

Congressional Affairs. Effective March 05, 2004.

DBGS00313 Deputy Secretary's Regional Representative to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective March 08, 2004.

DBGS00315 Special Assistant to the Deputy Secretary of Education. Effective March 08, 2004.

DBGS00318 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison. Effective March 09, 2004.

DBGS00319 Deputy Secretary's Regional Representative to the Deputy Assistant Secretary for Regional Services. Effective March 09, 2004.

DBGS00320 Confidential Assistant to the Deputy Assistant Secretary for Special Education and Rehabilitative Services. Effective March 12, 2004.

DBGS00321 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective March 26, 2004.

*Section 213.3318 Environmental Protection Agency*

EPGS04002 Director of Press Advance and Special Assistant for Communications to the Deputy Associate Administrator for the Office of Public Affairs. Effective March 26, 2004.

*Section 213.3325 United States Tax Court*

JCGS60080 Secretary (Confidential Assistant) to the Chief Judge. Effective March 03, 2004.

*Section 213.3330 Securities and Exchange Commission*

SEOT60032 Director of Public Affairs to the Chairman. Effective March 12, 2004.

*Section 213.3331 Department of Energy*

DEGS00405 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 08, 2004.

DEGS00406 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 12, 2004.

DEGS00409 Special Assistant to the Director, Public Affairs. Effective March 17, 2004.

DEGS00407 Daily Scheduler to the Director, Office of Scheduling and Advance. Effective March 25, 2004.

DEGS00411 Policy Advisor to the Director, Office of Science. Effective March 31, 2004.

*Section 213.3332 Small Business Administration*

SBGS60010 Senior Advisor to the Chief Operating Officer and Chief Information Officer. Effective March 04, 2004.

SBGS60153 Deputy Associate Administrator for Intergovernmental Affairs to the Associate Administrator for Field Operations. Effective March 04, 2004.

SBGS60208 Special Assistant to the Associate Deputy Administrator for Entrepreneurial Development. Effective March 04, 2004.

SBGS60154 Deputy Director, External Affairs to the Director of External Affairs. Effective March 15, 2004.

SBGS60043 Special Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective March 16, 2004.

SBGS60535 Senior Advisor to the Associate Deputy Administrator for Entrepreneurial Development. Effective March 19, 2004.

SBGS60356 Special Assistant to the Associate Administrator for Strategic Alliances. Effective March 26, 2004.

*Section 213.3337 General Services Administration*

GS GS00150 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective March 05, 2004.

GS GS00132 Special Assistant to the Regional Administrator, Region 10, Auburn, Washington. Effective March 22, 2004.

GS GS00130 Special Assistant to the Regional Administrator, Region 7, Fort Worth, Texas. Effective March 23, 2004.

GS GS00133 Congressional Relations Analyst to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective March 25, 2004.

*Section 213.3339 United States International Trade Commission*

TCGS60018 Staff Assistant (Legal) to the Commissioner. Effective March 08, 2004.

*Section 213.3344 Occupational Safety and Health Review Commission*

SHGS00003 Confidential Assistant to the Commissioner Member. Effective March 19, 2004.

*Section 213.3348 National Aeronautics and Space Administration*

NNGS00024 Writer—Editor to the Assistant Administrator for Public Affairs. Effective March 25, 2004.

*Section 213.3384 Department of Housing and Urban Development*

DUGS60438 Director, Office of Insured Health Care Facilities to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective March 03, 2004.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–9421 Filed 4–23–04; 8:45 am]

**BILLING CODE 6325–39–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49577; File No. SR–CBOE–2004–17]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Establishing a Process for Approving and Appointing Remote Electronic Designated Primary Market-Makers

April 19, 2004.

#### I. Introduction

On March 11, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to adopt new rules establishing a process for approving and appointing remote electronic Designated Primary Market-Makers (“e-DPMs”). On March 11, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 18, 2004, the CBOE’s rule proposal, as amended, was published for comment in the **Federal Register**.<sup>4</sup> No comment letters were received on the proposal. This order approves the proposal and Amendment No.1 thereto.

#### II. Description of Proposal

The CBOE is currently in the process of proposing significant enhancements to its Hybrid Trading System (“CBOE Hybrid 2.0 initiatives”) including, among other things, the addition of a proposed new category of CBOE market-

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> Amendment No. 1 replaced and superceded the CBOE’s original 19b–4 filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 49411 (March 12, 2004), 69 FR 12878.

making participants called e-DPMs. e-DPMs would be member organizations appointed to operate on CBOE as competing Designated Primary Market-Makers ("DPMs") in a broad number of option classes. The purpose of this filing is to establish rules and criteria to allow the CBOE to begin approving and appointing e-DPMs. In its filing, the CBOE acknowledges that any such e-DPM appointments would be contingent on Commission approval of e-DPMs and CBOE rules governing e-DPM trading procedures and obligations, which the CBOE has not yet submitted to the Commission, but plans to do so soon as a separate rule filing.

The CBOE expects to approve and appoint a limited number of e-DPMs. The Exchange's Board of Directors has established a special appointments committee, consisting of the Lessor Director, two Public Directors, the Vice Chairman, and the President, to select the firms that would be designated as e-DPMs, and to make initial e-DPM option class allocations. Candidates seeking appointment as an e-DPM would be evaluated on the basis of how well they meet the following criteria:

- Significant market-making and/or specialist experience in a broad array of securities;
- Superior resources, including capital, technology and personnel;
- Demonstrated history of stability, superior electronic capacity, and superior operational capacity;
- Proven ability to interact with order flow in all types of markets;
- Existence of order flow commitments;
- Willingness to accept allocations as an e-DPM in options overlying 400 or more securities; and
- Willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE in a manner that is likely to enhance the ability of CBOE to compete successfully for order flow in the options it trades.

The CBOE represents that it intends to use the final factor listed to take into consideration in the selection process which of the applicants would best be able to enhance the competitiveness of the Exchange. "Willingness to promote CBOE" includes assisting in meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other like activities. Further, the CBOE would not apply this factor to in any way restrict, either directly or indirectly, e-DPMs' activities as market makers or specialists elsewhere, or to restrict how e-DPMs

handle orders held by them in a fiduciary capacity to which they owe a duty of best execution.

The CBOE represents that it would use the factor relating to the existence of order flow commitments to evaluate existing order flow commitments between the applicant and order flow providers. A future change to, or termination of, any such commitments considered by the Exchange during the review process would not be used by the Exchange at any point in the future to terminate or take remedial action against an e-DPM. Furthermore, the Exchange would not take remedial action solely because orders subject to any such commitments were not subsequently routed to the Exchange. Whether actual commitments result in orders being routed to the Exchange would be considered by the Exchange as a separate matter from the criteria for which an e-DPM's performance would be evaluated.

As part of the approval of an e-DPM, the Exchange may place conditions on the approval based on the operations of the applicant and the number of option classes that may be allocated to the applicant. Moreover, each e-DPM shall retain its approval to operate as an e-DPM unless such approval is removed by the Exchange pursuant to appropriate rules. Finally, an e-DPM may not transfer its approval to act as an e-DPM unless allowed by the Exchange.

### III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>5</sup> and, in particular, the requirements of Section 6 of the Act.<sup>6</sup> Specifically, the Commission finds that the proposal to approve and appoint e-DPMs and to make initial e-DPM option class allocations is consistent with Section 6(b)(5) of the Act,<sup>7</sup> in that the proposal has been designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission notes that the CBOE's proposed criteria for making e-DPMs selections is similar to the appointment and allocation criteria that is used by other exchanges that have competing specialists<sup>8</sup> and similar to CBOE Rule 8.83, which governs

selection criteria for DPMs. The Commission believes that the proposed criteria should be used by the CBOE solely for the purpose of evaluating applicants for e-DPM appointments and for making any option class allocations to them. The Commission emphasizes that the CBOE should not use the proposed criteria—especially the "willingness and ability to make competitive markets on CBOE and otherwise to promote CBOE" criterion—to in any way directly or indirectly attempt to restrict a market participant that is appointed as an e-DPM from performing market-making or specialist activities on other markets. In addition, with regard to the "order flow commitment" criterion, the Commission believes that the CBOE should consider only any existing order flow commitments that the applicant has with order flow providers, and that the CBOE should not use those existing order flow commitments as an indicator of potential future order flow that an applicant may be able to bring to the CBOE.

The Commission notes that all approvals and appointments of e-DPMs and allocations of options classes to such e-DPMs under this proposal are contingent on Commission approval of e-DPMs and CBOE rules governing e-DPM trading procedures and obligations. Moreover, in approving the e-DPM appointment criteria, the Commission is not prejudging the CBOE's prospective proposals relating to e-DPMs and other CBOE Hybrid 2.0 initiatives. If the Commission were not to approve e-DPMs, any e-DPM appointments made pursuant to this proposal would be meaningless. Approving the e-DPM appointment criteria does, however, afford the CBOE an opportunity to prepare for the possibility that the Commission will approve e-DPMs and CBOE rules governing e-DPM trading procedures and obligations, and reduces the time between any such approval and the commencement of trading by e-DPMs pursuant to the Exchange's proposed CBOE Hybrid 2.0 initiatives.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-CBOE-2004-17) and Amendment No. 1 are hereby approved.

<sup>5</sup> The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See, e.g., Boston Stock Exchange Rule 18 and Philadelphia Stock Exchange Rule 511.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 04-9351 Filed 4-23-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49581; File No. SR-NASD-2003-159]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. To Permit Nasdaq To Append a New Modifier to Trade Reports of Pre-Open and After-Hours Trades Not Submitted to Nasdaq's Automated Confirmation Transaction Service, and Other Changes Regarding Trade Reporting

April 19, 2004.

On October 16, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit Nasdaq to append a new modifier to trade reports of pre-open and after-hours trades not submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT") within 90 seconds after execution, and to require members to: (1) Include the time of execution on all reports submitted to ACT; (2) append the .W modifier to reports of "stop stock transactions;" (3) append the .W modifier, as appropriate, to reports submitted to ACT after 5:15 p.m.;<sup>3</sup> and (4) append the .PRP modifier to reports of transactions in listed securities that are executed at a price that is based on a prior point in time. On February 5, 2004, Nasdaq amended the proposed rule change.<sup>4</sup> The proposed rule change,

as amended, was published for notice and comment in the **Federal Register** on March 17, 2004.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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 association,<sup>6</sup> the requirements of section 15A of the Act,<sup>7</sup> in general, and section 15A(b)(6) of the Act,<sup>8</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. The Commission believes the proposed rule change will improve the quality of information disseminated by Nasdaq about the prices at which stocks are trading in its market.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-NASD-2003-159), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

[FR Doc. 04-9423 Filed 4-23-04; 8:45 am]

BILLING CODE 8010-01-P

## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3571]

#### State of Tennessee

Davidson County and the contiguous counties of Cheatham, Robertson, Rutherford, Sumner, Williamson and Wilson in the State of Tennessee constitute a disaster area due to damages caused by a five alarm fire to the Old Hickory Village Shopping Center on March 28, 2004. Applications for loans for physical damage may be filed until the close of business on June 14, 2004, and for economic injury until the close of business on January 18,

<sup>5</sup> See Securities Exchange Act Release No. 49404 (March 11, 2004), 69 FR 12727.

<sup>6</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>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

*For Physical Damage:*

*Homeowners with credit available elsewhere:* 6.125%.

*Homeowners without credit available elsewhere:* 3.125%.

*Businesses with credit available elsewhere:* 5.800%.

*Businesses and non-profit organizations without credit available elsewhere:* 2.900%.

*Others (including non-profit organizations) with credit available elsewhere:* 4.875%.

*For Economic Injury:*

*Businesses and small agricultural cooperatives without credit available elsewhere:* 2.900%.

The number assigned to this disaster for physical damage is 357105 and for economic damage is 9Z9900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 15, 2004.

**Hector V. Barreto,**  
*Administrator.*

[FR Doc. E4-920 Filed 4-23-04; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

### [Social Security Acquiescence Ruling 04-1(9)]

**Howard on behalf of Wolff v. Barnhart; Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process—Title XVI of the Social Security Act**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Acquiescence Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 04-1(9).

**EFFECTIVE DATE:** April 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Wanda D. Mason, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-5044, or TTY (800) 966-5609.

**SUPPLEMENTARY INFORMATION:** We are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

<sup>10</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> Nasdaq also is proposing to clarify that members must append the .W modifier to a trade report if a trade can be properly reported with both a .T modifier and a .W modifier. This clarification is necessary because ACT can accept only one modifier per trade report. See *infra* note 14.

<sup>4</sup> See February 4, 2004 letter from Peter R. Geraghty, Associate Vice President and Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original proposed rule change.