

protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁶ The Commission believes that the increase in appeal fees should address increasing costs to maintain overall revenue neutrality of the Exchange's hearing fee structure.

In addition, the Commission believes that requiring issuers to satisfy outstanding listing fees prior to obtaining review of a Listing Qualifications Staff decision is reasonable, and may help to promote orderly and efficient operation of the Exchange. The Commission also believes that clarifying Sections 1203 and 1204 of the Amex *Company Guide* to specify that issuers submit hearing requests to the Amex Office of General Counsel should improve administrative efficiency, consistent with Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-Amex-2003-111) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49346; File No. SR-BSE-2003-31]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Order Granting Approval of Proposed Rule Change to Extend Trading Hours From 8 a.m. Until 9:28 a.m., and From 4:16 p.m. Until 6:30 p.m. to Allow for the Execution of Matched Orders Only

March 1, 2004.

On December 22, 2003, the Boston Stock Exchange, Incorporated ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("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 to provide for the execution of matched

orders, specifically designated and submitted with a contra order matched in price and size, outside of the regular 9:30 a.m. to 4 p.m. Primary Session, and the 4:01 p.m. to 4:15 p.m. Post Primary Session.³ The proposed rule change was published for comment in the **Federal Register** on January 28, 2004.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

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,⁵ and in particular, the requirements of Section 6(b)(5) of the Act⁶ and the rules and regulations thereunder. The Commission believes that extending trading hours from 8 a.m. until 9:28 a.m., and from 4:16 p.m. until 6:30 p.m. to allow for the execution of matched orders, specifically designated and submitted with a contra order matched exactly as to security, size, price, and time of entry, is reasonably 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. The Commission notes that the Exchange shall designate trades executed and reported outside of the Primary Session as .T trades. Further, the Commission notes that the Exchange shall not permit its members to accept any orders for execution outside of the Primary Session without making certain customer disclosures, and shall retain any orders, not specifically designated for execution outside the Primary Session, for entry into the Primary Session upon execution eligibility at 9:30 a.m.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-BSE-2003-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49343; File No. SR-CBOE-2003-58]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Its Summary Fine Schedule for Position Limit Violations

March 1, 2004.

On December 10, 2003, the Chicago Board Options Exchange, Inc. ("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")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its summary fine schedule for position limit violations under CBOE's minor rule violation plan.

The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.³ The Commission received no comments on the proposal.

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 exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5)⁶ of the Act which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In addition, the Commission believes that the proposed rule change is consistent with Rule 19d-1(c)(2), which governs minor rule violation plans. The Commission believes that the proposed rule change should enable the Exchange to deal more efficiently with position limit violations and inadvertent position limit overages. In addition, the Commission believes that the proposed rule change should allow the Exchange to appropriately discipline its members

⁶ 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).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ All times listed herein are Eastern time.

⁴ See Securities Exchange Act Release No. 49117 (January 22, 2004), 69 FR 4186.

⁵ 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).

⁶ 15 U.S.C. 78f(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 49078 (January 14, 2004), 69 FR 3402.

⁴ 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).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78f(b)(5).

and persons associated with its members for position limit violations.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the CBOE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-CBOE-2003-58) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-5053 Filed 3-5-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49349; File No. SR-NASD-2003-149]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SuperMontage and ITS Securities

March 2, 2004.

I. Introduction

On October 6, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to enhance the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to enable Nasdaq to trade via SuperMontage, all securities that are eligible for trading via the Intermarket Trading System ("ITS Securities"). The proposed rule change was published for comment in the **Federal Register** on October 28, 2003.³ The Commission received no comment letters with respect to the proposal.

On February 13, 2004, Nasdaq amended the proposed rule change.⁴ This order approves the proposed rule change, solicits comments on Amendment No. 1 to the proposed rule change, and grants accelerated approval to Amendment No. 1 to the proposed rule change.

II. Description of the Proposal and Amendment No. 1 Thereto

Nasdaq submitted the proposed rule change to replace its current Computer Assisted Execution System ("CAES") with SuperMontage for the trading of all ITS Securities on Nasdaq. Under the proposal, NASD members will trade ITS Securities using the SuperMontage functionality that the Commission has previously approved for the trading of Nasdaq-listed securities, with certain modifications needed to ensure that NASD members continue to comply with all pre-existing NASD and Commission rules governing the trading of ITS Securities.

After the proposed rule change was published for comment in the **Federal Register**, Nasdaq submitted Amendment No. 1 to the proposed rule change, in order to address informal feedback from participants in the ITS Plan and comments from Division staff. Specifically, Amendment No. 1: (1) Clarifies that an odd-lot share amount will be cancelled if it represents the only interest for an ITS Market Maker at a given price level; (2) establishes that Nasdaq would begin processing locked/crossed markets at 9:30 a.m.; (3) describes how SuperMontage processing in ITS Securities will occur between 4 and 6:30 p.m.; (4) describes how Nasdaq will surveil for compliance with the ITS

Plan and the NASD's rule against locked and crossed markets; (5) clarifies which order types will be functional in the proposed rule change; (6) increases from five seconds to seven seconds, the time for an ITS/CAES Market Maker to respond to a delivered order before that delivery will be canceled; (7) further specifies the functionality of IM Prime, the data-feed that Nasdaq proposes to use for the dissemination of information about quotes and orders for ITS Securities in SuperMontage; (8) identifies the measures Nasdaq has instituted to assure proper surveillance and compliance with ITS rules; and (9) provides further detail on Nasdaq's planned implementation schedule. The language of the proposed rule text, as amended, is attached as Exhibit A.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the proposed rule change, 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. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-149. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 NASD. All submissions should refer to File No. SR-NASD-2003-149 and should be submitted by March 29, 2004.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48674 (October 21, 2003), 68 FR 61508.

⁴ See letter from Jeff Davis, Office of General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 12, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq addressed staff comments relating to the implementation and procedures of the proposal. See Section II *infra*.