

instructions described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule and form preparation instructions from interested persons.

### **I. Board's Statement of the Terms of Substance of the Proposed Rule**

The PCAOB proposes to adopt a rule for public accounting firms registered with the Board to implement section 102 of the Act. The proposal consists of a rule (PCAOB Rule 2107) and instructions to prepare a form (PCAOB Form 1-WD). The text of the proposed rule and form preparation instructions are available for inspection at the Office of the Secretary, the PCAOB, the Commission's Public Reference Room and on the PCAOB's Internet Web site at [http://www.pcaobus.org/pcaob\\_rulemaking.htm](http://www.pcaobus.org/pcaob_rulemaking.htm).

### **II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule**

#### *(A) Purpose*

Section 102 of the Act makes it unlawful for any person that is not a public accounting firm registered with the Board to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer. The Board has previously adopted, and the Commission has approved, rules governing the process by which a public accounting firm becomes registered with the Board. The proposed rule would govern the process by which a firm, once registered, may withdraw such registration.

#### *(B) Statutory Basis*

The statutory basis for the proposed rule is Title I of the Act.

### **III. Date of Effectiveness of the Proposed Rule 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 Board consents, the Commission will:

(A) By order approve such proposed rule and form preparation instructions; or

(B) Institute proceedings to determine whether the proposed rule and form preparation instructions 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 rules are consistent with the Act. Comments may be submitted electronically or by paper. Electronic comments may be submitted by: (1) Electronic form on the SEC Web site (<http://www.sec.gov>) or (2) e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Mail paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. All submissions should refer to File No. PCAOB-2003-09; this file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. We do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All comments should be submitted on or before April 29, 2004.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49518; File No. SR-CBOE-2003-23]

#### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc., Relating to its Autoquote Triggered Ebook Execution System**

April 1, 2004.

On June 2, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to its AutoQuote Triggered

Ebook Execution system ("Trigger"). On September 10, 2003,<sup>3</sup> and on December 29, 2003,<sup>4</sup> the Exchange amended the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 26, 2004.<sup>5</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Trigger allows orders resting in the book to automatically execute in the limited situation where the bid or offer for a series of options generated by the Exchange's AutoQuote system (or any Exchange approved proprietary quote generation system used in lieu of the Exchange's Autoquote system) crosses or locks the Exchange's best bid or offer for that series as established by a booked order. The Exchange proposes to amend CBOE Rule 6.8(d)(v) to provide that Trigger will continue to provide automatic executions of orders resting in the book<sup>6</sup> up to the maximum number of contracts permitted to be entered into RAES for that series ("Trigger Volume"), but that the trading crowd would have the ability, but not the obligation, to execute manually the remaining contracts in the order that exceed the Trigger Volume. Any unexecuted contracts in the booked order in excess of the Trigger Volume would remain in the book, and the bid or offer generated by Autoquote would be one tick inferior to the price of the booked order, so that the disseminated quote would not cross or lock the Autoquote bid or offer.

The Commission has reviewed carefully the Exchange's proposed rule change and finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In the Commission's view, the proposed rule change would continue to ensure that customers receive automatic executions of their booked orders up to the Trigger Volume in the event that Autoquote (Exchange or proprietary) locks or crosses the booked order's limit price.

<sup>3</sup> See letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 9, 2003.

<sup>4</sup> See letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 22, 2003.

<sup>5</sup> See Securities Exchange Act Release No. 49287 (February 19, 2004), 69 FR 8995.

<sup>6</sup> Such orders would be executed against market makers participating in the Exchange's Retail Automated Execution System ("RAES"). CBOE Rule 6.8(d).

<sup>7</sup> 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).

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

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

CBOE Rule 6.8(d)(v), however, no longer would assure that an order on the book would be executed in full whenever Autoquote for that series locks or crosses the quotation established by the booked order. The unexecuted portion of the order would remain on the book and the bid or offer generated by Autoquote would be one tick inferior to the price of the booked order such that the Exchange's disseminated quote would not lock or cross with the Autoquote bid or offer.

The Commission finds that the proposed rule change is consistent with section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of section 6(b)(5) of the Act.<sup>9</sup> The Commission notes that the proposed rule change does not alter CBOE members' duty to comply with the Commission's rule relating to the firmness of quotations.<sup>10</sup> The trading crowd, as the responsible broker or dealer, would continue to be required to honor its disseminated quote.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CBOE-2003-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

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

[FR Doc. 04-7971 Filed 4-7-04; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49512; File No. SR-NASD-2004-054]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Make Permanent the Current Pilot Program for the Imposition of a Fee for Written Interpretations of Nasdaq Listing Rules

March 31, 2004.

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 March 25, 2004, 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") the proposed rule change as described in items I, II, and III below, which Items have been prepared by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to make permanent NASD Rule 4550, which provides for the imposition of fees for written interpretations of Nasdaq listing rules. The text of the proposed rule change is below, which is identical to the text proposed in the pilot.<sup>3</sup>

\* \* \* \* \*

#### 4500. Issuer Listing Fees

##### 4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on The Nasdaq SmallCap Market or The Nasdaq National Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b) Notwithstanding paragraph (a), an issuer may request a written interpretation of the Rules contained in

the 4000 through 4500 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of \$10,000.

(c) An applicant to The Nasdaq Stock Market that has submitted the applicable entry fee under Rule 4510 or Rule 4520 will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial inclusion on Nasdaq. In addition, an issuer is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2).

(d) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.

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#### 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 IV 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 4550, which was approved by the Commission on September 4, 2003,<sup>4</sup> established a six-month pilot program under which Nasdaq charges fees for written interpretations regarding the application of the listing rules set forth in the NASD Rule 4200, 4300 and 4400 Series. The pilot went into effect October 1, 2003, and is scheduled to expire on April 1, 2004. Based on a review of the pilot to date, Nasdaq proposes adopting this fee on a permanent basis.

Under NASD Rule 4550, an issuer considering a specific action or

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5). Section 6(b)(5) of the Act requires that the rules of a national securities exchange be "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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

<sup>10</sup> 17 CFR 240.11Ac1-1.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

<sup>12</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 and Exchange Act Release No. 48450 (September 4, 2003), 68 FR 53770 (September 12, 2003).

<sup>4</sup> Securities and Exchange Act Release No. 48450, 68 FR 53770 (September 12, 2003).