

Commission finds that the proposal to trade the Index Fund Shares is consistent with Section 6(b)(5) of the Exchange Act.<sup>42</sup>

The Commission also notes that the Exchange's rules and procedures should address the special concerns attendant to the trading of new derivative products. In particular, by imposing the Index Fund Share listing standards in Amex Rule 1000A, and addressing the suitability, disclosure, and compliance requirements noted above, the Commission believes that the Exchange has addressed adequately the potential problems that could arise from the derivative nature of the FITRs.

In particular, the Commission finds that adequate rules and procedures exist to govern the trading of Index Fund Shares, including FITRs. Index Fund Shares will be deemed equity securities subject to Amex rules governing the trading of equity securities. These rules include: General and Floor Rules, such as priority, parity, and precedence of orders, market volatility related trading halt provisions pursuant to Rule 117, members dealing for their own accounts, specialists, odd-lot brokers, and registered traders, and handling of orders and reports;<sup>43</sup> Office Rules, such as conduct of accounts, margin rules, and advertising;<sup>44</sup> and Contracts in Securities, such as duty to report transactions, comparisons of transactions, marking to the market, delivery of securities, dividends and interest, closing of contracts, and money and security loans.<sup>45</sup> The Amex also will consider halting trading in any series of Index Funds Shares under certain other circumstances including those set forth in Amex Rule 918C(b)(4) regarding the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market. The Commission believes that the application of these rules should strengthen the integrity of the FITRs.

The Commission believes that the Amex has appropriate surveillance procedures in place to detect and deter potential manipulation for similar index-linked products. By applying these procedures to the FITRs, the Commission believes that the potential for manipulation should be minimized, while protecting investors and the public interest.

The Exchange requests that the proposed rule change be approved on an accelerated basis pursuant to section

19(b) of the Exchange Act.<sup>46</sup> The Exchange believes there is good cause to grant accelerated approval insofar as the 1940 Act Application relating to the FITRs has been reviewed by the Division of Investment Management and notice of the Application has been published in the **Federal Register**.<sup>47</sup> No comments were submitted and the Commission granted the relief requested in the Application.<sup>48</sup> The FITRs will trade on the Exchange in the same manner as Index Fund Shares previously approved by the Commission, including Index Fund Shares based on an index of fixed income securities.<sup>49</sup> The proposed rule change presents no novel issues with respect to trading of Index Fund Shares. The Exchange anticipates that FITRs will be in a position to begin trading on the Exchange prior to the 30–35 period for Commission action under section 19(b) of the Exchange Act<sup>50</sup> and accelerated approval will permit Exchange trading to begin within the time frame established by the Trust. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with section 6 of the Act.<sup>51</sup>

#### 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 Exchange 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 Amex. All submissions should refer to File No. SR–AMEX–2001–32 and should be submitted by November 27, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,<sup>52</sup> that the proposed rule change (File No. SR–Amex–2001–32), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>53</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02–28187 Filed 11–5–02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46743; File No. SR–CBOE–2002–26]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Increase Position and Exercise Limits for Options on the DIAMONDS Trust

October 30, 2002.

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 May 20, 2002, 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 Exchange. 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 increase position and exercise limits for options on the DIAMONDS Trust (“DIA”) to 300,000 contracts on the same side of the market. The Exchange's reporting requirements for DIAMONDS Trust options will serve to identify options holdings and information concerning

<sup>42</sup> 15 U.S.C. 78f(b)(f).

<sup>43</sup> Amex Rules 1–236.

<sup>44</sup> Amex Rules 300–590.

<sup>45</sup> Amex Rules 700–891.

<sup>46</sup> 15 U.S.C. 78s(b).

<sup>47</sup> See Investment Company Act Release No. 25725 (September 3, 2002), 67 FR 57464 (September 10, 2002).

<sup>48</sup> See Investment Company Act Release No. 25759 (September 27, 2002).

<sup>49</sup> See Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002).

<sup>50</sup> 15 U.S.C. 78s(b).

<sup>51</sup> 15 U.S.C. 78f.

<sup>52</sup> 15 U.S.C. 78s(b)(2).

<sup>53</sup> 17 CFR 200.3–3(a)(12).

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

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

the hedging of these positions. The text of the proposed rule change is set forth below. Proposed new language is *italicized*; proposed deletions are in brackets.

\* \* \* \* \*

#### Chapter IV—Business Conduct

##### Rule 4.11. Position Limits NO CHANGE

###### \* \* \* Interpretations and Policies:

.01 through .06 NO CHANGE.

.07 The position limits under Rule 4.11 applicable to options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be the same as the position limits applicable to equity options under Rule 4.11 and Interpretations and Policies thereunder. The position limits under Rule 4.11 applicable to options on the Nasdaq-100 Index Tracking Stock<sup>SM</sup> ("QQQ") and the *DIAMONDS Trust (DIA)* shall be 300,000 option contracts.

\* \* \* \* \*

##### Rule 4.12. Exercise Limits NO CHANGE

###### \* \* \* Interpretations and Policies:

.01 NO CHANGE.

.02 The exercise limits established under Rule 4.12 in respect of options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be equivalent to the position limits prescribed for such options in Interpretation and Policy .07[6] under Rule 4.11, subject to any

exemptions granted in respect of such position limits.

\* \* \* \* \*

##### Rule 4.13. Reports Related to Position Limits

(a) NO CHANGE.

(b) In addition to the reporting requirement described in paragraph (a) of this Rule, each member (other than an Exchange market-maker or DPM) that maintains a position in excess of 10,000 non-FLEX equity option contracts or 100,000 QQQ or DIA contracts on the same side of the market on behalf of its own account or for the account of a customer, shall report information as to whether such positions are hedged, and provide documentation to as to how such contracts are hedged, in a manner and form prescribed by the Exchange. In addition, whenever the Exchange determines based on a report to the Department of Market Regulation or otherwise, that a higher margin requirement is necessary in light of the risks associated with an under-hedged QQQ or DIA option position in excess of 100,000 contracts or Non-FLEX equity option position in excess of 10,000 contracts on the same side of the market, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Exchange Rule 12.10. Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3-1 to the extent of any margin deficiency resulting from the higher margin requirements.

(c)-(d) NO CHANGE.

\* \* \* \* \*

#### 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 Exchange 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 Commission has stated that position and exercise limits "must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market."<sup>3</sup>

The DIAMONDS Trust, based on the Dow Jones Industrial Average, is among the most actively traded exchange-traded funds, averaging 4.5 million shares per day during the previous six months. Moreover, the components comprising the fund are themselves among the most actively traded and widely held securities listed in the U.S. As shown in the following table, the average number of shares outstanding for the 30 components of the DJIA is 2.55 billion shares, ranging from a high of 9.9 billion shares (General Electric Co.) to a low of 291.7 million shares (Eastman Kodak Co.). The 6-month average daily trading volume ranges from a high of 48 million shares per day (Intel Corp.) to a low of 2 million shares per day (Caterpillar, Inc.).

Ticker	Company name	Shares out (millions)	Stock volume 6-mo ADV
1 INTC	INTEL CORP .....	6,703.00	48,065,436
2 MSFT	MICROSOFT CORP .....	5,415.46	29,527,880
3 GE	GENERAL ELECTRIC CO .....	9,935.63	23,410,290
4 C	CITIGROUP INC .....	5,165.40	13,221,095
5 T	AT&T CORP .....	3,566.31	12,964,184
6 XOM	EXXON MOBIL CORPORATION .....	6,792.60	10,953,032
7 HPQ	HEWLETT-PACKARD CO .....	3,019.17	10,634,250
8 JPM	JP MORGAN CHASE & CO .....	1,990.20	10,080,997
9 IBM	INTL BUSINESS MACHINES CORP .....	1,716.94	8,435,996
10 DIS	THE WALT DISNEY CO .....	2,039.34	8,013,419
11 WMT	WAL-MART STORES INC .....	4,451.23	7,512,838
12 JNJ	JOHNSON & JOHNSON .....	3,047.15	7,264,796
13 SBC	SBC COMMUNICATIONS INC .....	3,340.17	7,064,081

<sup>3</sup> See H.R. Rep. No. IFC-3, 96th Cong., 1st Sess. At 189-91 (Comm. Print 1978).

Ticker	Company name	Shares out (millions)	Stock volume 6-mo ADV
14 HD	HOME DEPOT INC .....	2,350.05	6,898,992
15 MRK	MERCK & CO., INC. ....	2,271.09	6,878,693
16 MO	PHILIP MORRIS COMPANIES INC .....	2,147.30	5,855,147
17 AXP	AMERICAN EXPRESS CO .....	1,340.95	5,017,522
18 KO	COCA-COLA CO/THE .....	2,484.72	4,773,278
19 MCD	MCDONALD'S CORPORATION .....	1,271.96	4,682,622
20 BA	BOEING CO .....	838.71	3,947,814
21 GM	GENERAL MOTORS CORP .....	560.50	3,845,899
22 HON	HONEYWELL INTERNATIONAL INC .....	814.97	3,721,316
23 AA	ALCOA INC .....	846.65	3,578,749
24 PG	PROCTER & GAMBLE CO .....	1,299.61	3,223,338
25 DD	DU PONT (E.I.) DE NEMOURS .....	992.95	3,137,774
26 IP	INTERNATIONAL PAPER CO .....	482.72	2,851,071
27 EK	EASTMAN KODAK CO .....	291.74	2,811,618
28 UTX	UNITED TECHNOLOGIES CORP .....	472.86	2,540,922
29	3M CO .....	389.35	2,014,652
MMM			
30 CAT	CATERPILLAR INC .....	343.45	1,988,112
	Average .....	2,546.07	8,830,527

The Exchange notes that there are currently no position limits for DJX options, which are the same size and have an equivalent economic payoff as options on DIAMONDS. Based on DIAMONDS portfolio holdings as of May 6, 2002, the proposed position limit of 300,000 contracts represents a holding of just over 2 million shares of each security comprising the DJIA, which is less than 1% of each components' outstanding shares and, in most cases, equal to no more than 1 day's trading volume. The 300,000 contract position limit is currently in place for options on the Nasdaq-100 Index Tracking Stock (QQQ). The Exchange believes that increasing position limits for this product will lead to a more liquid and competitive market environment for DIA options that will benefit customers interested in this product.

#### Reporting Requirements

Consistent with the reporting requirement for QQQ options, the Exchange will require that each member or member organization that maintains a position on the same side of the market in excess of 100,000 contracts in the DIA option class, for its own account or for the account of a customer report certain information. This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the

general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for DIA options.<sup>4</sup>

#### 2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### 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.

<sup>4</sup> See CBOE Rule 4.13(a).

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

#### 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 Exchange 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, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All

submissions should refer to the File No. SR-CBOE-2002-26 and should be submitted by November 27, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-28130 Filed 11-5-02; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46742; File No. SR-NASD-2002-123]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Modification of the Trade or Move Process in the Nasdaq Order Collection and Display Facility ("SuperMontage")

October 30, 2002.

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 September 19, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 from interested persons and to approve the proposal, as amended, on an accelerated basis.

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

Nasdaq proposes to amend NASD Rule 4613, "Character of Quotations," to permit Nasdaq, upon the filing of a complaint by a member or an Unlisted

Trading Privilege ("UTP") Exchange, to declare null and void a Trade-or-Move Directed Order executed at or after 9:29:30 a.m. The text of the proposed rule change appears below. Proposed new language is in italics.

#### Rule 4613—Character of Quotations

(a)–(d) No Change.

(e) Locked and Crossed Markets.

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) No Change.

(B) No Change.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(i)–(vi) No Change.

(vii) *A Trade or Move Directed Order that is executed at or after 9:29:30 may, upon the filing of a complaint by a member or UTP Exchange, be declared null and void in accordance with the procedures set forth in NASD Rule 11890.*

\* \* \* \* \*

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

In its filing with the Commission, Nasdaq 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 III below. Nasdaq 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

NASD Rule 4613(e) sets out the obligations of market participants who enter locking/crossing quotations during the pre-market opening period.<sup>4</sup> The rule requires a market participant that locks or crosses the market between 9:20 a.m. and 9:29:30 a.m. to send a Directed Order(s) with a "Trade-or-Move" designator ("Trade-or-Move Directed Order") to the parties it is locking or crossing. The aggregate size of the Trade-or-Move Directed Order must be at least 10,000 shares for S&P 400 Index

issues and Nasdaq 100 Index issues, and 5,000 shares for other issues.<sup>5</sup> Within ten seconds of the receipt of a Trade-or-Move Directed Order, the recipient must either trade in full with the incoming Trade-or-Move Directed Order or move its quote to a price that would unlock/uncross the market. In essence, the rule prohibits a market participant from locking/crossing the market during the ten minutes prior to the opening, unless the market participant is willing to commit the required number of shares.

Under the SuperMontage opening process, starting at 9:29:30 a.m., Nasdaq will take steps to resolve any outstanding locks/crosses by automatically executing any remaining overlapping buy and sell quotes using the most aggressively priced matching method contained in NASD Rule 4710(b)(3)(B). At the end of this automated process, which should be completed before the 9:30:00 a.m. market open, all locked /crossed markets will be eliminated.

A Trade-or-Move Directed Order has a minimum life of ten seconds by rule before it may be canceled, and the Directed Order process has a built-in five-second minimum life. Therefore, a market participant could receive an execution on a Trade-or-Move Directed Order sent in the final seconds before 9:29:30 a.m. and also receive an execution against its locking/crossing quote in the SuperMontage opening process. Thus, a market participant could be subject to a double execution (*i.e.*, against its quote during the SuperMontage opening process and for the outstanding Trade-or-Move Directed Order).

To address these potential double executions, Nasdaq believes that the recipient of a Trade-or-Move Directed Order should not execute the Trade-or-Move Directed Order after 9:29:30 a.m. and that members should consider Trade-or-Move Directed Orders pending at 9:29:30 a.m. to be null and void. According to Nasdaq, because member firms are concerned that they or others may inadvertently execute a Trade-or-Move Directed Order after 9:29:30 a.m. due to a system malfunction or human error, members have asked that Nasdaq staff be permitted to cancel trades resulting from the improper execution of a Trade-or-Move Directed Order.

NASD Rule 4613(e), as amended, will convey the authority to declare an execution null and void, and is based on the fact of executing a Trade-or-Move Directed Order at or after 9:29:30 a.m.

<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> On October 16, 2002, Nasdaq filed Amendment No. 1 to the proposal. Amendment No. 1 revised the proposal to: (1) provide that Nasdaq may declare null and void a trade resulting from the execution of a Trade-or-Move Directed Order during the SuperMontage pre-opening process only upon the filing of a complaint by a member or by an Unlisted Trading Privilege ("UTP") Exchange; and (2) clarify that Nasdaq may declare null and void the execution of a Trade-or-Move Directed Order, not an execution against a quotation during the SuperMontage opening process.

<sup>4</sup> A locked market occurs when the quoted bid price is the same as the quoted ask price. A crossed market occurs when the quoted bid price is greater than the quoted ask price.

<sup>5</sup> See Securities Exchange Act Release No. 45990 (May 28, 2002), 67 FR 38535 (June 4, 2002) (order approving File No. SR-NASD-00-76).