

reduce the brokerage expenses involved in the Substitutions.

(e) The Contract Owners will not incur any directly or indirectly related fees or charges, including brokerage-related fees or charges, as a result of the transfer of account value from any Old Sub-account.

(f) The Substitutions will not alter or affect the insurance benefits or rights of Contract Owners or the terms and obligations of the Skandia Contracts.

(g) The Substitutions are designed to avoid any adverse effects upon the tax benefits available to Contract Owners and are designed not to give rise to any current Federal income tax to Contract Owners.

(h) The Substitutions are expected to confer economic benefit to Contract Owners as described in the application.

(i) Contract Owners in the new AST Alger Growth Sub-account and the AST Alger Mid-Cap Growth Sub-account will not be subject to any 12b-1 fee, or be effected by any change in sub-advisor as a result of AST's "manager-of-managers" exemptive order, unless: (i) Contract Owners have had a right as beneficial owners of the AST Portfolios after the Substitutions to vote to approve the adoption of a 12b-1 plan or to approve the "manager-of-managers" order received from the Commission; or (ii) any Contract Owner allocates his or her Skandia Contract's account value to an AST investment option that has in effect a 12b-1 fee or "manager-of-managers" order.

(j) Other expenses in the new AST Alger Growth Sub-account and the AST Alger Mid-Cap Growth Sub-account will be capped at 0.04% for one year following the Substitution Date.

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitutions. Applicants assert that the purposes, terms, and conditions of the Substitutions are consistent with the protection for which Section 26(b) was designed. Applicants assert that the Substitutions will benefit investors

because they will result in greater administrative efficiency and enhanced oversight of the New Portfolios by ASLAC. Additionally, Applicants assert that over time, the efficiencies that come with being part of a large coordinated fund affiliated with ASLAC will have resulting benefits to Contract Owners.

3. Additionally, Applicants assert that the proposed Substitutions and related transactions will be in the best interests of Contract Owners in that they will (a) increase ASLAC's control over the administrative aspects of the New Portfolios; (b) enhance an Old Portfolio with significant style drift; (c) provide Contract Owners with a more diverse number of portfolios within the AST family; (d) provide a means to gather significantly more assets; (e) participate in the value-added manager of managers platform; (f) reduce conflicts; and (g) promote administrative efficiencies.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any such affiliated persons from purchasing any security or other property from such registered investment company.

5. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a transaction prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants request an order pursuant to Sections 6(c) and 17(b) of the 1940 Act exempting the in-kind redemptions and purchases from the provisions of Section 17(a) of the 1940 Act.

7. Applicants assert that the terms of the Substitutions are reasonable and fair and do not involve overreaching on the part of any person concerned.

Applicants represent that the Substitutions will be effected at the net asset value and the interests of Contract Owners will not be diluted. Applicants represent that in-kind redemptions will only be used to the extent they are consistent with the investment

objectives and applicable diversification requirements of the affected portfolios.

8. Applicants assert that the Substitutions and the in-kind redemptions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitutions and exempting the in-kind redemptions should be granted.

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

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43430; File No. SR-CBOE-00-21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend its Rule Governing the Operation of Its Automated Book Priority System To Permit Split-Price Executions

October 11, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 24, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 22, 2000, CBOE filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, CBOE amended the text of the proposed rule change and included a discussion of the indicator to be used when a book order is establishing CBOE's best bid or offer. See letter from Angelo Evangelou, Attorney, CBOE, to Joseph Corcoran, Attorney, Division of Market Regulation, Commission, dated June 20, 2000 ("Amendment No. 1").

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

The CBOE proposes to amend its rules governing the operation of its Retail Automatic Execution System ("RAES") to provide for split-price executions under the Automated Book Priority system. Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

Rule 6.8. RAES Operations

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

(a)(1) Firms on the Exchange's Order Routing System ("ORS") will automatically be on the Exchange's Retail Automatic Execution System ("RAES") for purposes of routing small public customer market or marketable limit orders into the RAES system. Those orders which are eligible for routing to RAES may be subject to such contingencies as the appropriate Floor Procedure Committee ("FPC") shall approve. Public customer orders are orders for accounts other than accounts in which a member, non-member participant in a joint-venture with a member, or any non-member broker-dealer (including a foreign broker-dealer as defined in Rule 1.1 (xx)) has an interest. The appropriate Floor Procedure Committee ("FPC") shall determine the size of orders eligible for entry into RAES in accordance with paragraph (e) of this Rule. For purposes of determining what a small customer order is, a customer's order cannot be split up such that its parts are eligible for entry into RAES. Firms on ORS have the ability to go on and off ORS at will. Firms not on ORS that wish to participate will be given access to RAES from terminals at their booths on the floor.

(ii) When RAES receives an order, the system automatically will attach to the order its execution price, determined by the prevailing market quote at the time of the order's entry to the system, except as otherwise provided in *paragraph (b) of this Rule in instances where the best bid or offer on the Exchange's book constitutes the prevailing market best bid or offer, and as otherwise provided in Interpretation and Policy .02 under this Rule 6.8 in respect of multiple-traded options.* A buy order will pay the offer, a sell order will sell at the bid. A Market-Maker logged on to participate in RAES (a "Participating Market-Maker") will be designated as contra-

broker on the trade. A trade executed on RAES at an erroneous quote should be treated as a trade reported at an erroneous price and adjusted to reflect the accurate market after receiving a Floor Official's approval.

(ii) 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.

(b) *When the best bid or offer on the Exchange's book constitutes the best bid or offer on the Exchange and is for a size less than the RAES order eligibility size for that class, such fact shall be denoted in the Exchange's disseminated quote by a "Book Indicator". It is possible that the best bid or offer on the Exchange's book constitutes the prevailing market bid or offer [may be equal to the best bid or offer on the Exchange's book]. In those instances, a RAES order will be executed against the order in the book. In the event, the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order will be assigned to participating market-makers at the same price at which the initial portion [rest] of the order was executed up to an amount prescribed by the appropriate Floor Procedure Committee on a class-by-class basis (the "Book Price commitment Quantity"). Any remaining balance thereafter shall be (i) routed to the crowd PAR terminal if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote constitutes the new prevailing market bid or offer; or (iii) executed against any order in the book that constitutes the new prevailing market bid or offer with the balance of the RAES order being assigned to participating market-makers at that price up to the Book Price Commitment Quantity. Any additional remaining balance of a RAES order shall be handled in accordance with (ii) or (iii) of this paragraph.*

(c)-(g) Unchanged.

* * * Interpretations and Policies:

.01-03 Unchanged.

.04 In those option classes where the Automated Book Priority ("ABP") system is not operational or has not yet been implemented, if a RAES order would be executed at the price of one or more booked orders, the order will be rerouted on ORS to either the DPM or to another location pursuant to the firm's routing parameters. Under ordinary circumstances, in those option classes where the Automated Book Priority system is not operational or has

not yet been implemented, when one or more RAES eligible orders in a class of options is re-routed on ORS as described (but not in cases when the orders are routed to the firm's booth), the crowd will be obligated to sell (buy) the rerouted order (or the first order in any group of rerouted orders at the same price) up to the number of contracts represented by the booked order(s), plus the Book Price Commitment Quantity (as defined in paragraph (b) of this Rule) where applicable, [equal to applicable maximum size of RAES eligible orders for that class of options] at the offer (bid) which existed at the time of the order's entry into the RAES system. Because the first such rerouted order will be entitled to a price that existed when the order was initially entered into the RAES system, it is imperative that such an order be represented by the floor brokers as quickly as possible. Orders re-routed to the firm's booth and orders rerouted to the trading station that are not entitled to the above protection will be entitled to be filled by the trading crowd at the bid or offer existing when the Floor Broker represents the order in open outcry in the crowd, pursuant to Rule 8.51. .05-.08 Unchanged.

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

On October 8, 1999, the Commission approved a CBOE rule change establishing the Exchange's Automated Book Priority System ("ABP").⁴ ABP allows an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the best bid or offer on the Exchange's book is equal to the prevailing market bid or offer. For the option classes in which ABP has been

⁴ See Securities Exchange Act Release No. 34-41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR-CBOE-99-29).

implemented, CBOE represents that ABP has been beneficial to customers by preserving the priority of booked orders and preventing RAES orders from being kicked out to the crowd. Accordingly, ABP has aided customers using the RAES system as well as customers whose orders are in the Exchange's book, because both categories of orders have been executed more quickly than they would have been executed otherwise. However, a current feature of ABP provides that in the event the order in the book is for a smaller number of contracts than the RAES order, the entire balance of the RAES order is assigned to participating market-makers at the same price at which the initial portion of the order was executed against the book, regardless of the next prevailing best bid or offer on the Exchange. Thus, if the book contains an order for 1 contract that represents the best bid, an incoming market order to sell 50 contracts will execute against the book for 1 contract and then against the trading crowd for 49 contracts at the book price, regardless of the trading crowd's best bid.

The Exchange now proposes to enhance the ABP system so that RAES orders utilizing ABP are executed against the book price up to the applicable book volume or a larger amount as pre-determined by the appropriate Floor Procedure Committee ("FPC") for the subject option class. That pre-determined contract amount, to be called the "Book Price Commitment Quantity", would be determined by the FPC, and could be set from zero contracts up to the maximum RAES eligible order size for that option class. The Exchange anticipates that the FPC will mandate a Book Price Commitment Quantity that will generally be uniform amongst option classes and that, as such, the established quantity will be widely known to CBOE customers and other market participants. Nevertheless, the Exchange intends to issue a regulatory circular regarding Book Price Commitment Quantity parameters established by the FPC. Further, because the FPC would have to conduct a meeting to adjust the Book Price Commitment Quantity, it is highly unlikely that the Book Price Commitment Quantity would be changed intra-day.

Thus, if the book contains an order for 1 contract that represents the best bid, and the Book Price Commitment Quantity is set to 40, an incoming market order to sell 50 contracts, would execute against the book for 1 contract and execute against the trading crowd for 39 contracts on RAES at the book price. Any remaining balance of a RAES

order would be: (i) Routed to PAR if Autoquote is not in effect for that series; (ii) assigned to participating market-makers at the Autoquote price if Autoquote represents the best bid or offer; or (iii) executed against an order in the book if such order equals or represents the best bid or offer—with the balance of the RAES order being assigned to participating market-makers at the new book price up to the Book Price Commitment Quantity. So long as an order in the book equals or represents the next best bid or offer (and Autoquote is in effect for the subject series), any remaining balance of a RAES order would be handled pursuant to (ii) or (iii) above.

A "Book Indicator" will be affixed to the CBOE disseminated quotation when an order in the Exchange's Book represents the best bid or offer on the Exchange. This indicator will alert brokers and the public that the bid, offer or both are being generated by orders in the book, not by market maker quotes. With respect to the Book Indicator, the Exchange will disseminate an indicator "B" if the bid on the book is better than the trading crowd bid; "O" if the book offer is better than the trading crowd offer; and "C" if both the book bid and offer are better than the trading crowd bid and offer. However, the indicator will not be disseminated if the booked order is for a size greater than the RAES order eligibility size for the subject options class since a split-price execution would not occur in such instance. This indicator will be disseminated in the Special Market Conditions field that also includes indicators for, among other things, fast markets and trading halts. The Book Indicator will alert brokers and the public that a trade could be executed at more than one price in that a part of the order could be executed at one price against the book and against the crowd pursuant to the Book Price Commitment Quantity, and the remaining part could be executed at another price (or prices) against the best market from the book or crowd. It is anticipated, however, that the eventual implementation of size parameters for disseminated options quotations will obviate the need for the Book Indicator.

The following example illustrates the application of the proposed rule: the Book Price Commitment Quantity is set at 20 contracts; there are two sell orders resident in the book priced at $2\frac{9}{16}$ and $2\frac{5}{8}$ respectively—each for one contract; the crowd's Autoquote market is $2\frac{1}{2}$ – $2\frac{3}{4}$; and the best bid/offer on the Exchange is $2\frac{1}{2}$ – $2\frac{9}{16}$ (assume no other market center has a better bid/offer). An

incoming RAES market order to buy 50 contracts would be executed as follows:

- One contract will be executed at $2\frac{9}{16}$ against the book;
- 19 contracts will be executed at $2\frac{9}{16}$ against the RAES wheel;
- The new best bid/offer is $2\frac{1}{2}$ – $2\frac{5}{8}$ against the book;
- One contract will be executed at $2\frac{5}{8}$ against the book;
- 19 contracts will be executed at $2\frac{5}{8}$ against the RAES wheel;
- The new best bid/offer is $2\frac{1}{2}$ – $2\frac{3}{4}$;
- The remaining 10 contracts will be executed against the RAES wheel at $2\frac{3}{4}$.

Currently, ABP has not yet been implemented for all option classes. SR-CBOE-00-03 amended CBOE Rule 6.8 Interpretation and Policy .04 to explicitly provide that there remains an obligation of the trading crowd, where ABP is not in place, to execute the first order rejected from RAES at the price of the booked order that caused the kickout. Thus, for those classes where ABP has not yet been implemented, the trading crowd must fill the first rejected order at the price of the booked order that created the kickout. This was done to ensure consistency with ABP requirements in those classes where ABP is in place. While the Exchange anticipates that ABP will be fully implemented for all option classes traded on the Exchange in the near future, the Exchange proposes to amend CBOE Rule 6.8 Interpretation and Policy .04 to provide that the first order rejected from RAES (because of a kickout based on a booked order) be filled against the book with any remainder being filled at the book price up to the Book Price Commitment Quantity established for that class, thus providing consistency with the proposed ABP rule.

Lastly, CBOE proposes to amend Rule 6.8, Interpretation and Policy .04, to have the Interpretation apply in instances where ABP is not operational as a result of system constraints or pursuant to a fast market situation. The Exchange also proposes to amend some of the wording in paragraphs (a) and (b) of the proposed rule change to better clarify the application of split-price executions under the ABP system. According to the Exchange, these wording changes do not alter the intent or application of the proposed rule change.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of section 6(b)(5)⁵ of the Act in that it is designed to remove

⁵ 15 U.S.C. 78f(b)(5).

impediments to a free and open market and to protect investors and the public interest.

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 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-21 and should be submitted by November 9, 2000.

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

Jonathan G. Katz,
Secretary.

[FR Doc. 00-26804 Filed 10-18-00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43435; File No. JR-NASA-99-69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto by the National Association of Securities Dealers, Inc. Amending Certain Listing Standards of the Nasdaq Stock Market, Inc.

October 11, 2000.

I. Introduction

On November 22, 1999, the National Association of Securities Dealers, Inc. ("NASA" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change amending certain Nasdaq listing standards. The Association submitted Amendments No. 1³ and No. 2⁴ to the

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter to Jack Drogin, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 7, 2000 ("Amendment No. 1"). Amendment No. 1 clarifies that the proposed time frame for gaining compliance with the continued inclusion market capitalization standards applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. In addition, Amendment No. 1 clarifies that the method for regaining compliance with the continued inclusion requirement for the number of market makers set forth in Rule 4310(c)(8)(A) applies to issuers listed on both The Nasdaq SmallCap Market and the Nasdaq National Market. Finally, Amendment No. 1 makes certain technical corrections to the proposed rule change.

⁴ See Letter to Jack Drogin, Senior Special Counsel, Division, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated April 25, 2000 ("Amendment No. 2"). Amendment No. 2 clarifies that Rule 4310(c)(8)(C) is being amended to specify time frames for determining when an issuer is non-compliant or has regained compliance with the Association's market capitalization standards. Amendment No. 2 also clarifies that the NASD's Rule 4300 series contains the qualification requirements for all securities included in The Nasdaq Stock Market while the Rule 4400 Series

proposed rule change on April 10, 2000, and April 27, 2000, respectively. The proposed rule change was published in the **Federal Register** for comment on June 7, 2000.⁵ The Association submitted Amendment No. 3 to the proposed rule change on October 5, 2000.⁶ This order approves the proposed rule change, as amended by Amendments No. 1 and 2, and grants accelerated approval to Amendment No. 3.

II. Description of the Proposed Rule Change

Nasdaq is proposing to amend its listing standards to: (1) Codify the time frames for determining compliance with the continued inclusion requirements for market capitalization and number of market makers; (2) clarify the need for shareholder approval for a transaction in which the *potential* issuance of shares could exceed the applicable threshold; (3) codify the method used to determine whether an American Depository Receipt complies with the listing standards; (4) clarify that rights are subject to initial inclusion standards; (5) clarify that the publicly held shares, market value of publicly held shares, and bid price initial inclusion requirements do not apply to rights and warrants to be listed on the Nasdaq National Market.

Compliance With the Continued Inclusion Requirements for Market Capitalization and Number of Market Makers

Rules 4310(c)(2)(B)(ii) and 4450(b)(1)(A) set forth the market capitalization standards for continued inclusion on The Nasdaq SmallCap Market and the Nasdaq National Market, respectively. These rules, however, unlike the bid price requirement, do not provide time frames for determining when an issuer is non-compliant or when it has regained compliance with these standards. Accordingly, Nasdaq proposes to amend Rule 4310(c)(8)(C)⁷

sets forth additional requirements for those securities designated for the Nasdaq National Market.

⁵ Securities Exchange Act Release No. 42876 (May 31, 2000), 65 FR 36198.

⁶ See Letter to Jack Drogin, Senior Special Counsel, Division, Commission, from John Nachman, Nasdaq, dated October 4, 2000 ("Amendment No. 3"). Amendment No. 3 withdraws proposed Rule 4200(a)(20), which defines market capitalization, and renubmers the remaining provisions of Rule 4200(a) accordingly.

⁷ Although the time frames regarding compliance with the continued inclusion market capitalization standards are proposed to be set forth only in Rule 4310(c)(8)(A), these time frames, like those for the minimum bid price and market value of public float, are applicable to issuers listed on both The