overreaching. In exchange for the ability to gain admission to the Partnership after the final closing date (which occurred on June 25, 2004), to which all other Limited Partners are subject, applicants believe that it is reasonable and fair for the Fund to bear the risk of fluctuations in the prime rate between the final closing date and the date the Fund is admitted into the Partnership.

C. Section 17(d) and Rule 17d–1

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any first- or second-tier affiliate of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan in which the investment company participates. As noted above, the Partnership, the General Partner, the Limited Partners, the Future Affiliates, the Manager, CII LLC, the Private Equity Investment Officers, CGPE, the Associates, CGII, and Capital Group may be first- or second-tier affiliates of the Fund. Accordingly, an investment in the Partnership by the Fund may represent a joint arrangement among these entities for the purposes of section 17(d).

2. Rule 17d–1 under the Act permits the Commission to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants.

3. Applicants believe that the proposed investment by the Fund in the Partnership satisfies the standards of rule 17d–1. Applicants state that the Fund will participate in the Partnership on terms that are comparable to the terms applicable to the other Limited Partners. Furthermore, both the profits to be earned and the risks to be incurred will be allocated among each of the Limited Partners pro rata, in direct proportion to each Limited Partner's investment. With regard to the payment by the Fund of an Additional Amount that could be at a rate higher than that for the other Limited Partners, applicants state that the fund would receive a corresponding benefit not offered to other Limited Partners, namely the ability to participate in the Partnership after the final closing date.

Applicants' Conditions

Applicants agree that any Commission order granting the requested relief will be subject to the following conditions:

1. The Manager will waive its management fee (which includes administrative fees) payable by the Fund with respect to the Fund's net assets represented by the Fund's Proposed Investment in the Partnership. To effectuate this waiver, Fund assets represented by the Partnership interests purchased by the Fund under the Proposed Investment will be excluded from the net assets of the Fund in the calculation of the management fee. As such waiver relates to the Manager's fee schedule, any Fund assets invested in the Partnership will be excluded from the Fund's assets before any fee calculation is made; thus, the Fund's aggregate net assets will be adjusted by the amount invested in the Partnership prior to determining the fee based on the Manager's fee schedule (the amount waived pursuant to this procedure shall be defined as the ''Reduction Amount'' for purposes of Condition No. 4, below). In addition, the Manager will credit against any future management fees payable to it in conjunction with the management of the Fund's assets, the amount of management fees paid previously by the fund with respect to the assets representing the Fund's Proposed Investment for the period between January 1, 2004 (the date management fees commenced with respect to the Partnership) and the date that the Fund is admitted to the Partnership, plus such Additional Amounts on such assets calculated as set forth in the Application. Such credit shall be applied to the management fee paid by the Fund for management of its assets after exclusion of the Fund's assets represented by such Partnership interests.

2. Any fees payable by the Fund to the Manager so excluded in connection with the Proposed Investment, as described herein, will be excluded for all time, and will not be subject to recoupment by the Manager or by any other investment adviser at any other time.

3. The Fund's Proposed Investment in the Partnership will be no more than U.S. $75 million.

4. If the Manager waives any portion of its fees or bears any portion of its expenses in respect of the Fund (an ''Expense Waiver''), the adjusted fees for the Fund (gross fees minus Expense Waiver) will be calculated without reference to the Reduction Amount. Adjusted fees then will be reduced by the Reduction Amount. If the Reduction Amount exceeds adjusted fees, the Manager will reimburse the Fund in an amount equal to such excess.

5. The Fund's Proposed Investment in the Partnership will not be subject to a sales load, redemption fee, distribution fee analogous to those adopted in accordance with Rule 12b–1 under the Act by an investment company registered under the Act, or service fee (analogous to those defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

6. The Fund's Proposed Investment in the Partnership will be in accordance with the Fund's investment restrictions and will be consistent with its policies as recited in its registration statement.

7. The Fund's Board will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the rule's compliance date.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–791 Filed 2–25–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Maximum Dynamics, Inc.; Order of Suspension of Trading

February 24, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Maximum Dynamics, Inc. (''Maximum'') because of questions regarding the accuracy of assertions to investors by Maximum in its most recent periodic filing (Form 10–QSB, filed on December 3, 2004), and a press release dated January 10, 2005, concerning, among other things: (1) The reason why Maximum has experienced delays in fulfilling orders of its Tagnet product offering; and (2) that Maximum has signed an agreement that will enable it to offer its point-of-sale solutions to the prepaid market in Mexico and the United States.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above company.

Therefore, *it is ordered,* pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST on February 24, 2005 through 11:59 p.m. EST on March 9, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–3901 Filed 2–25–05; 11:36 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51235; File No. SR–CBOE–2004–73]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Restrict a Designated Primary Market-Maker's Ability To Charge a Brokerage Commission

February 22, 2005.

I. Introduction

On November 12, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to amend its rules relating to a designated primary market maker's (''DPMs'') ability to charge a brokerage commission. The proposed rule change was published for comment in the **Federal Register** on December 15, 2004.[3] The Commission received two comments on the proposal.[4] This order approves the proposed rule change.

II. Description

The CBOE proposes to clarify that DPMs cannot charge a brokerage commissions on orders for which they do not perform an agency function, by amending the CBOE's rules to specifically prohibit DPMs from charging a brokerage commission for an order, or the portion of an order, (1) for which the DPM was not the executing broker, which includes any portion of the order that is automatically executed through an Exchange system; (2) that is automatically cancelled; or (3) that is not executed, and not cancelled.

The CBOE also proposes to make a technical clarification to current CBOE Rule 8.85(b)(iv), which currently prohibits a DPM from charging a brokerage commission for an order in which the DPM acts as both principal and agent. The proposed change would clarify that a DPM can charge a brokerage commission for the part of any order for which it acts as the executing broker but not as the executing principal.

III. Summary of Comments

The Commission received two comment letters from DPMs on the Exchange regarding the proposal. One commenter, Susquehanna,[5] stated that it does not object to the proposed rule change and that it ''conceptually agree[s]'' that DPMs cannot charge a brokerage commission on orders for which they do not perform an agency function. However, Susquehanna argued that Section 6(e) of the Act[6] prohibits the CBOE from requiring a DPM to charge zero commissions on orders for which the DPM has agency or order handling responsibilities. Accordingly, in Susquehanna's view, the CBOE should be required to expressly provide that DPMs never have any agency or order handling responsibilities towards the orders for which they are prohibited from charging a commission.

The second commenter, Citadel,[7] supported the proposed rule change, stating that ''DPMs should not be free unilaterally to impose charges for their regulatorily-mandated functions'' and that ''the ability to impose non-uniform charges not reflected in market maker quotes would be destructive to best execution and the Intermarket Linkage system because quotes that appear to be the NBBO [National Best Bid or Offer] may not really be the best if one must pay an extra charge to access them.'' Citadel also suggested that the CBOE further clarify in the rule text that DPMs may not charge a brokerage commission for ''any portion of an order for which the DPM acted in its capacity as a DPM.''

In response to Citadel's comments, the CBOE noted that a DPM is a ''member organization that is approved by the Exchange to function in allocated securities as a Market-Maker * * * as a Floor Broker (as defined in Rule 6.70), and as an Order Book Official. * * *''[8] In addition, since DPMs also may be Floor Brokers, the CBOE noted that most DPMs maintain brokerage staff who perform agency functions with respect to certain orders and thus such DPMs should be allowed to charge brokerage commissions on those orders, which they represent in an agency capacity. Further, the CBOE noted that the proposal clarifies that a DPM may not charge a commission for orders when it does not act as agent.

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters received, and the CBOE's response, and finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) and 6(e)(1) of the Act,[11] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers, or to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members. The Commission also believes that the proposed rule change is consistent with Section 11(A)(a)(1)(C) of the Act[12] which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50821 (December 8, 2004), 69 FR 75092 (''Notice'').

[4] *See* letter from Todd Silverberg, General Counsel, Susquehanna Investment Group (''Susquehanna''), to Jonathan G. Katz, Secretary, Commission, dated January 5, 2005 (''Susquehanna Letter''); and letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C., on behalf of Citadel Derivatives Group LLC (''Citadel''), to Jonathan G. Katz, Secretary, Commission, dated January 8, 2005 (''Citadel Letter'').

[5] *See* Susquehanna Letter, *supra* note 4.

[6] 15 U.S.C. 78f(e). Susquehanna noted that Section 6(e) of the Act requires the Commission to follow special procedures when reviewing proposals from exchanges to fix commissions. *See* Susquehanna Letter, *supra* note 4.

[7] *See* Citadel Letter, *supra* note 4.

[8] *See* letter from James M. Flynn, Attorney II, CBOE, to Jonathan G. Katz, Secretary, Commission, dated February 3, 2005 (citing CBOE Rule 8.80).

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

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Commission notes that it previously approved a similar proposed rule change, filed by the New York Stock Exchange, Inc. (''NYSE'') to prohibit a specialist on the NYSE from charging ''floor brokerage'' (*i.e.,* a commission imposed on exchange floor brokers) for the execution of an order received by the specialist via the NYSE's automated order routing system, known as SuperDot. *See* Securities Exchange Act Release No. 42727 (April 27, 2000), 65 FR 26258 (May 5, 2000) (Approval of amendments to NYSE Rule 123B); 42694 (April 17, 2000), 65 FR 24245 (April 25, 2000) (Approval of extension of pilot program relating to NYSE Rule 123B); and 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999) (Approval of pilot program relating to amendments to NYSE Rule 123B).

[11] 15 U.S.C. 78f(b)(5) and 78f(e)(1).

[12] 15 U.S.C. 78k–1(a)(1)(C).