

will be the day immediately preceding the last regularly-scheduled trading day.

Surveillance

The Exchange states that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in options on each volatility index. The Exchange represents that these surveillance procedures are adequate to monitor the trading of options on these volatility index. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

Position Limits

The Exchange proposes to establish position limits for options on each volatility index—VIX, VXN and VXD—at 25,000 contracts on either side of the market and no more than 15,000 of such contracts may be in series in the nearest expiration month.⁸ The Exchange states that this is consistent with Exchange Rule 24.4 (Position Limits for Broad-Based Index Options).

Exchange Rules Applicable

Except as modified herein, the Exchange Rules in Chapter XXIV will be applicable to the VIX, VXN, and VXD options. Each volatility index will be classified as a "broad-based index" and, under CBOE margin rules, specifically, Exchange Rule 12.3(c)(5)(A), the margin requirement for a short put or call on the respective volatility indexes shall be 100% of the current market value of the contract plus up to 15% of the respective underlying index value.

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of VIX, VXN and VXD options. CBOE also has been informed that OPRA has the capacity to support such new series.⁹

2. Statutory Basis

CBOE believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹⁰ in general and furthers the objectives of Section 6(b)(5),¹¹ in particular, in that it will permit trading in options based VIX, VXN, and VXD on the volatility indices pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and

equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

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

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 CBOE consents, the Commission will:

- A. By order approve the 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, as amended, 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 File No. SR-CBOE-2003-40 and should be submitted by December 17, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-29577 Filed 11-25-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48810; File No. SR-NASD-2003-161]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Nasdaq Official Opening Price

November 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 28, 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") 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 Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to establish a Nasdaq Official Opening Price that would be made available for wholly voluntary use by NASD members and the public. Nasdaq represents that it would calculate and disseminate the Nasdaq Official Opening Price using its proprietary systems, and that the Nasdaq Official Opening Price would not affect the dissemination of last sale information pursuant to the national market system plan governing trading of Nasdaq securities, the Nasdaq UTP Plan.

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

⁸ This is consistent with Exchange 24.4 (Position Limits for Broad-Based Index Options).

⁹ See Exhibit E to the proposed rule change filed by CBOE, which set out the contract specifications for each product.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.