Fund, Inc. [File No. 811–115]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1996, applicant, on behalf of John Hancock Sovereign Investors Fund (the ''Fund''), a series of applicant, transferred all of the Fund's assets and liabilities to John Hancock Sovereign Investors Fund, a series of John Hancock Investment Trust, based on the relative net asset values per share. Applicant bore approximately $266,103 in reorganization expenses. John Hancock Investment Trust bore approximately $307,727 in reorganization expenses.

Filing Dates: The application was filed on October 6, 1997 and amended on May 22, 1998.

Applicant's Address: 101 Huntington Avenue, Boston, MA 02199–7603.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14826 Filed 6–3–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40041; File No. SR–CBOE–98–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Update and Reorganize Its Rules Relating to Designated Primary Market-Makers

May 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] is hereby given that on April 22, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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 the CBOE. 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

The CBOE proposes to update and reorganize the Exchange's rules relating to designated primary market-makers (''DPMs''). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Chapter III—Membership

* * * * *

Rule 3.27 Membership Options Trading Permits

* * * * *

(c) DPMs. The *DPM trading system described in Section C of Chapter VIII* [Modified Trading System established in Rule 8.80] will be employed in NYSE Options. Each specialist firm to which

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

[2] 17 CFR 240.19b–4.

a Permit is issued pursuant to subparagraph (a)(2) of this Rule shall be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE. Subject to the provisions of the Rules, a Permit holder qualified to act as a DPM pursuant to the Rules shall be appointed to act as the DPM for each class of equity options designated by the Exchange pursuant to the last sentence of paragraph (b) of this Rule. Each specialist firm appointed as a DPM in a class of NYSE Options pursuant to the foregoing two sentences shall, subject to the provisions of the Rules, continue to act as such DPM during the term of the Permits and thereafter so long as it is a regular member or member organization of the Exchange.

* * * * *

Chapter VI—Doing Business on the Exchange Floor

* * * * *

Rule 6.8. RAES Operations in Equity Options

* * * * *

[(a)(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.]

* * * * *

Chapter VIII—Market Traders, Trading Crowds and Designated Primary Market-Makers

* * * * *

Section A: Market-Makers

* * * * *

Rule 8.3 Appointment of Market Makers

* * * * *

[Interpretations and Policies: .01 The Exchange has adopted the policy that no Market-Maker may act as an independent Market-Maker in a class of options for which the Market-Maker has been approved to act as a DPM.]

* * * * *

Rule 8.7. Obligations of Market-Makers

* * * * *

* * * Interpretations and Policies:

* * * * *

.07 Market-Makers are expected to participate in and support Exchange sponsored automated programs, or approved equivalents, including but not limited to the Retail Automatic Execution System and Auto Quote. The variables in the formula used in each trading crowd to generate automatically updated market quotations shall be as agreed upon by the respective trading crowds. For those classes in which a DPM has been appointed, this responsibility shall be primarily assigned to the DPM pursuant to Rule *8.85(a)(viii).* The DPM shall disclose to the other members trading at the same trading station the following components of the formula used to generate automatically updated market quotations at that station: option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the value of the underlying; provided however, that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems.

* * * * *

Rule 8.16 RAES Eligibility in Option Classes Other Than DJX

* * * * *

(a)(ii) The Market-Maker may designate that his trades be assigned to and clear into either this individual account or a joint account in which he is a participant. Each individual member of the joint must be physically present in the trading crowd while that member is signed onto RAES and each joint account member is subject to all of the following provisions of this rule. [DPM participation shall also be governed by the MTS Committee as provided in Rule 8.80.]

* * * * *

Section C: Designation Primary Market-Makers

DPM Defined

Rule 8.80. A ''Designated Primary Market-Maker'' or ''DPM'' is a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1), as Floor Broker (as defined in Rule 6.70, and as an Order Book Official (as defined in Rule 7.1). Determinations concerning whether to grant or withdraw the approval to act as a DPM are made by the Modified Trading System Appointment Committee (''MTS Committee'') in accordance with Rules 8.83 and 8.90. DPMs are allocated securities by the Allocation Committee and the Special Product Assignment Committee in accordance with Rule 8.95.

DPM Designees

Rule 8.81. (a) A DPM may act as a DPM soley through its DPM Designees. A ''DPM Designee'' is an individual who is approved by the MTC Committee to represent a DPM in its capacity as a DPM. The MTS Committee may subclassify DPM Designees and require that certain DPM Designees be subject to specified supervision and/or be limited in their authority to represent a DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be a DPM Designee of a DPM:

(i) the individual must be a member of the Exchange:

(ii) the individual must be a nominee of the DPM or of an affiliate of the DPM or must own a membership that has been registered for the DPM or for an affiliate of the DPM;

(iii) the individual must be registered as a Market-Maker pursuant to Rule 8.2 and as a Floor Broker pursuant to Rule 6.71;

(iv) on such form or forms as the Exchange may prescribe the DPM must authorize the individual to enter into Exchange transactions on behalf of the DPM in its capacity as a DPM, must authorize the individual to represent the DPM in all matters relating to the fulfillment of the DPM's responsibilities as a DPM, and must guaranty all obligations arising out of the individual's representation of the DPM in its capacity as a DPM in all matters relating to the Exchange; and

(v) the individual must be approved by the MTS Committee to represent the DPM in its capacity as a DPM.

The approval of an individual to act as a DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(c) Each DPM shall have at least two DPM Designees who are nominees of the DPM or who own a membership that has been registered for the DPM.

(d) A DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. When acting on behalf of a DPM in its capacity as a DPM, a DPM Designee is exempt from the provisions of Rule 8.8.

MTS Committee

Rule 8.82. (a) The MTS Committee shall consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine members elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker and who is not associated with a

member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: During October of each year, the Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on November 15, or the first business day thereafter in the event November 15 occurs on a holiday or a weekend. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election.

Approval to Act as a DPM

Rule 8.83. (a) A member organization desiring to be approved to act as a DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The MTS Committee shall determine the appropriate number of approved DPMs. Each DPM approval shall be made by the MTS Committee from among the DPM applications on file with the Exchange, based on the MTS Committee's judgment as to which applicant is best able to perform the functions of a DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(i) adequacy of capital;

(ii) operational capacity;

(iii) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(iv) number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business;

(v) regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(vi) willingness and ability of the applicant to promote the Exchange as a marketplace;

(vii) performance evaluations conducted pursuant to Rule 8.60; and

(viii) in the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in this Section C of Chapter VIII respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

(c) Each applicant for approval as a DPM will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. The MTS Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as a DPM, the MTS Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each DPM shall retain its approval to act as a DPM until it resigns as a DPM or its approval is terminated by the MTS Committee pursuant to Rule 8.90.

(f) If a member organization resigns as a DPM or if pursuant to Rule 8.90 the MTS Committee terminates or otherwise limits its approval to act as a DPM, the MTS Committee shall have the discretion to do one or both of the following:

(i) approve an interim DPM, pending the final approval of a new DPM pursuant to paragraphs (a) through (d) of this Rule; and

(ii) allocate on an interim basis to another DPM or to other DPMs the securities that were allocated to the affected DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Nether an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

Conditions on the Allocation of Securities to DPMs

Rule 8.84. (a) The MTS Committee may establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) The MTS Committee has the authority under other Exchange rules to restrict the ability of particular DPMs to receive allocations of securities, including but not limited to, Rules 8.88(b) and 8.60, Rule 8.83(d), and Rule 8.90.

DPM Obligations

Rule 8.85. (a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) assure that disseminated market quotations are accurate;

(ii) assure that each displayed market quotation is honored for at least the number of contracts prescribed pursuant to Rule 8.51;

(iii) in the case of option contracts, comply with the bid/ask differential requirements of Rule 8.7(b)(iv);

(iv) assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the MTS Committee;

(v) trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity;

(vi) segregate in a manner prescribed by the MTS Committee (A) all transactions consummated by the DPM in securities allocated to the DPM and (B) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business;

(vii) participate at all times in any Exchange sponsored automated order handling system, including the Retail Automatic Execution System (RAES); and

(viii) determine a formula for generating automatically updated market quotations and disclose the following components of the formula to the other members trading at the trading station at which the formula is used; option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying.

Notwithstanding the provisions of subparagraph (a)(viii) of this Rule, the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(viii) of this Rule and the general obligations of a Market-Maker under the Rules, subparagraphs (a)(i) through (a)(viii) of this Rule shall govern.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) place in the public order book any order in the possession of the DPM which is eligible for entry into the book unless (A) the DPM executes the order upon its receipt or (B) the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book;

(ii) not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, or is executed or (B) the DPM returns the order to the member that placed the order with the DPM in response to a request from that member to return the order;

(iii) accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

(iv) not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal;

(v) act as a Floor Broker to the extent required by the MTS Committee; and

(vi) not represent discretionary orders as a Floor Broker or otherwise.

Notwithstanding the provisions of subparagraph (b)(vi) of this Rule, the MTS Committee shall have the discretion to authorize a DPM, on a temporary basis, to accept and represent types of order in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vi) of this Rule shall govern.

(c) Other obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations;

(i) resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) promote the Exchange as a marketplace, including meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, and performing other like activities;

(iii) act to increase the Exchange's order flow in the securities which are allocated to the DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(iv) promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM; and

(v) supervise all persons associated with the DPM to assure compliance with the Rules.

(d) Obligations of DPM Associated Persons. Each person associated with a DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the DPM.

** * * Interpretations and Policies: .01 The Exchange may make personnel available to assist a DPM in the DPM's performance of the obligations of an Order Book Official, for which the Exchange may charge the DPM a reasonable fee.*

DPM Financial Requirements

Rule 8.86. Each DPM shall maintain (i) net liquidating equity in its DPM account of not less than $100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3–1. Each DPM which is a Clearing Member shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation.

Participation Entitlement of DPMs

Rule 8.87. (a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) To the extent established pursuant to paragraph (a) of this Rule, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in securities allocated to the DPM that occur at the DPM's previously established principal bid or offer.

Review of DPM Operations and Performance

Rule 8.88. (a) The MTS Committee or a subcommittee of the MTS Committee may conduct a review of a DPM's operations or performance at any time and at a minimum shall conduct a review of each DPM's operations and performance on an annual basis. A DPM and its associated persons shall submit to the MTS Committee such information requested by the Committee in connection with a review of the DPM's operations or performance.

(b) The MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to DMPs and the Market-Makers that trade at DPM trading stations. The MTS Committee may combine a review conducted pursuant to paragraph (a) of this Rule with an evaluation conducted pursuant to Rule 8.60.

(c) Members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations.

Transfer of DPM Appointments

Rule 8.89. (a) A DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give not less than thirty (30) days prior written notice thereof to the MTS Committee. No such transaction that is deemed to involve the transfer of a DPM appointment within the meaning of paragraph (b) of this Rule may take place unless (i) the transferee is qualified to act as a DPM in accordance

with the Rules, and (ii) the transaction has received the prior approval of the MTS Committee.

(b) For purposes of this Rule 8.89, the following transactions are deemed to involve the transfer of a DPM appointment: (i) any sale, transfer, or assignment of any significant share of the ownership of a DPM; (ii) any change or transfer of control of a DPM; (iii) any merger, sale of assets, or other business combination or reorganization of a DPM. A sale, transfer, or assignment of a five percent (5%) or more interest in the equity or profits or losses of a DPM (or any series or smaller changes that in the aggregate amount to a change of five percent or more) shall be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM; provided, however, that any sale, transfer, or assignment of a less than five percent interest may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances, in which event the MTS Committee shall notify the DPM within fifteen (15) days after receiving notice thereof that the approval of the transaction by the MTS Committee is required.

(c) An application for the approval of a transaction deemed to involve the transfer of a DMP appointment shall be submitted in writing to the MTS Committee at least thirty (30) days prior to the proposed effective date of the transaction, unless the MTS Committee approves a shorter period for its review. The application shall contain a full and complete description of the proposed transaction, including (i) the identity of the transferee, (ii) a description of the transferee's ownership and capital structure, (iii) the identity of those persons who will be the partners, shareholders, directors, officers, and other managers or affiliates of the transferee, as well as those persons who will be responsible for performing the duties of the DPM following the transfer, (iv) the terms of the transaction including the consideration proposed to be paid by the transferee, (v) the terms of any other business relationships between the parties to the transaction, and (vi) any other material information pertaining to the transaction that the MTS Committee may request.

(d) Promptly after receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee shall post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin. The MTS Committee shall not ordinarily consider a proposed transfer sooner than ten (10) days following the day notice is posted on the Bulletin Board, unless the MTS Committee finds it necessary to give earlier consideration to the matter in the interest of the maintenance of fair and orderly markets and the protection of investors. During this period, the MTS Committee will accept written comments on the proposed transfer from any member, and will accept written proposals from other members or from Market-Maker crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

(e) No application shall be finally approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer (all corporate or partnership documents and amendments thereto, voting trust, ''buy-sell'' or similar agreements, employment agreements, pro forma financial statements), except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown. In considering the approval of a proposed transfer of a DPM appointment, the MTS Committee shall give due consideration to all relevant facts and circumstances, including but not limited to each of the following factors, if applicable; (i) the financial and operational capacity of the transferee; (ii) continuity of control, management, and persons responsible for the operation of the DPM; (iii) avoiding undue concentration of DPM appointments on the Exchange; (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period; and (v) the best interests of the Exchange. If the proposed transferee is not approved to act as a DPM at the time the application is considered by the MTS Committee, the approval of the transfer may be made contingent on the transferee's being so approved within a stated period of time.

(f) The approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within ten (10) days of the time the decision of the MTS Committee is announced, of (i) a written request for such review made by the applicant, specifying why the applicant believes the decision of the Committee should be reversed or modified (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case).

** * * Interpretations and Policies: .01 For purposes of paragraph (b) of this Rule, a transfer of an interest in the profits (but not the ownership) of a DPM to an associated person of the DPM solely as compensation for the associated person's services in support of the business of the DPM shall not ordinarily be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM.*

Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 8.90. (a) The MTS Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as a DPM under any one or more of the following circumstances:

(i) if the member organization incurs a material financial, operational, or personnel change;

(ii) if the member organization fails to comply with any of the requirements under this Section C of Chapter VIII, including, but not limited to, any conditions imposed under Rule 8.83(d), Rule 8.84(a)(ii), or this Rule; or

(iii) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as MTS Committee proceedings concerning DPM approvals which are governed by Rule 8.82(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as a DPM may include, among other things, limiting or withdrawing the member organization's DPM participation entitlement provided for under Rule 8.87, withdrawing the right of the member organization to act in the capacity of a DPM in a particular security or securities which have been allocated to the member organization,

and/or requiring the relocation of the member organization's DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

Limitations on Dealings of DPMs and Affiliated Persons of DPMs

Rule 8.91. (a) No person or entity affiliated with a DPM shall purchase or sell on the Exchange, for any account in which such person or entity has a direct or indirect interest, any security which is allocated to the DPM. Any such person or entity may, however, reduce or liquidate an existing position in a security which is allocated to an affiliated DPM provided that any order to consummate such a transaction is (i) identified as being for an account in which such person or entity has a direct or indirect interest, (ii) approved for execution by a Floor Official, and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price. This paragraph (a) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(b) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security or with any officer, director, or 10% shareholder of the issuer of the security. For the purposes of this paragraph (b), a material business transaction shall be deemed to be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b).

(c) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall accept any orders from the issuer of the security that underlies the equity option or directly from any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security or directly from any officer, director, or 10% shareholder of the issuer of the security.

(d) Paragraphs (a), (b), and (c) of this Rule shall not apply to any member affiliated with a DPM that has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate and market information (i.e., a ''Chinese Wall'') between such member on the one hand and the DPM and persons affiliated with the DPM on the other hand. Any such procedures shall comply with the following Guidelines:

Guidelines for Exemptive Relief Under Rule 8.91(d) for Members Affiliated with DPMs

These Guidelines set forth the steps that a member affiliated with a DPM must undertake, at a minimum, to seek to obtain an exemption under Rule 8.91(d) from the requirements of paragraphs (a) through (c) of Rule 8.91. These Guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate to do so.

(a) Generally, an affiliated member seeking a Rule 8.91(d) exemption should establish its operational structure along the lines discussed below.

(i) The affiliated member and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records, and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member and the DPM to be under common management, in no instance may persons on the affiliated member's side of the ''Wall'' exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market-making responsibilities pursuant to the Rules.

(ii) The affiliated member and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated member's conduct. Specifically, the affiliated member and the DPM must ensure that material non-public corporate information relating to trading positions taken by the affiliated member in a DPM security are not made available to the DPM or to any shareholder, director, officer, partner, manager, member, principal, DPM Designee, or employee associated therewith; that no trading is done by the DPM while in possession of non-public corporate information derived by the affiliated member from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the affiliated member's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's ''book'' in a DPM security is kept confidential and is not made available to the affiliated member except to the extent that such information is made available to the affiliated member in accordance with subparagraph (b)(iii) of these Guidelines.

(b) An affiliated member seeking a Rule 8.91(d) exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which the affiliated member intends to satisfy each of the conditions stated in subparagraphs (a)(i) and (a)(ii) of these Guidelines, and the compliance and audit procedures the affiliated member proposes to implement to ensure that the functional separation is maintained between the affiliated member and the DPM;

(ii) The designation and identification of the individuals associated with the affiliated member responsible for maintenance and surveillance of such procedures;

(iii) That the DPM shall make available to the affiliated member only the sort of market information that the DPM would make available in the normal course of its DPM activity to any other member; that the DPM shall only make such information available to the affiliated member in the same manner that it is made available to any other member; and that the DPM shall only make such information available to the affiliated member pursuant to a request by the affiliated member for such information;

(iv) That where the affiliated member ''popularizes'' a security in which the DPM acts as DPM the affiliated member shall disclose that an associated DPM

makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Exchange in the security; and that the affiliated member shall forward to the Exchange, immediately after its issuance, a copy of any research report or written recommendation which ''popularizes'' a security in which the DPM acts as DPM;

(v) That the affiliated member shall file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a security in which the DPM acts as DPM;

(vi) That the affiliated member shall take appropriate remedial action against any person violating these Guidelines and/or the affiliated member's internal compliance and audit procedures adopted pursuant to subparagraph (b)(i) of these Guidelines, and that the affiliated member and the DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) removal of securities from the DPM and/or revocation of the Rule 8.91(d) exemption, in the event of such a violation;

(vii) Whether the affiliated member intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's ''Chinese Wall'' (the procedures followed shall, at a minimum, be the same as those used by the affiliated member to clear for unaffiliated third parties); and

(viii) That no individual associated with the affiliated member shall trade on the Exchange as a Market-Maker in any security in which the DPM acts as DPM.

(Any written statements submitted pursuant to this paragraph (b) shall be collectively referred to herein as the ''Exemption Request''.

(c) In the event that, notwithstanding the procedures established pursuant to these Guidelines, any DPM Designee of a DPM becomes aware of the fact that the Designee has received from the affiliated member any material non-public corporate or market information relating to any of the DPM securities, the DPM Designee shall promptly communicate that fact and disclose the information so received to the person associated with the affiliated member responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether the DPM Designee should, as a consequence of the Designee's receipt of such information, give up the DPM Designee's appointment as a DPM Designee in the security involved. If the compliance officer determines that the DPM Designee should give up the Designee's appointment as a DPM Designee, the DPM Designee shall, at a minimum, give the appointment up to another DPM Designee who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM Designee to recover the Designee's appointment as a DPM Designee and recommence acting as DPM Designee in the security involved. Procedures shall be established by the affiliated member to assure that in any instance when the compliance officer determines that a DPM Designee should give up the Designee's appointment as a DPM Designee, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the remaining DPM Designees.

The compliance officer shall keep a written record of each request received from a DPM Designee for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM Designee, the determination made by the compliance officer, and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM Designee reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM Designee should give up the DPM Designee's appointment and also of the determination that the DPM Designee should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from DPM Designees for a determination as referred to above shall be furnished to the Exchange for its review. Members are cautioned that any trading by any person while in possession of material non-public information received as a result of any breach of the internal controls required by these Guidelines may violate Exchange Act Rule 10b–5, Exchange Act Rule 14e–3, just and equitable principles of trade, or one or more other provisions of the Exchange Act, regulations thereunder, or Rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(d) Subparagraph (b)(vii) of these Guidelines permits an affiliated member to clear the DPM transactions of the DPM provided that the affiliated member establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's ''Chinese Wall.'' Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) associated with the affiliated member that are in senior management positions and are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member, or in making recommendations to the customers or potential customers of the affiliated member. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of the DPM to meet market-making or other obligations under Exchange Rules.

(e) The Exemption Request shall detail the internal controls which both the affiliated member and the DPM intend to adopt to satisfy each of the conditions stated in paragraphs (b)(i) through (b)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the affiliated member and the DPM are acceptable under these Guidelines, the Exchange shall so inform the affiliated member and the DPM, in writing, at which point a Rule 8.91(d) exemption shall be granted with or without conditions. Absent such prior written Exchange approval, an

exemption shall not be available. The Exemption Request should identify the individuals associated with the affiliated member that are in senior management positions (and their titles/levels of responsibility) to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which the information is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any shareholder, director, officer, partner, manager, member, principal, or employee of the affiliated member intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a shareholder, director, officer, partner, manager, member, principal, or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel, or similar types of functions) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified in the Exemption Request, and all requirements in paragraph (a) of these Guidelines as to maintaining the confidentiality of information are satisfied.

(f) In the event that the Exchange grants a Rule 8.91(d) exemption to an affiliated member: (i) the affiliated member and DPM shall abide by any representations and undertakings set forth in the Exemption Request and shall comply with any conditions placed by the Exchange upon the grant of such exemption; (ii) the affiliated member shall promptly notify the Exchange in writing in the event that any of the information set forth in the Exemption Request changes or becomes inaccurate; and (iii) the Exchange may amend or revoke its grant of exemptive relief pursuant to Rule 8.91(d) in the event that there is a change in the policies, procedures, or organizational structure of the affiliated member or DPM or in any of the information set forth in the Exemption Request.

[Modified Trading System

Rule 8.80. (a) Deleted [insert date of effectiveness of SR–CBOE–98–03]. (See Rule 8.95.)

(b) The MTS Designated Primary Market-Makers (''DPM'') shall be selected and removed as follows:

(1) the selection and removal of DPMs will be conducted by the MTS Appointments Committee (''MTS Committee'' or ''Committee''). The Committee will consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members, to be nominated by the Nominating Committee and appointed by the Board, whose business functions are as follows: Six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed committee members shall have two year terms four or five of which will expire each year.

(2) Any regular member or member organization is eligible for appointment as a DPM. The MTS Committee will select that candidate who appears best able to perform the functions of DPM in the designated options class or classes. Factors to be considered for selection include the following: adequacy of capital, experience with trading the option class or a similar option class, willingness to promote the Exchange as a marketplace, operational capacity, support personnel, history of adherence to Exchange rules and to all criteria specified in this Rule as DPM responsibilities, and trading crowd evaluations under Rule 8.60.

(3) Applications for DPM appointment by member organizations shall include the name of specified nominees. The MTS Committee shall specify whether a DPM appointment is as an individual, or as a member organization. The Committee may also specify any one or more conditions on the appointment, in respect of any representations made in the application process, including but not limited to capital, operations, or personnel. The DPM is obligated promptly to inform the Committee of any material change in financial or operational condition, or in personnel. The appointment may not be transferred without approval of the MTS Committee. The DPM shall serve until he is relieved of his obligations by the Committee.

(4) The MTS Committee may, in its discretion, open an option class or classes to a new DPM selection process under any of the following circumstances:

(i) If upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment under Subpart (b)(3) or his functions as described in subpart (c) hereof. The Committee may conduct reviews of appointments at any time, and shall do so at least quarterly.

(ii) If a DPM incurs a material financial, operations, or personnel change. Provided, however, that the Committee shall open an option class or classes to a new DPM selection process upon request, if a DPM member organization changes its specified nominee and the former nominee so requests.

(iii) If for any reason the DPM should no longer be eligible for appointment, should resign appointment, or fail to perform his duties. The incumbent DPM may apply for the appointment in the new selection process.

(5) The MTS Committee has discretion to relieve a DPM of his appointment due to a material financial, operations, or personnel change warranting immediate action.

(6) If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the MTS Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a prejudgment of the new DPM selection process.

(7) Deleted [insert date of effectiveness of SR–CBOE–98–03]. (See Rule 8.95.)

(8) If the MTS Committee decides to terminate a DPM's appointment under subpart (b)(7) of this Rule, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. This award will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.

(9) The hearing process before the MTS Committee will be as follows:

(i) Appointment Decisions: Each applicant for appointment as DPM will be given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member,

or any person associated with a member. Formal rules of evidence do not apply to these proceedings.

(ii) Decisions to Terminate Appointments: The DPM who is the subject of Committee review in conjunction with the termination of a DPM appointment will be so advised and given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision. The procedure shall be as described in paragraph 9(i) above.

(iii) Review: A DPM relieved of an appointment under subpart (b)(5), (6) or (7) of this Rule, and, in the case of a member organization DPM, the relieved nominee, may seek review of that decision under Chapter XIX of the Rules. A DPM relieved of an appointment under subpart (b)(4) of this Rule may also seek review of that decision under Chapter XIX of the Rules, but only if he applies for reappointment and is denied.

(10) The MTS Committee may perform all functions of the Market Performance Committee under the Rules in respect of review and evaluation of the conduct of DPMs in the classes of his DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.60. The process for review of any action taken by the MTS Committee under this subpart shall be the same as if the action had been taken by the Market Performance Committee.

(c) The DPM is a member who functions in approved classes as a market-maker, floor broker, and in the place of the Order Book Official (''OBO'') exempt from Rule 8.8. In acting as a market-maker, the DPM shall fulfill all obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in place of the OBO in appointed options classes, the DPM shall fulfill his obligation of due diligence (and all other obligations associated with these functions). In addition, the DPM shall:

(1) assure that disseminated market quotations are accurate.

(2) assure that each disseminated market quotation in appointed options classes shall be honored up to five contracts, or such other minimum number as set from time to time by the MTS Committee.

(3) determine any formula for generating the automatically updated market quotations, disclosing the elements of the formula to the members of the trading crowd.

(4) in addition to fulfilling general market-maker obligations under Rule 8.7, be present at the trading post throughout every business day, and, with respect to his trading as market-maker, effect trades which have a high degree of correlation with the overall pattern of trading for each series in the options classes involved.

(5) participate at all times in any automated execution system which may be open in appointed option classes.

(6) resolve trading disputes, subject to Floor Official review upon the request of any party to the dispute.

(7) In executing transactions for his own account as market-maker, the DPM shall (i) accord priority to orders he represents as floor broker over his activity as market-maker; (ii) have a right to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer; and (iii) not initiate a transaction for his own account that would result in putting into effect any stop or stop limit order which may be in the book or which he represents as floor broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction.

(8) In appointed options classes and in other securities traded subject to the rules in Chapter XXX for which a DPM has been appointed, the DPM shall perform all functions of the Order Book Official, pursuant to Rules 7.3 through 71.0, and may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the public order book, and to represent such orders as a Floor Broker. The DPM may not represent discretionary orders as a Floor Broker or otherwise. All orders in the DPM's possession which are eligible to be booked shall be booked.

(9) The DPM is designated to disclose book information under Rule 7.8.

(d) The Exchange shall continue to be responsible for the maintenance, handling, and billing of the book in option classes in which a DPM has been appointed, and shall retain and compensate the DPM for performing the OBO function. The Exchange will make personnel available to assist the DPM, as the DPM shall require in the DPM's OBO function, for which personnel the Exchange may charge the DPM a reasonable fee.

* * * Interpretations and Policies: .01 Willingness to promote the Exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities.

.02 Every registered DPM shall maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater. In the event that two or more DPMs are associated with each other and deal for the same DPM account, this requirement shall apply to such DPMs as one unit, rather than to each DPM individually.

.03 In addition to his responsibilities as a Market-Maker, a person appointed to serve as DPM in one or more securities traded subject to the rules in Chapter XXX shall continuously maintain on the floor of the Exchange a two-sided market in the securities for which he has been appointed, consisting of a current bid and a current offer for his account, at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities sufficient to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor.

Limitations on Dealings of Designated Primary Market-Makers

Rule 8.81. (a) No member (other than a Designated Primary Market Maker (''DPM'') acting pursuant to Rule 8.80 above), limited partner, officer, employee, approved person or party approved, who is affiliated with a DPM or member organization, shall, during the period of such affiliation, purchase or sell any option in which such DPM is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such DPM is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution by a Floor official; and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price.

(b) Notwithstanding the provisions of Rule 8.80, an approved person or member organization which is affiliated with a DPM shall not be subject to Rule 8.81(a), provided that it has established and obtained Exchange approval of

procedures restricting the flow of material non-public corporate or market information between itself and the DPM and any member, officer, or employee associated therewith.

(c) For such member organization which controls or is controlled by or is under common control with, another organization, the exemption provided in paragraph (b) of this Rule shall be available to it only where the Exchange has determined that the relationship between the DPM, each person associated therewith, and such other organization satisfies all the conditions specified in the guidelines.

(d) The procedures referred to in paragraph (b) of this rule shall comply with such guidelines as are promulgated by the Exchange.

Guidelines for Exemptive Relief Under Rule 8.81 for Members or Member Organizations Affiliated with a Designated Primary Market-Maker

(a) The following restrictions apply to a member or member organization which is affiliated with a designated primary market-maker (''DPM''):

It may not purchase or sell for any account in which it has a direct or indirect interest any security in which its affiliate is a DPM.

It may not engage in any business transaction with the issuer of a security or its insiders in which its affiliate is a DPM.

The member firm may not accept orders directly from the issuer, its insiders or certain designated parties in securities in which its affiliate is a DPM.

This Rule provides a means by which an affiliated firm doing business with the public as defined in Rule 9.1 (hereafter ''member organization'') may obtain an exemption from the restrictions discussed above. This exemption is only available to a member firm which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated DPM, i.e., a ''Chinese Wall.'' This Rule sets forth the steps a member firm must undertake, at a minimum, to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval for its procedures in accordance with these Guidelines shall remain subject to the restrictions set forth above.

(b) These Guidelines require that an affiliated member firm establish procedures which are sufficient to restrict the flow of information between itself and the DPM. Generally, an affiliated member firm seeking an exemption from the Rules discussed in paragraph (a) above should establish its operational structure along the lines discussed below.

(i) The affiliated member firm and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member firm and the DPM to be under common management, in no instance may persons on the member firm's side of the ''Wall'' exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market making responsibilities pursuant to the Rules of the Exchange.

(ii) The affiliated member firm and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member firm to influence the DPM's conduct and avoid the misuse of DPM market information to influence the affiliated member firm's conduct. Specifically, the affiliated member firm and the DPM organization must ensure that material non-public corporate information relating to trading positions taken by the affiliated member firm in a DPM security are not made available to the DPM; or to any member, partner, director or employee thereof; by a DPM while in possession of non-public corporate information derived by the affiliated member firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the member firm's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's ''book'' in a DPM security is kept confidential and is not made available to the affiliated member firm.

(c) An affiliated member firm seeking exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which it intends to satisfy each of the conditions stated in subparagraphs (b)(i) and (b)(ii) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(ii) The designation and identification of the individual(s) within the affiliated member firm responsible for maintenance and surveillance of such procedures;

(iii) That the DPM may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its DPM activity to any other broker and in the same manner that it would make information available to any other broker; and that the DPM may only make such information available to a broker affiliated with the member firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information;

(iv) That where it ''popularizes'' a security in which it acts as DPM it must disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Floor of the Exchange in the security, and the firm will notify the Exchange immediately after the issuance of a research report or written recommendation;

(v) That it will file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a specialty security;

(vi) That it will take appropriate remedial action against any person violating these Guidelines and/or its internal compliance and audit procedures adopted pursuant to subsection (c)(i) of these Guidelines, and that it and its associated DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as DPM and/or revocation of the exemption, in the event of such a violation;

(vii) Whether the firm intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall (the procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); and

(viii) That no individual associated with it may trade as a market-maker in any security in which the associated DPM has an appointment.

(d) Paragraph (b) of these Guidelines requires the establishment of procedures designed to prohibit the flow of certain market sensitive information from a member firm to its affiliated DPM or to any member, partner, director or employee thereof. In the event that, notwithstanding these procedures, any DPM becomes aware of the fact that he has received any such information relating to any of his DPM securities from his organization's affiliated member firm, the DPM shall promptly communicate that fact and disclose the

information so received to the person in the affiliated member firm responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the appointment in the option class involved. If the compliance officer determines that the DPM should give up the DPM appointment, the DPM shall, at a minimum, give it up to another member who is registered as DPM in the security and who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM to recover the DPM security and recommence acting as DPM in the DPM security involved. Procedures shall established by the affiliated member firm to assure that in any instance when the compliance officer determines that a DPM should give up the appointment, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the temporary DPM.

The compliance officer shall keep a written record of each request received from a DPM for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM, the determination made by the compliance officer and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM should give up the appointment and also of the determination that such DPM should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from the affiliated DPM for a determination as referred to above shall be furnished to the Exchange for its review. Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may have violated Rule 10b–5, Rule 14e–3, just and equitable principles of trade or one or more other provisions of the Exchange Act, or regulations thereunder or rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(e) Subparagraph (c)(vii) of these Guidelines permits a member firm to clear the DPM transactions of its affiliated DPM provided it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member firm and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) in senior management positions in the affiliated member firm who are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member firm's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member firm, or in making recommendations to the customers or potential customers of the affiliated member firm. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any DPM to meet market-making or other obligations under Exchange Rules.

(f) The written statement require by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated member firm and the DPM intend to adopt to satisfy each of the conditions stated in subparagraphs (c)(i) through (c)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the member firm and its affiliated DPM are acceptable under the Guidelines, the Exchange shall so inform the member firm and its affiliated DPM, in writing, at which point an exemption shall be granted. Absent such prior written approval, an exemption shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated member firm to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated member firm intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the function performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.]

Section D: Allocation of Securities and Location of Trading Crowds and DPMs

Rule 8.95. Allocation of Securities and Location of Trading Crowds and DPMs

* * * * *

* * * Interpretations and Policies: .01 Subject to Rule *8.83(f)* [8.80(b)(6)], it shall be the responsibility of the Allocation Committee and the Special Product Assignment Committee pursuant to paragraph (a) of this Rule to reallocate a security in the event that the security is removed pursuant to another Exchange Rule from the trading crowd or DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains such allocation.

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Chapter XXX—Stocks, Warrants and Other Securities

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Rule 30.40. Market-Makers

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(b) Classes of Contracts Other Than Those to Which Appointed. With respect to securities in which he does not hold an appointment, a Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations, as specified in paragraph (a) of this Rule, with respect to those securities to which he does hold appointments. Whenever a Market-Maker enters the trading crowd for securities in which he does not hold an appointment in other than a floor brokerage capacity, he shall fulfill the obligations established by paragraph (a) of this rule. On a day on which a transaction in a non-appointed security is effected for the account of a Market-maker, such Market-Maker may be required to undertake the obligations specified in paragraph (a) of this Rule upon request by a Floor Broker, or by the Order Book Official or DPM in accordance with Rules 7.5 and *8.85(b)* [8.80(c)], as applicable. Furthermore, Market-Makers should not:

(i) Congregate in a particular security; or

(ii) Individually or as a group, intentionally, or unintentionally, dominate the market in a particular security; or

(iii) Effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

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Rule 30.73—Application of Exchange Rules

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* * * Interpretations and Policies:

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.02 Any acceptance of a commitment or obligation to trade received on the floor through ITS or any other application of the System shall comply with the rules applicable to the making of bids and offers and transactions on the floor, except where the context otherwise requires. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the floor of the Exchange Rules 6.3, 6.6, 6.21, 6.22, 6.24, 8.1 through 8.6, 8.8, *8.85, 8.87, 8.91,* [8.80, 8.81,] 30.3, 30.4, 30.16, 30.18 and 30.40.

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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

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs allocated a total of 11 equity option classes.[3] In the more than 10 years since the introduction of the DPM program, the program has experienced significant growth and success and was granted permanent approval by the Commission in 1994.[4] Currently, the program includes 28 DPMs, and those DPMs have been allocated over 675 equity option classes, as well as numerous index option classes and structured products.

Over the course of the more than 10 year evolution of the DPM program, the Exchange has developed various procedures for implementing the rule provisions that govern the program. However, the Exchange has made relatively few changes to these rule provisions, which are set forth in CBOE Rules 8.80 and 8.81, since the time these provisions were first promulgated in 1987. The purpose of this proposed rule change is to update the rule provisions relating to DPMs so that they address the various procedures that have been implemented over time pursuant to Rules 8.80 and 8.81 and so that they incorporate various proposed improvements and enhancements that the Exchange believes will be beneficial to the operation of the DPM program based on the Exchange's decade-long experience in operating the program. Additionally, the Exchange proposes to reorganize the rule provisions that govern the DPM program by segregating them into 12 separate rules that each address 1 of the 12 primary aspects of the DPM program. The Exchange believes that this restructuring will improve the organization of the rule provisions relating to DPMs and make it easier for the Exchange's membership to reference and understand these provisions.

The proposed rule changes are the product of a comprehensive review and evaluation by the Exchange of the current rule provisions relating to DPMs. This thorough and detailed review and evaluation was conducted by Exchange staff, the Exchange's Modified Trading System Appointments Committee (''MTS Committee''), the Exchange's Floor Directors Committee, and the Exchange's Board of Directors, and involved numerous meetings and discussions by and among these groups over several years.

Under this proposed change, the Exchange's rule provisions relating to DPMs are proposed to be segregated into proposed Rules 8.80 through 8.91. Set forth below is a summary of each of these proposed rules.

Rule 8.80—DPM Defined. Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker, Floor Broker, and Order Book Official. The only change to this definition from the current DPM definition is that proposed Rule 8.80 requires a DPM to be a member organization. The purpose of this additional requirement is to ensure that each DPM has a formal organizational structure in place to govern the manner in which it will operate and to define the relationship between the individuals associated with the DPM. Proposed Rule 8.80 also clarifies that DPMs are approved by the MTS Committee and are allocated securities by the Exchange's Allocation Committees.[5]

Rule 8.81—DPM Designees. Proposed Rule 8.81 is divided into four subparagraphs, (a) through (d), and sets forth the requirements applicable to DPM Designees.

Proposed Rule 8.81(a) makes explicit that a DPM may act as a DPM solely through its DPM Designees and defines a DPM Designee as an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. Proposed Rule 8.81(a) also provides that the MTS Committee may subclassify DPM Designees and require certain DPM Designees to be subject to

[3] See Securities Exchange Act Release No. 24934 (September 22, 1987) 52 FR 36122 (September 25, 1987) (order approving file No. SR–CBOE–87–18).

[4] See Securities Exchange Act Release No. 34999 (November 22, 1994) 59 FR 61361 (November 30, 1994) (order approving File No. SR–CBOE–94–36).

[5] The Exchange's process for allocating securities to DPMs and Market-Maker trading crowds is set forth in Rule 8.95, recently approved by the Commission. See Securities Exchange Act Release No. 39879 (April 16, 1998) 63 FR 20227 (April 23, 1998).

specified supervision and/or to be limited in their authority to represent the DPM. For example, the MTS Committee may wish to require that less experienced DPM Designees only act in that capacity when a more experienced DPM Designee is also present at the trading station to provide supervision.

Proposed Rule 8.81(b) requires each DPM Designee of a DPM to (i) be an Exchange member, (ii) be a nominee of or an affiliate of the DPM, or own a membership that has been registered for the DPM or for an affiliate of the DPM, (iii) be registered with the Exchange as a Market-Maker and a Floor Broker, (iv) have in place an authorization from the DPM to act on its behalf and a guarantee from the DPM guarantying the designee's obligations arising out of its representation of the DPM, and (v) be approved by the MTS Committee. Additionally, Rule 8.81(b) provides that a DPM Designee approval will expire if the individual does not have trading privileges on the Exchange for a 6 month period. This provision is intended to ensure that any DPM Designee who has no trading privileges for 6 months (and therefore does not engage in trading activities during that period) and who then desires to act again in the capacity of a DPM Designee will be reviewed by the MTS Committee so that the Committee can evaluate whether the individual remains qualified to act as a DPM Designee.

Proposed Rule 8.81(c) requires each DPM to have at least 2 DPM Designees who are nominees of the DPM or who have a membership that has been registered for the DPM. Exchange rules require each member organization to have at least 1 nominee or person who has registered his or her membership for the organization, and the purpose of Rule 8.81(c) is to help to ensure that a DPM remains qualified to act as a member organization, and hence a DPM, if a nominee or person who has registered his or her membership for the organization departs from the organization.

Proposed Rule 8.81(d) incorporates two existing rule provisions. First, proposed Rule 8.81(d) provides that a DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. Similar provisions are currently embodied in CBOE Rule 8.3.01 (which is proposed to be deleted) and in current Rule 8.81 (which is proposed to be substantially restated in proposed Rule 8.91). Second, proposed Rule 8.81(d) provides that a DPM Designee is exempt from the provisions of CBOE Rule 8.8 when acting on behalf of the DPM in its capacity as a DPM. Rule 8.8 generally prohibits a member from acting as both a Market-Maker and Floor-Broker in a trading station on the same day, and the exemption to Rule 8.8 for DPMs is currently set forth in current Rule 8.80(c).

Rule 8.82—MTS Committee. Proposed Rule 8.82 governs the composition of the MTS Committee and retains the current 11 member composition of the Committee, which consists of the Vice-Chairman of the Exchange, the Chairman of the Exchange's Market Performance Committee, 4 members whose primary business is as a Market-Maker, 2 members whose primary business is as a Market-Maker or as a DPM Designee, 1 member whose primary business is as a Floor Broker who is not associated with a member organization that conduct a public customer business, and 2 persons associated with member organizations that conduct a public customer business. Currently, the 9 members of the MTS Committee, other than the Vice-Chairman and the Chairman of the Market Performance Committee, are nominated by the Nominating Committee and appointed by the Board of Directors to serve 2 year terms on the Committee. Under Rule 8.82, these 9 members of the Committee will be elected by the Exchange's membership in the same manner that elected Exchange Directors are chosen by the membership. In addition, Rule 8.82 increases the length of the terms to be served by these 9 members of the Committee to 3 years [6] and provides that no more than 2 of the 9 elected MTS Committee members may be associated with a DPM. Because of the important responsibilities of the MTS Committee, the Exchange believes that that MTS Committee should be composed of individuals who have been elected by the membership. The Vice-Chairman is already elected by the membership and the Chairman of the Market Performance Committee is typically one of the Exchange's elected Directors. In addition, the Exchange believes that increasing the term lengths of the MTS Committee members by one year will provide the Committee with more continuity and expertise in addressing issues that come before the Committee.

Rule 8.83—Approval to Act as a DPM. Proposed Rule 8.83 addresses the DPM approval process. For the most part, it consists of a restatement of the current provisions that govern the DPM approval process as set forth in current Rule 8.80.[7] For example, Rule 8.83 describes the criteria that may be considered by the MTS Committee in deciding whether to approve an application as a DPM (including such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance), and provides that each applicant will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. Additionally, as with any decision of the MTS Committee (other than an approval or failure to approve a proposed transfer of a DPM appointment, which is subject to direct review by the Board of Directors as discussed below), any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeal Committee under Chapter XIX of the Exchange's Rules. The appeal procedures provide for the right to a formal Appeals Committee hearing concerning any such decision, and the decision of the Appeals Committee may be appealed to the Board of Directors pursuant to CBOE Rule 19.5.

Rule 8.84—Conditions on the Allocation of Securities to DPMs. Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel. Among the reasons for granting the MTS Committee the authority to limit the concentration of securities allocable to a single DPM is to promote competition on the Exchange's trading floor and to help to ensure that no DPM is allocated such a large number of securities that it would be difficult for the Exchange to quickly reallocate those securities to other DPMs and/or Market-Maker trading crowds in

[6] Upon the effectiveness of this proposed rule change, the MTS Committee members at that time will remain as members of the Committee until their then current terms expire. Because MTS Committee members currently serve 2 year terms (with 4 or 5 of those terms expiring each year) and because Rule 8.82 provides that the MTS Committee members will serve 3 year terms (with 3 of those terms expiring each year), the Exchange's Nominating Committee will shorten the length of some of the terms of the MTS Committee positions elected in the first 2 years following the effectiveness of this rule change in order to ensure that 3 positions on the MTS Committee will come up for election each year once the 3 year terms are fully phased in.

[7] Many of the obligations of a DPM, which are currently set forth in Rule 8.80(c), are proposed to be moved to proposed Rule 8.85, discussed below.

the event that for some reason the DPM were no longer able to preform as a DPM. Among the reasons for granting the MTS Committee the authority to establish minimum eligibility standards for DPMs to receive allocations of securities is to help to ensure that a DPM has the financial and operational capacity to handle additional allocations of securities. Similarly, the MTS Committee may utilize this Rule to establish specific minimum market performance standards that must be satisfied by the DPMs in order to receive allocations of securities so that a DPM that is not performing adequately with respect to the securities that have already been allocated to the DPM is not allocated additional securities.

Rule 8.85—DPM Obligations. Proposed Rule 8.85 describes the obligations of a DPM, including the general obligation with respect to each of its allocated securities to fulfill all of the obligations under Exchange Rules of a Market-Maker, of a Floor Broker (to the extent that the DPM acts as a Floor Broker), and of an Order Book Official.

Most of the obligations and other provisions contained in proposed Rule 8.85 are contained in current Rule 8.80. In some instances, these provisions are proposed to be slightly modified to clarify their scope. Among the new DPM obligations and related provisions set forth in Rule 8.85 are the following:

Proposed Rule 8.85(a)(vi) requires a DPM to segregate in a manner prescribed by the MTS Committee (i) all transactions consummated by the DPM in securities allocated to the DPM and (ii) any other transaction consummated by or on behalf of the DPM that are related to the DPM's DPM business. This will permit the Exchange to monitor each DPM's trading positions in order to ensure that the DPM is in compliance with the financial and other requirements that are applicable to DPMs. In addition, the Exchange proposes to charge a $250 processing fee for each DPM Designee that will be executing transactions on behalf of a DPM in that DPM's segregated account(s). This is the same fee amount that is charged for each participant in a joint account established pursuant to CBOE Rule 8.9. Since DPMs currently utilize joint accounts to segregate their transactions, the proposed $250 fee will essentially replace the $250 joint account fee that DPMs are currently being assessed in this regard.

Current Rule 8.80(c)(3) requires each DPM to determine a formula for generating automatically updated market quotations and to disclose the components of the formula to the other members trading at the DPM's trading station. Proposed Rule 8.85(a)(viii) restates this requirement and clarifies the requirement by specifying that the components of the formula that are required to be disclosed include the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying. Rule 8.85(a) also provides that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems having to disclose proprietary information concerning the formulas used by those systems. Most DPMs utilize the Exchange's Auto Quote System to generate automatically updated market quotations and therefore would not be eligible for an exemption of this kind.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession that is eligible for entry into the book, subject to two limited exceptions. First, Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to book a book-eligible order if the DPM immediately executes the order upon its receipt. This permits a DPM to immediately execute a marketable customer order without having to delay that execution by first placing the order in the public order book. Second, Rule 8.85(b)(i)(B) provides that a DPM may refrain from booking a book-eligible order if the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book. Rule 8.85(b)(i)(B) is intended to accommodate the wishes of customers who desire an opportunity for price improvement before the execution of a limit order at its limit price, while at the same time requiring the information concerning the order that would have been displayed in the public order book to be disclosed to the other members of the trading crowd, so that the other members of the trading crowd are not at an informational disadvantage.

Proposed Rule 8.85(b)(ii) elaborates upon the requirement set forth in Rule 8.85(b)(i) by requiring that a DPM not remove any order from the public order book except in two circumstances. First, Rule 8.85(b)(ii)(A) clarifies that a DPM may remove an order from the book if the order is canceled, expires, or is executed. Second, Rule 8.85(b)(ii)(B) clarifies that a DPM may return an order to the member that placed the order with the DPM when so requested by that member. For example, a Floor Broker may desire to leave an order with a DPM temporarily while the Floor Broker attends to business elsewhere on the trading floor, or until such time as the prevailing market moves closer to the order's limit price.

Proposed Rule 8.85(b)(iii) restates the current requirement that a DPM is obligated to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, and sets forth one narrow exception to this requirement in circumstances where the customer who placed the order has consented to not being accorded such priority. This exception is intended to address situations such as the following. Under both the current and proposed DPM rules, a DPM may, but is not obligated to, accept non-discretionary orders that are not eligible to be placed in the public order book, such as orders from a competing specialist or other broker-dealer. Competing specialists have on occasion inquired as to whether a DPM would be willing to represent an order on behalf of the competing specialist if the competing specialist were to agree to waive the priority requirement and/or allow the DPM to participate (or match) with the competing specialist's order. However, despite the fact that both the DPM and the customer (in this case, the competing specialist) may desire to have such an arrangement, they are unable to do so under the current rules, which allow no exceptions to the requirement that a DPM accord priority to the orders it represents. Rule 8.85(b)(iii) would permit a DPM to accommodate a customer who desires to have a DPM represent an order and to waive this priority requirement with respect to the order.

Proposed Rule 8.85(b)(iv) restates the current requirement that a DPM may not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal. Additionally, just as with respect to the priority requirement set forth in proposed Rule 8.85(b)(iii), there is an exception to the requirement set forth in Rule 8.85(b)(iv) if the customer consents. The reasons for this exception are the same as the reasons for the exception to the priority requirement in Rule 8.85(b)(iii). It should also be noted that although Rule 8.85(b)(iv) would not permit a DPM to charge a brokerage commission with respect to the execution of an order for which the DPM acts as both agent and principal (subject to the limited exception described above), the DPM would be permitted under Rule 8.85(b)(iv) to bill back to the customer any Exchange fees

charged to the DPM with respect to the execution of the order.

As noted above, a DPM may, but is not obligated to, accept non-discretionary orders that are not eligible to be placed in the public order book. However, proposed Rule 8.85(b)(v) also provides that a DPM is required to act as a Floor Broker to the extent required by the MTS Committee. The purpose of Rule 8.85(b)(v) is to permit the MTS Committee to require a DPM to act as a Floor Broker if there is a need for the DPM to act in this capacity. For example, the MTS Committee may require a DPM to act as a Floor Broker if regular Floor Brokers are not available to represent orders in the securities allocated to the DPM.

Proposed Rule 8.85(b)(vi) restates the current requirement that a DPM may not represent discretionary orders as a Floor Broker or otherwise. Rule 8.85 also provides that the MTS Committee may authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. As with Rule 8.85(b)(v), the purpose of this provision is to grant MTS Committee the ability to invoke this provision if there is a need for a DPM to act in this capacity, such as if regular Floor Brokers are not available to do so.

Rule 8.86—DPM Financial Requirements. Proposed Rule 8.86 restates the current requirement that each DPM is required to maintain net liquidating equity in its DPM account of not less than $100,000. It also includes two requirements which, although they are currently applicable to DPMs, are not referenced in the current DPM rules. Specifically, Rule 8.86 includes the requirement that each DPM maintain net capital sufficient to comply with the requirements of Rule 15c3–1 under the Act and that each DPM which is an Exchange Clearing Member also maintain net capital sufficient to comply with the requirements of The Options Clearing Corporation. Although there are other rules which already subject DPMs to these requirements, the Exchange believes that it is worthwhile to also include these requirements in Rule 8.86 so that the Rule is more informative and complete.

Additionally, proposed Rule 8.86 requires DPMs to maintain net liquidating equity in their DPM accounts in conformity with such guidelines as the MTS Committee may establish from time to time. The Exchange currently uses DPM financial guidelines in connection with the process for allocating securities to DPMs, and Rule 8.86 would permit the Exchange to implement and enforce such guidelines and future equity guidelines as DPM financial requirements under the Rules. The MTS Committee has established financial guidelines that it intends to utilize under Rule 8.86. Under these guidelines, in order for a DPM to apply for the allocation of securities, the DPM must have in its DPM account $350,000 plus $25,000 in equity for each security that has been allocated to the DPM in excess of the initial 8 securities allocated to the DPM. Because these guidelines are more stringent than the current requirement that a DPM must maintain an equity amount sufficient to assume a position of 20 trading units of each security which has been allocated to the DPM, that requirement has been eliminated.

Rule 8.87—Participation Entitlement of DPMs. A DPM's right to participate as principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under these principles, if a DPM announces a bid (offer) for the DPM's own account ahead of other members in response to a request for a market from a member not acting on behalf of the DPM, the DPM is entitled to participate up to 100% in any resulting transaction. In addition to the rights granted by Rule 6.45, current Rule 8.80(c)(7)(ii) grants each DPM a right to participate ''pro rata'', with the Market-Makers present in the trading crowd, in any transaction in a security that has been allocated to the DPM if the DPM's previously established principal bid (offer) was equal to the highest bid (lower offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45. Because the term ''pro rata'' is not precisely defined by current Rule 8.80(c)(7)(ii), the scope of that term, and hence the participation right, has historically been interpreted by the MTS Committee.

Since 1993, the MTS Committee has interpreted a DPM's participation right in transactions that occur in an allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to consist of the following: an initial 40% participation right, a 30% participation right when average daily volume in the security over the previous calendar quarter reaches 2501 contracts, and no guaranteed participation right when average daily volume in the security over the previous calendar quarter reaches 5,000 contracts. Additionally, the MTS Committee has determined to maintain all multiply traded securities at the 40% participation level until further notice.

Proposed Rule 8.87 formalizes the authority of the MTS Committee to determine the appropriate participation right for DPMs by providing that the MTS Committee, subject to review by the Board of Directors, may establish from time to time a participation entitlement formula that is applicable to all DPMs. Additionally, Rule 8.87 further provides that, in accordance with the established formula, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in the DPM's allocated securities that occur at the DPM's previously established principal bid or offer.

Rule 8.88—Review of DPM Operations and Performance. Proposed Rule 8.88(a) restates that current rule provision that the MTS Committee may conduct a review of a DPM's operations or performance any time, and clarifies that such reviews may be conducted by a subcommittee of the MTS Committee. Rule 8.88(a) also clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee in connection with such a review. The current rule provision which contemplates that such reviews will be conducted at least quarterly has been revised to provide that, at a minimum, a review of each DPM's operations and performance shall be conducted on an annual basis. The reason for this change is that the Exchange does not believe it is necessary to conduct a formal and detailed operational and performance review of each DPM more than once a year. In the interim, the MTS Committee will review information regarding each DPM's operations and performance on an ongoing basis and will conduct a review of, and/or speak with, any DPM that has any operational or performance issues that need to be addressed prior to that DPM's next annual review. The Exchange believes that this approach is more effective than quarterly reviews, since it will permit the MTS Committee to timely address any operational or performance issues that require immediate attention, while allowing more time to be spent on each formal and detailed DPM review.

Proposed Rule 8.88(b) provides that the MTS Committee shall perform the market performance evaluation and

remedial action functions set forth in CBOE Rule 8.60 with respect to DPMs and that the MTS Committee may combine a review conducted pursuant to Rule 8.88(a) with an evaluation conducted pursuant to Rule 8.60. This is consistent with current Rule 8.80(b)(10) which also provides that the MTS Committee may review and evaluate the conduct of DPMs pursuant to Rule 8.60.

On the other hand, current Rule 8.80(b)(10) also grants the MTS Committee market performance authority with respect to other issues relating to DPMs that the Exchange now believes should be handled by other Exchange committees. The Exchange believes that this authority should be transferred from the MTS Committee to these other committees because these other committees already have responsibility concerning these issues for non-DPMs and because consolidating responsibility for these issues will result in greater efficiency. Thus, for example, the authority to determine the series eligible for the Exchange's Retail Automatic Execution System (RAES) and the eligible size of RAES orders for securities allocated to DPMs, which is currently exercised by the MTS Committee pursuant to CBOE Rule 6.8, has been consolidated in the Exchange's Floor Procedure Committees since they have responsibility for these issues for securities that are allocated to non-DPM trading crowds. Similarly, the authority under the Rules with respect to DPM RAES participation and eligibility, which is currently exercised by the MTS Committee pursuant to CBOE Rule 8.16, has been consolidated in the Exchange's Market Performance Committees since they have responsibility for these issues for non-DPMs.

One market performance related authority that the Exchange has determined that MTS Committee should retain is Floor Official authority. Thus, proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations. MTS Committee members currently possess this authority by virtue of current Rule 8.80(b)(10), which provides that the MTS Committee may perform all of the functions of the Market Performance Committee under the Rules, and CBOE Rule 6.20.09, which provides that members of the Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies. The Exchange believes that MTS Committee members should retain Floor Official authority with respect to DPM trading stations because MTS Committee members have expertise with respect to the trading conduct rules that are applicable to DPMs. In addition, acting as Floor Officials at DPM trading stations allows MTS Committee members to stay abreast of issues that may arise at these stations and provides the MTS Committee with a valuable source of information which the Committee utilizes in connection with its oversight of the performance and operations of DPMs.

Proposed Rule 8.88 expands the market performance responsibilities of the MTS Committee by providing that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to the Market-Makers that trade at DPM trading stations, in addition to performing these functions with respect to DPMs. The primary reason for this change is that the performance of a DPM trading crowd is influenced by both the DPM and the Market-Makers that trade in the crowd. Accordingly, the Exchange believes that it will be more efficient if one committee exercises the market performance and remedial action responsibilities with respect to both the DPM and the Market-Makers that trade in a DPM trading crowd, instead of the current bifurcated structure in which the MTS Committee has market performance authority with respect to the DPM and the Market Performance Committee has market performance authority with respect to the Market-Makers.

Rule 8.89—Transfer of DPM Appointments. Current Rule 8.80(b)(3) provides that a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth both a detailed procedure for the consideration of any proposal to sell, transfer, or assign an interest in a DPM, and the standards that apply to such consideration. This procedure is set forth in proposed Rules 8.89(a) through 8.89(f) and consists of the following:

Proposed Rule 8.89(a) provide that a DPM proposing any sale, transfer, or assignment or any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give at least 30 days prior written notice of the proposed change to the MTS Committee. Rule 8.89(a) further provides that if the transaction is deemed to involve the transfer of a DPM appointment, the transaction is required to be approved by the MTS Committee before it may be consummated.

Proposed Rule 8.89(b) defines the transfer of a DPM appointment to include, among other things, any sale, transfer, or assignment of any significant share of the ownership of a DPM and defines the foregoing to include any sale, transfer, or assignment of a 5% or more interest in the equity or profits or losses of the DPM (or a series of smaller changes that in the aggregate amount to a change of 5% or more). Additionally, Rule 8.89(b) provides that a sale, transfer, or assignment of less than 5% may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances.

Proposed Rule 8.89(c) provides that any DPM desiring to obtain approval of a transaction that is deemed to involve the transfer of a DPM appointment is required to submit a written application to the MTS Committee at least 30 days prior to the proposed effective date of the transaction. Rule 8.89(c) also requires that the application contain a full and complete description of the proposed transaction, including among other things, the transferee's ownership and capital structure, the identity of those persons who will perform the duties of the DPM following the transaction, the terms of the transaction, and any other material information pertaining to the transaction that the MTS Committee may request.

Proposed Rule 8.89(d) provides that promptly after the receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee will post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin and that the MTS Committee will not ordinarily consider the proposed transfer until it has been posted on the Bulletin Board for at least 10 days. Rule 8.89(d) also provides that during this posting period the MTS Committee will accept written comments on the proposed transfer from any member and will accept written proposals from other members and from Market-Maker trading crowds that wish to be considered for appointment in some or all of the options classes that are impacted by the proposed transfer.

Proposed Rule 8.89(e) sets forth the factors that may be considered by the MTS Committee in determining whether to approve a proposed transfer of a DPM appointment. These factors include (i) the financial and operational capacity of the transferee, (ii) the continuity of control, management, and persons responsible for the operation of the DPM, (iii) avoiding undue concentration of DPM appointments on the Exchange,

(iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period, and (v) the best interests of the Exchange. In addition, Rule 8.89(e) provides that no application relating to a proposed transfer of a DPM appointment will be approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer, except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown.

Proposed Rule 8.89(f) provides that the approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within 10 days of the time the decision of the MTS Committee is announced, of (i) a written request for review made by the applicant (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least 5 Directors of the Exchange (in any case). In the event of a request for review, the Board will appoint a panel Directors to review the matter. Following this review, the panel, with the assistance of Board counsel, will prepare a proposed written decision of the Board concerning the matter and will submit the proposed decision to the full Board for discussion and consideration. The Board will then decade whether to adopt or modify the proposed decision and will issue its final decision to the applicant and to the MTS Committee.

In conjunction with proposed Rule 8.89, the Board of Directors has also issued a memo to the MTS Committee which conveys the Board's views with respect to the various factors that may bear upon whether a request to transfer an interest in a DPM appointment should be approved. The purpose of the memo is to provide guidance to the MTS Committee concerning the types of considerations that the Board believes should be taken into account in evaluating such requests. Among the guidance provided in the memo is the Board's view that a DPM's franchise in its allocated securities is not a transferable property interest owned by the DPM. Thus, the Board states in the memo that it does not believe that the outright sale of all or a part of a DPM's business should ordinarily be approved. Nevertheless, the Board also states that it recognizes that there are circumstances where it may be in the best interests of both the DPM and the Exchange to permit the transfer of some or all of the DPM's interest in its DPM appointment, even though this may result in the DPM being paid for the value of the goodwill in its DPM business. For example, the Board states that such circumstances might include situations where a transfer is for the purpose of attracting new capital to an existing successful DPM to enable it to expand its market-making activities, or to enable the DPM to bring in a new partner or other principal, or in response to an emergency need for capital where there is reason to permit the existing DPM to remain involved in the operation and therefore not to reallocate its appointment, assuming in each case that the expansion or increase in capital is found to be necessary or desirable in the best interests of the Exchange.

The Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors will improve the current rule provision regarding transfer of DPM appointments both by setting forth a detailed procedure for considering such requests, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such requests, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such requests.

Rule 8.90—Termination, Conditioning, or Limiting Approval to Act as a DPM. Proposed Rule 8.90 governs the termination, conditioning, and limiting of approval to act as a DPM. For the most part, it restates, with certain clarifications, provisions that are contained in current Rule 8.80. For example, Rule 8.90(a) clarifies that the MTS Committee may condition or limit a DPM's appointment (in addition to being permitted to terminate the appointment) if the DPM (i) incurs a material financial, operational, or personnel change, (ii) fails to comply with the rules applicable to DPMs or any conditions placed on its DPM appointment, or (iii) is no longer eligible to act as a DPM. In addition, Rule 8.90(c) clarifies that limiting a DPM's appointment may include, among other things, limiting or withdrawing a DPM's participation entitlement, withdrawing a DPM's right to act as a DPM in one or more of its allocated securities, and requiring a relocation of the DPM on the trading floor.

As is the case under current Rule 8.80, proposed Rule 8.90(a) generally provides that before the MTS Committee may take any action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. The only exception to this provision is that, as under current Rule 8.80, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if the DPM incurs a material financial, operational, or personnel change warranting such action or if the DPM fails to comply with any of the financial requirements applicable to DPMs.

As is also the case under the current DPM rules, if a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to proposed Rule 8.90, Rule 8.90(d) provides that the member organization may appeal that decision to the Appeals Committee under Chapter XIX. Additionally, as is described above, these appeal procedures provide for the right to a formal Appeals Committee hearing concerning any such decision, and the decision of the Appeals Committee may be appealed to the Board of Directors.

Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs. Guidelines for Relief Under Rule 8.91(d) for Members Affiliated with DPMs. Proposed Rule 8.91 and the accompanying proposed guidelines for exemptive relief under Rule 8.91(d) restate the rule provisions that are currently contained in current Rule 8.81 and the current guidelines for exemptive relief that accompany that Rule. Proposed Rule 8.91 and its accompanying guidelines are intended to more clearly reflect those provisions and how they have historically been interpreted by the Exchange. For example, the organization of these provisions have been improved by including in proposed Rule 8.91 all three of the restrictions on DPM affiliates that are set forth in the current provisions, instead of including only one of these restrictions in the Rule and including the other two restrictions in the accompanying guidelines, as is currently the case. Also, the restrictions on DPM dealings with an issuer are restated to take into account that in the case of options, which are nominally issued by The Options Clearing Corporation, these restrictions are intended to apply to dealings with the issuer of the underlying security, whereas in the case of securities other than options, they apply to dealings with the issuer of the security itself. Additionally, other clarifying revisions of a similar nature have been made to the current provisions without changing

the substance of these provisions as they have been interpreted by the Exchange.

Deletions from Current DPM Rules. Among the significant deletions from the current DPM rules that are not discussed above are the following:

Current Rule 8.80(b)(4)(ii) provides that the MTS Committee shall open a DPM's allocated option classes to a new DPM section process if the DPM changes its specified nominee and the former nominee so requests. The Exchange no longer believes that this provision is appropriate because DPM organizations are generally much larger than they used to be. Today, DPMs often have many nominees, and nominees are added to and depart from DPM organizations more frequently than in the early years of the DPM program. For this reason, most DPM nominees no longer have the same stake in their DPM organizations that many DPM nominees may have had in the past. Thus, it is often no longer equitable to allow a DPM nominee to request a new DPM section process for that DPM's allocated securities following the nominee's departure from the DPM organization.

Two provisions relating to maintenance of the public order book have also been deleted. First, current Rule 8.80(b)(8), which provides that under certain circumstances a terminated DPM will receive a proportionate share of the net book revenues for a period specified by the MTS Committee (up to a maximum of 5 years), has not been retained in the proposed DPM rules. The original purpose of this provision was to provide incentive to members to apply to be appointed as a DPM. Because the interest in becoming a DPM has grown throughout the years, this incentive is no longer necessary to attract DPM candidates.

Second, the Exchange is eliminating the provision of current Rule 8.80(d) which provides that the Exchange shall be responsible for the maintenance, handling, and billing of the public order book and shall retain and compensate the DPM for performing the Order Book Official function. The reason for this deletion is that over time DPMs have taken on the responsibility for the maintenance, handling, and billing of the public order book, and the Exchange no longer retains this responsibility nor compensates DPMs for performing these functions. However, the current provision of Rule 8.80(d) which contemplates that the Exchange may make personnel available to assist a DPM in the DPM's performance as an Order Book Official, for which the Exchange may charge the DPM a reasonable fee, has been retained in proposed Rule 8.85.01 with one minor modification. Specifically, proposed Rule 8.85.01 merely permits, and does not require, the Exchange to provide this assistance when it is requested. This change has been made because, although the Exchange is often able to provide such assistance to DPMs, the Exchange may not always be able to do so.

Finally, current Rule 8.80(c)(7)(iii) is being deleted because the procedure called for under the Rule is cumbersome and because the concern that the Rule addresses is adequately addressed by another Exchange Rule. Current Rule 8.80(c)(7)(ii) provides that a DPM may not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order which may be in the public order book or which the DPM represents as Floor Broker, except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. This procedure is cumbersome because it necessitates that a Floor Official be summoned to the trading station each of the many times this situation arises. Also, the required approval mechanism leads to delay in the execution of customer orders. The Exchange believes that the concern addressed by current Rule 8.80(c)(7)(iii) is adequately addressed by CBOE Rule 6.73(a), which requires a Floor Broker handling an order, including a DPM, to use due diligence to execute the order at the best price or prices available to the Floor Broker, in accordance with the Rules. Thus, if a DPM were to initiate a transaction for its own account in order to disadvantage a customer by putting into effect a stop or stop limit order, the Exchange would have the ability to discipline the DPM for such activity under Rule 6.73 for failure to exercise due diligence with respect to the representation of the order.

2. Statutory Basis

The Exchange believes that the proposed rule change will improve the operation of the DMP trading system which, in accordance with Section 11A(a)(1)(C)(i) of the Act,[8] assures the economic and efficient execution of securities transactions. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and further the objectives of Section 6(b)(5)[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

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 self-regulatory organization 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, N.W., Washington, D.C. 25049. Copies of the submissions, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. 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–98–15 and should be submitted by June 25, 1998.

[8] 15 U.S.C. 78kk-1(a)(1)(C)(i).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–14778 Filed 6–3–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40045; File Nos. SR–DTC–98–09, SR–NSCC–98–05]

Self-Regulatory Organizations; The Depository Trust Company; National Securities Clearing Corporation; Notice of a Proposed Rule Change Relating to Direct Clearing Services and New York Window Services

May 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 13, 1998, The Depository Trust Company (''DTC'') and the National Securities Clearing Corporation filed with the Securities and Exchange Commission (''Commission'') proposed rule changes as described in Items I, II, and III below, which Items have been prepared primarily by DTC and NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule changes.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

Under the proposed rule changes, NSCC will discontinue providing its Direct Clearing Services (''Direct Clearing'') and New York Window Services (''Window''). DTC will begin to offer its participants most of the services currently offered by NSCC through Direct Clearing and the Window and will call the service the ''New York Window Services.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Direct Clearing is a physical securities processing service which NSCC has provided since its inception to NSCC participants that do not have offices in New York City. The principal services of Direct Clearing include (i) processing of over-the-window receives and deliveries, (ii) processing transfers of physical securities certificates, and (iii) processing deliveries to designated agents in connection with reorganizations and other corporate actions. In the course of providing these and other Direct Clearing services, NSCC may have custody of participants' physical securities certificates including overnight custody for one or more days.[3]

The Window was originally approved by the Commission as a pilot project for NSCC in 1993[4] and became a permanent service in 1994.[5] The principal services of the Window are similar to those of Direct Clearing, but they initially were provided to NSCC participants located in New York City. NSCC organized the Window in order to centralize redundant services provided at many of its participants' offices that were based in New York City.

NSCC has proposed to discontinue providing Direct Clearing and the Window in order to focus its resources on the core businesses of NSCC. The proposed arrangements between NSCC and DTC should assist in eliminating redundant services and facilities and thereby should result in greater efficiencies while offering the current users of Direct Clearing and the Window the ability to receive similar services from DTC.

Under the proposals, DTC will adopt new procedures for the operation of its New York Window Services.[6] DTC's proposed procedures are substantially the same as NSCC's Rule 31[7] except that DTC's proposed procedures do not include provisions similar to section 4 of NSCC Rule 31, which relates to money settlement through the Window. Currently, it is anticipated that NSCC will discontinue providing Direct Clearing and the Window and DTC will begin offering its New York Window Services on July 10, 1998.

DTC and NSCC believe that the proposed rule changes are consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder because the proposed arrangements should provide for more efficient clearing and depository services and thereby should facilitate the prompt and accurate clearance and settlement of such transactions. In addition, DTC believes that the proposed rule changes will be implemented consistently with its obligation under Section 17A to safeguard securities and funds in its custody and control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed arrangements would impose no burden on competition. Securities depositories registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the businesses in which industry members compete with one another.

After consummation of the proposed arrangements between DTC and NSCC, securities industry members will continue to have access to high-quality, low-cost depository services provided under the mandate of the Act.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Written comments from DTC participants, NSCC participants, and others have not been solicited or received. NSCC and DTC have worked closely, however, with a users' group composed of many of the users of Direct Clearing and the Window in evaluating and planning the proposed transaction.

[11] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 79s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC and NSCC.

[3] For a more complete description of Direct Clearing, refer to Securities Exchange Act Release No. 32221 (April 26, 1993), 58 FR 26570 [File No. SR–NSCC–93–03].

[4] Securities Exchange Act Release No. 31861 (February 16, 1993), 58 FR 9582 [File No SR–NSCC–93–03].

[5] Securities Exchange Act Release No. 34629 (September 9, 1994), 59 FR 46680 [File No. SR–NSCC–94–12].

[6] DTC's proposed procedures are attached as Exhibit 2 to DTC's filing which is available for inspection and copying at the Commission's public reference room and through DTC.

[7] The current version of NSCC Rule 31 was approved by the Commission in 1996. Securities Exchange Act Release No. 37631 (September 3, 1996), 61 FR 47534 [File No. SR–NSCC–96–08].

[8] 15 U.S.C. 78q–1.