

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to SR-CBOE-2002-69 and should be submitted by March 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47333; File No. SR-CBOE-2002-18]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to its DPM Membership Ownership Requirement

February 10, 2003.

#### I. Introduction

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 19, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change to amend CBOE Rule 8.85(e). On June 10, 2002, the proposed rule change was published in the **Federal Register**.<sup>3</sup> The Commission received one comment letter.<sup>4</sup> On January 23, 2003, the

Exchange filed Amendment No. 1.<sup>5</sup> The Commission approves the proposed rule change, as amended, and publishes this notice to solicit comments on Amendment No. 1. The Commission also approves Amendment No. 1 on an accelerated basis.

#### II. Description of the Proposed Rule Change

The CBOE proposes to amend Rule 8.85(e) pertaining to the Designated Primary Market-Maker ("DPM") seat ownership requirement. Currently, the DPM seat ownership requirement,<sup>6</sup> contained in CBOE Rule 8.85(e), requires each DPM to own at least one Exchange membership. The rule also provides that this requirement is satisfied if the senior principal of the DPM owned the required membership(s).

The Exchange now proposes to amend CBOE Rule 8.85(e) to make DPM seat ownership requirements applicable to each trading location (as opposed to each DPM organization). Thus, under the rule a DPM organization will be required to own a seat for each trading location in which a DPM organization serves as a DPM, as determined by the Exchange's Modified Trading System Appointments Committee ("MTS Committee").<sup>7</sup> Under the proposal the term "trading location," is defined as "any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocations Committee."<sup>8</sup> The proposed rule change also stipulates that each DPM organization will have ninety-days from the date of Commission approval to satisfy the new ownership requirements.

CBOE also proposes to eliminate the provision allowing a senior principal of a DPM to own a membership instead of the DPM organization for the purpose of satisfying a DPM's seat ownership requirements. Thus, each DPM organization would be required to directly own seats to fulfill the

requirements pursuant to CBOE Rule 8.85(e).

#### III. Summary of Comments

The Commission received one comment letter from TD Options, LLC ("TD Options").<sup>9</sup> TD Options expressed concern that the proposal: (1) Did not sufficiently explain its claim that the amendment to the DPM seat ownership rule would promote a long-term commitment to the Exchange, (2) did not provide sufficient rationale to explain why the DPM seat ownership requirement would no longer be satisfied by a principal's seat ownership under the proposal, and (3) lacked clarity with regard to the definition of "trading location."

In CBOE's response to the comments from TD Options,<sup>10</sup> the Exchange indicated that the proposal would ensure that DPMs have a long-term commitment to the Exchange because DPMs are allocated valuable securities by the CBOE, derive considerable benefits from those allocations, but currently do not have to pay for such allocations. Thus, the CBOE suggested that by amending its Rule 8.85(e) to align the DPM seat ownership requirements with the allocation of option classes, the DPM commitment to Exchange would be enhanced, and the likelihood of seat lease-related problems that could compromise a DPM's ability to open trading in its allocated option classes would be reduced. The Exchange also indicated that eliminating a DPM's ability to fulfill its seat ownership requirement through a principal ownership should enable CBOE to better monitor compliance with the rule, particularly in the present environment where individuals join and leave DPM organizations with increased frequency due to industry consolidation. In the CBOE Response Letter, the Exchange also explained that it was seeking to clarify what may be considered a trading location in instances where what physically appears to be two trading stations is actually one trading station, or conversely, where what physically appears to be one trading station is actually two trading stations. In Amendment No. 1, CBOE further clarified that the term "trading location," as used in this proposed rule change would refer to any separate, identifiable unit of a DPM organization that applies for and is allocated options

Regulation ("Division"), Commission, dated July 16, 2002 ("TD Options Comment Letter").

<sup>5</sup> See Letter from Angelou Evangelou, Senior Attorney, Legal Division, CBOE to Deborah Flynn, Assistant Director, Division, Commission, dated January 23, 2003 ("Amendment No. 1"). In Amendment No. 1, CBOE clarifies that the term "trading location," as used in Rule 8.85(e), is defined "as any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee."

<sup>6</sup> See Securities Exchange Act Release No. 43186 (August 21, 2000), 65 FR 51880 (August 25, 2000) (Order approving File No. SR-CBOE-99-37).

<sup>7</sup> The MTS Committee is the Committee responsible for reviewing and ensuring compliance with CBOE Rule 8.85.

<sup>8</sup> See Amendment No. 1, *supra* note 5.

<sup>9</sup> See TD Options Comment Letter, *supra* note 4.

<sup>10</sup> See Letter from Angelou Evangelou, Senior Attorney, Legal Division, CBOE to Marc McKayle, Special Counsel, Division, Commission, dated October 10, 2002 ("CBOE Response Letter").

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 46020 (June 3, 2002), 67 FR 39758 (June 10, 2002).

<sup>4</sup> See Letter from Margaret Wiermanski, Chief Compliance Officer, TD Options, LLC, to Kelly Riley, Senior Special Counsel, Division of Market

classes by the appropriate Allocation Committee.<sup>11</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-2002-18, Amendment No. 1, and should be submitted by March 7, 2003.

#### V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>13</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The proposed rule change will require that a DPM own an Exchange membership or seat for every trading location, *i.e.*, any separate, identifiable unit of a DPM organization that applies for and is allocated options classes by the appropriate Allocation Committee. The Commission believes that the Exchange's effort to ensure stability in its options market by amending the

DPM seat ownership requirements is not unreasonable. By requiring each DPM to own an Exchange membership per trading location, the Exchange seeks to ensure a DPM's long-term commitment to the Exchange. The proposal should discourage entities from seeking short-term DPM appointments, which could be disruptive to the trading of allocated options classes, because DPMs will be required to make a substantial financial commitment to the Exchange. DPMs that own a membership in the Exchange should be more willing to invest the time, effort, and funding needed to build and foster a stable market place for the trading of their allocated options classes. This should provide enhanced trading benefits to investors by increasing liquidity and trading stability. Moreover, the proposal could help to preserve the integrity of the Exchange because DPMs will have a vested interest in ensuring that the Exchange maintains high standards.

Further, the Commission believes that the proposed amendment to the DPM seat ownership requirement should provide incentives to DPMs that are allocated existing CBOE options, or seeking allocations in established option classes, to maintain sufficient capital to operate as a DPM, which should result in greater liquidity and investor protections in those options classes. The proposal could further CBOE's interest in securing long-term commitments to the Exchange because members that are committed to the Exchange should have greater incentives to ensure the orderly and effective operation of the market.

The proposed rule change also eliminates the provision allowing a senior principal of a DPM to own a required membership instead of the DPM organization for the purpose of satisfying a DPM's seat ownership requirements. Instead, each DPM organization would be required to maintain direct ownership of any seats pursuant to CBOE Rule 8.85(e). The Commission believes that this requirement is consistent with the Act. In particular, the Commission believes that eliminating a DPM's ability to fulfill its seat ownership requirement through a principal's ownership could enhance the Exchange's ability to monitor DPM compliance with CBOE Rule 8.85 by helping to eliminate any confusion that may result from industry consolidation or a principal's leaving or joining a DPM organization. The Commission believes that by requiring the DPM organization to have direct ownership of the seat, the proposal could help assure the DPM's long-term commitment to the Exchange, and its willingness to invest the time, effort, and funding needed to build and

foster a stable market place for the trading of its allocated options classes.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. CBOE filed Amendment No. 1 in response to comments it received after the publication of the notice of the filing of the proposed rule change, to clarify the definition of the term "trading location." Because Amendment No. 1 is responsive to the commenter's concerns, the Commission finds good cause for accelerating approval of the proposed rule change, as amended by Amendment No. 1.

#### VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change, as amended, (File No. SR-CBOE-2002-18) be, and it hereby is approved.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47331; File No. SR-NASD-2003-09]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees Applicable to the NASD Alternative Display Facility

February 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 30, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. NASD has designated the proposed rule change as one that establishes or changes a due, fee or other charge imposed by NASD pursuant to

<sup>11</sup> See Amendment No. 1, *supra* note 5.

<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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