

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.

III. 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, N.W., Washington, D.C. 20549. 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 all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-98-43 and should be submitted by December 7, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,⁷ and, in particular, the requirements of Section 6(b)(5) of the Act.⁸ Section 6(b)(5) of the Act requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and 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. Specifically, the Commission finds that the proposal to modify the weighting methodology of the Nasdaq-100 Index from a capitalization-weighted index to a modified capitalization index will

contribute to the maintenance of fair and orderly markets consistent with investor protection by ensuring that no one stock or group of stocks dominate the Index. Moreover, the Commission believes the proposal will have the effect of reducing the potential influence of any one stock on the movement of the Index.

The Commission believes that the proposed weighting method does not present any new or novel regulatory issues because the proposal adopts a method that is similar to one previously approved for the continued listing of options underlying the GSTI Composite Index.⁹ The Index will be calculated using a modified capitalization-weighted method, which is a hybrid between equal weighting and capitalization weighting. Under the new methodology, based upon quarterly examinations, the Index will be rebalanced if either one or both of the following two weight distribution requirements are not met. The first requires the then current weight of the single largest stock in the Index to be less than or equal to 24.0%. The second requirement looks at the "collective weight" of the stocks whose individual current weights exceed 4.5%; these stocks when added together, must be less than or equal to 48.0%. If either one of these two requirements is not met, a weight rebalancing must be performed in accordance with defined rules. In approving this proposal, the Commission believes that the new methodology should help reduce the likelihood that one or a few stocks will dominate the Index and have an undue effect on the Index value.

The Exchange stated that Nasdaq plans to implement this new methodology as of December 18, 1998 (after the close of trading). The Exchange proposes to bring up a new series of options overlying the Index, based on the new methodology, on the Monday following the expiration Friday, December 21, 1998. The new series of options will be signified by the current symbol, NDX. Any outstanding series will continue to list under a different symbol and continue to settle under the old methodology. CBOE will notify market participants of the new calculation by a notice to members and member firms in advance of the changeover. The Commission believes that these procedures will help to ensure investors have been adequately notified about the impending change prior to its implementation, and should provide them with sufficient time to

make any desired adjustments to their positions.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. By accelerating the effectiveness of the Exchange's rule proposal, the Commission will enable the continued listing and trading of options on the Index without interruption after the change in the weighting methodology. In addition, the Commission believes that the proposed weighting method does not present any new or novel regulatory issues as the proposal adopts a weighting method that will assist in ensuring that one or a few components will not dominate the Index. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act¹⁰ to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed change (File No. SR-CBOE-98-43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-40645; File No. SR-CBOE-98-33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exercise Advice Procedures

November 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 27, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") 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 the CBOE. The

⁷ In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ Exchange Act Release No. 38852 (July 18, 1997), 62 FR 40128 (July 25, 1997).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

CBOE subsequently filed an amendment to the proposed rule change on November 3, 1998.³ 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 clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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 CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. Substantive changes to Exchange rules are explained below.

³ Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated October 27, 1998 ("Amendment No. 1"). Amendment No. 1 clarifies the Business Conduct Committee's authority to impose sanctions under proposed rules 17.50(c)(2) and (d)(2); makes technical corrections to the proposed rule language; clarifies amendments to proposed rules 11.1.05 and 11.1.07; and elaborates on the statutory basis for the proposed rule change.

Restrictions on Exercise of Index Options

It is the Exchange's policy that, with the exception of the last business day prior to expiration, exercises of cash-settled index options are prohibited when trading in such options is delayed, halted, or suspended, unless otherwise determined by the President of the Exchange or his designee. Under this policy, however, the exercise of a cash-settled index option may be processed and given effect while trading in the option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension. This policy is currently reflected in Exchange Regulatory Circular RG91-11. The CBOE is proposing to amend rule 11.1.05 so that this policy is explicitly stated. The CBOE believes the amendment clarifies Rule 11.1.05. In addition, the Exchange proposes to reflect this policy in Rule 4.16, the Exchange's general rule regarding exercise restrictions, so that members are not required to refer to other Exchange rules and circulars. The proposed amended Rule 11.1.05 cross-references Rule 4.16.

Exercise Notice Procedures for Cash-Settled Index Options

Rule 11.1.03 requires that members notify the Exchange of certain exercise decisions concerning cash-settled index options and sets forth procedures for providing such notifications to the Exchange. The Exchange proposes to amend Rule 11.1.03 to clarify that Rule 11.1.03 is only applicable to American-style, cash-settled index options and not to European-style, cash-settled index options.

Exercise Notices Inconsistent With Just and Equitable Principles of Trade

Currently, Rule 11.1.07 provides that submitting or preparing an exercise instruction after the exercise cutoff time in any expiring option on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade. This provision applies to expiring noncash-settled equity options. The Exchange has also considered it to be a violation of just and equitable principles of trade to prepare or submit an exercise advice or advice cancel after the applicable deadline in any non-expiring American-style, cash-settled index option on the basis of material information released after the deadline.

The Exchange believes that this general policy will be more effectively

communicated to the membership if it is moved to proposed Rule 11.1.03(e), the procedures paragraph for American-style, cash-settled index options and if it is repeated in proposed Rule 11.1.06(f), the procedures paragraph for noncash-settled equity options. In this way, a member who refers to .03 or .06 will be made aware of the policy without referring to other interpretations of the Rule.

Therefore, the Exchange proposes to add new paragraph (e) to Rule 11.1.03 which governs the exercising of American-style, cash-settled index option contracts to specify that preparing or submitting an exercise advice or advice cancel after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Similarly, proposed new paragraph (f) in Rule 11.1.06 will specify that preparing or submitting an exercise instruction, contrary exercise advice, or advice cancel after 4:30 p.m. Chicago Time on the basis of material information released after such time, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Accordingly, the general provision currently found in Rule 11.1.07 establishing this policy will no longer be necessary and will be deleted.

Options Not Subject to Exercise by Exception

The Exchange proposes to clarify the requirements in Exchange Rule 11.1.06(c) applicable to exercise decisions and instructions for noncash-settled equity options not subject to the exercise by exception provisions of The Options Clearing Corporation's Rule 805. Proposed new paragraph (c) of Rule 11.01.06 will clarify that a member must deliver to the Exchange, no later than 4:30 p.m. Chicago Time, each exercise instruction prepared, submitted, or accepted by the member, for all noncash-settled equity option contracts not subject to the automatic exercise procedures of exercise by exception. Proposed new paragraph 11.1.06(d) clarifies that a member is excused from compliance with the exercise instruction requirements when the exceptions enumerated in Rule 11.1(b) apply and the member complies with Interpretation .01 of the Rule. Paragraphs (c)-(e) of the Rule are thus being deleted and replaced with new paragraphs (c) and (d).

Other Clarifications to Rule 11.1

The Exchange is also proposing to revise Rule 11.1.03(c) concerning the preparation of exercise advices prior to the purchase of American-style, cash-settled index option contracts to mirror the same provision applicable to noncash-settled equity options in Rule 11.1(d). In addition, the Exchange proposes to amend Rule 11.1 to more accurately reference the "preparation, submission, or acceptance" of exercise instructions. As amended, the proposed rule takes into account the different sources of the exercise instructions (*i.e.*, Clearing Members "prepare" exercise instructions for proprietary accounts, members "submit" exercise instructions to Clearing Members, and members "accept" exercise instructions from customer accounts). Finally, throughout Rules 11.1 and 17.50, the Exchange has corrected references to terms that have previously been defined in the Exchange rules. For example, reference to "Member" or "Member Organization" have been corrected to refer to the term "member" as previously defined in Section 1.1 of the Constitution.

Summary Fine for Failure to Submit an Exercise Advice

The Exchange proposes to make the failure to submit a contrary exercise advice, advice cancel, or exercise instruction in a timely manner pursuant to Rule 11.1.06, relating to the exercise or nonexercise of a noncash-settled equity option, a minor rule violation subject to the procedure and summary fine provisions of Rule 17.50. The Exchange will add new paragraph (8) to Rule 17.50(g) to provide that the failure of any member to follow the advice procedures in Rule 11.1.06 will subject the member to the summary fines specified by Rule 17.50. In any 12-month period, the first infraction will result in a Letter of Information sent to the member. The second infraction will result in a Letter of Caution, and subsequent infractions will result in a fine of \$500.

As with other summary fines imposed pursuant to Rule 17.50, a member will be permitted to contest the Exchange's determination. Rule 17.50(c)(1) permits members to seek review by the Business Conduct Committee ("BCC") of the Exchange for fines imposed by new paragraph (8).

Calculation of Summary Fines for Failure to Submit Accurate Trade Information

Both Rule 17.50(g)(4)(b) and (5)(b) impose an escalation of the total fines for repeated violations of rule 6.51. The

Exchange has modified paragraphs (4)(b) and (5)(b) of the rule regarding the calculation of the total fine to be imposed after a member incurs two fines for failure to submit or report accurate trade information in any 18-month period. If a member has incurred two fines under Rule 17.50(g)(4) or, similarly, two fines under 17.50(g)(5), in any 18 month period, any subsequent fine will be calculated by adding the amount of the fine assessed for the current violation to the amount of the next most recent fine incurred by the member under the rule.⁴

The proposed rule change also would amend Rule 17.50.03(a) to change from the fifth day of the month to the tenth day of the month the date by which the Exchange shall attempt to serve members fined pursuant to Rule 17.50(g)(4) or (g)(5) and to change from the twentieth day of the month to the twenty-fifth day of the month the date by which a member may request verification of the fine by the Exchange. These changes will provide the Exchange with more time to process these fines at the beginning of the month while preserving the current time frame in which members may request verification of these fines.

Exchange Discretion To Bring Disciplinary Action

The Exchange is also proposing to modify the summary fine appeal provisions under Rule 17.50(c)(2) and (d)(2). The Exchange proposes to clarify in these proposed sections that the BCC and the Appeals Committee must determine that the conduct serving as the basis for the action under review is in violation of an Exchange rule before a sanction may be imposed. The BCC and the Appeals Committee, however, may only review the alleged conduct to determine if it violates the rules charged.⁵ If the alleged conduct would constitute a violation of the rule charged, the BCC or the Appeals Committee could determine that the conduct at issue did not rise to a level

that would trigger a summary fine but nonetheless was in violation of an Exchange rule. In such a case, the BCC or the Appeals Committee could impose a disciplinary sanction for that conduct as part of its decision concerning the summary fine appeal.

The Exchange also is proposing to modify Rule 17.50(f) to conform the rule to a rule of the Chicago Stock Exchange.⁶ Proposed Rule 17.50(f) has been modified to clarify that the Exchange has the discretion not to issue a summary fine under Rule 17.50 in appropriate circumstances such as when extenuating circumstances exist or no remedial purpose would be served by the issuance of the fine. In addition, the Exchange would have the discretion to commence a formal disciplinary proceeding under Rule 17.2 whenever the Exchange determines that a rule violation is not minor in nature.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular. The Exchange believes the proposed rule change refines and enhances its rules relating to the exercise of options contracts and the procedures for minor rule violations thereby making both processes more efficient and effective. Accordingly, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)⁹ because it is designed to promote just and equitable principles of trade, of prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating clearing, and settling securities transactions, and to protect investors and the public interest.

⁶ See Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving Chicago Stock Exchange Article XII, Rule 9).

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(5).

⁹ Id.

⁴ An example of the calculation of summary fines is as follows: In January, Member XYZ incurs a fine of \$100 under Rule 17.50(g)(4) for violation of Rule 6.51 (based on the percentage of times that the members submitted inaccurate or no transaction times). In February, Member XYZ incurs a second fine under Rule 17.50(g)(4) and the appropriate fine is deemed to be \$250. In March, Member XYZ incurs a third fine for \$100 and, pursuant to the Rule 17.50(g)(4)(b), must pay a total of \$350 calculated by adding the third fine incurred (\$100) to the next most recently incurred fine (\$250). In April, Member XYZ incurs a fourth fine of \$250 and, pursuant to Rule 17.50(g)(4)(b), must pay a total of \$600 calculated by adding the fourth fine (\$250) to the total fine most recently incurred (\$350).

⁵ Amendment No. 1.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition.

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.

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 self-regulatory organization 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. 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, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-98-33 and should be submitted by December 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34-40652; File No. SR-NASD-98-78)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Equity Option Hedge Exemption

November 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ notice is hereby given that on October 15, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation ("NASD Regulation"), 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 NASD Regulation. 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

NASD Regulation proposes to amend Rule 2860(B)(3)(A)(vii) of the NASD, to make permanent the Equity Option Hedge Exemption, which has been operating as a pilot program since 1990. Below is the text of the proposed rule change. Deletions are bracketed.

Rule 2860. Options.

* * * * *

(b)(3)(A)(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is "hedged" by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

- 1. long call and short stock;

- 2. short call and long stock;
- 3. long put and long stock;
- 4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraph (b)(3)(A)(i) through (v) with respect to standardized equity options, or subparagraph (b)(3)(A)(ix) with respect to conventional equity options.

[c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1998.]

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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

Position limits impose a ceiling on the number of options contracts of each options class on the same side of the market that can be held or written by a member, an investor, or a group of investors acting in concert. NASD Rule 2860(b)(3) provides that the position limits for equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits. Currently, the five tiers for standardized equity options² are 4,500, 7,500, 10,500, 20,000 and 25,000 contracts. The position limits for conventional equity options³ are three times the limits for standardized equity

² Standardized equity options are exchange-traded options issued by the Options Clearing Corporation ("OCC") that have standard terms with respect to strike prices, expiration dates and the amount of the underlying security.

³ A conventional option is any option contract not issued, or subject to issuance by, the OCC.

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).