

including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, will consider to what extent the advisory fees charged to the Investing Fund should be reduced to account for the reduction of these services as a result of a portion of the assets of the Investing Fund being invested in the Money Market Fund. Further, no sales load, redemption fee, distribution fee, or service fee will be charged by the Money Market Funds with respect to the purchase or redemption of the Money Market Fund shares. If a Money Market Fund offers more than one class of shares, each Investing Fund will invest only in the class with the lowest expense ratio at the time of investment.

6. Sections 17(a)(1) and (2) make it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from such investment company. Because each Fund may be deemed to be under common control with the other Funds, it may be an "affiliated person," as defined in section 2(a)(3) of the Act, of the other Funds. Accordingly, the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares from the Investing Funds, would be prohibited under section 17(a).

7. Section 17(b) authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Investing Funds to purchase shares of a Money Market Fund, and a Money Market Fund to redeem such shares.²

8. The Investing Funds will retain their ability to invest their cash balances directly in money market instruments as authorized by their respective investment objectives and policies, if they believe they can obtain a higher return or for any other reason. Each of the Money Market Funds has the right to discontinue selling shares to any of the Investing Funds if its board of trustees determines that such sales

would adversely affect the Money Market Fund's portfolio management and operations. Therefore, applicants believe that the proposal satisfies the standards for relief in sections 6(c) and 17(b).

9. Section 17(d) and rule 17d-1 prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Each Investing Fund, by purchasing shares of the Money Market Funds, each Investment Adviser of an investing Fund, by managing the assets of the Investing Funds invested in the Money Market Funds, and each Money Market Fund, by selling shares to the Investing Funds, could be participants in a joint enterprise or other joint arrangement within the meaning of section 17(d) and rule 17d-1.

10. In passing upon applications submitted pursuant to section 17(d) and rule 17d-1, the SEC will consider whether the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the proposal satisfies these standards.

Applicants Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act, or service fee (as defined in section 26(b)(9) of the NASDd Rules of Fair Practice).

2. Before the next meeting of the board of trustees of an Investing Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Investment Adviser to the Investing Fund will provide the board of trustees with specific information regarding the approximate cost to the Investment Adviser for, or portion of the advisory fee under the existing advisory fee attributable to, managing the assets of the Investing Fund that can be expected to be invested in the Money Market Fund. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Investing Fund, including a majority of

the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by the Investment Adviser should be reduced to account for the reduction of these services to the Fund by the Investment Adviser under the advisory contract as a result of a portion of the assets of the Fund being invested in the Money Market Fund. The minute books of the Investing Fund will record fully the board's consideration in approving the advisory contract, including the consideration relating to fees referred to above.

3. Each Investing Fund will invest uninvested cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total net assets.

4. Investment in shares of the Money Market Funds will be in accordance with each investing Fund's respective investment restrictions, if any, and will be consistent with each Investing Fund's policies as set forth in its prospectuses and statements of additional information.

5. Each Investing Fund, each Money Market Fund, and any future fund that may rely on the order shall be advised by the Investment Adviser, or a person controlling, controlled by, or under common control with the Investment Adviser.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. A majority of the directors of an Investing Fund will not be "interested persons," as defined in section 2(a)(19) of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

² Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c), along with section 17(b), frequently are used to grant relief from section 17(a) to permit an ongoing series of future transactions.

[Release No. 34-37487; File No. SR-CBOE-96-14]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Inc.; Order Approving a Proposed Rule
Change and Notice of Filing and Order
Granting Accelerated Approval of
Amendment Nos. 1, 2, and 3 to the
Proposed Rule Change Relating to the
Telephone Policy for the S&P 100
("OEX") Options Post**

July 26, 1996.

I. Introduction

On March 12, 1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposal to amend its policy governing the use of member-owned or Exchange-owned telephones located at the trading post where options on the Standard & Poor's 100 Stock Index ("OEX") are traded. The proposed rule change was published for comment and appeared in the Federal Register on April 8, 1996.³ No comments were received regarding the proposal. The Exchange filed Amendment Nos. 1,⁴ 2,⁵ and 3⁶ to its

proposal on June 10, 1996, July 10, and July 23, 1996, respectively. This order approves the proposal.

II. Description of the Proposal

The purpose of the proposed rule change is to amend the Exchange's Regulatory Circular governing the use of telephones at the OEX trading post in two respects: first, by relaxing the restriction against floor brokers taking orders over the post telephones; and second, to accommodate the receipt of such orders, by relaxing the prohibition on the use of post telephones to permit floor brokers to receive incoming calls.⁷ In addition, Exchange members seeking to use or install a telephone or telephone line or to be assigned a PIN access code will be required to submit an Application and Agreement form that sets forth the policies enunciated in the proposed Regulatory Circular, requires a member to furnish all the information pertaining to his or her intended use of an OEX post telephone, and shows whether a member has received all of the necessary approvals attendant to the intended telephone usage.⁸ Finally, as discussed below, the Exchange is proposing certain amendments to its Rule 6.70.

The first proposed change to the Exchange's OEX telephone policy relaxes the prohibition against floor brokers taking orders over the post telephones. The telephone lines may not be used to receive orders except for those telephone lines dedicated to a particular floor broker who has been approved for such use by the Exchange. Floor brokers who meet the requirements to engage in a public customer business, including the requirement that they be registered representatives associated with a

member organization which is qualified to do a public customer business under Chapter IX of the Exchange's rules, and who are approved by the Exchange to receive such telephone orders, would be permitted to take the orders of public customers.⁹ Floor brokers who are not qualified to do a public customer business still would be permitted to take the orders of registered broker-dealers, after receiving Exchange approval to take such telephone orders.¹⁰ The second proposed change to the current policy relaxes the prohibition against receiving incoming calls to accommodate the receipt of orders by floor brokers.

Under the revised policy, incoming calls from locations outside of the CBOE building may be received at the OEX post only on telephone lines dedicated to the exclusive use of properly approved floor brokers, and may not be received on Exchange-provided general use telephone lines at the post. For this purpose, a call that emanates from a location outside the building and is patched or conference-linked from a member's booth or other location to a post telephone is considered to be a call from outside the building. Any floor broker who wishes to use a telephone or telephone line to receive incoming calls from outside the CBOE building or to receive orders from any source must obtain prior approval from the Exchange's Department of Compliance and from the OEX Floor Procedure Committee. Additionally, any floor broker who wishes to take orders directly from public customers over a telephone lie at the OEX post must be approved by the Membership Committee to conduct a public customer business in accordance with the rules of the Exchange.¹¹

To accommodate these changes, the Exchange has proposed some language changes to the existing Regulatory Circular. First, the Regulatory Circular

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 36331 (March 29, 1996), 61 FR 15540.

⁴ Amendment No. 1 effects several changes to the CBOE's proposal. First, the Exchange represents that it will conduct floor broker audits in connection with the proposed relaxation of the restrictions on the use of the telephones at the OEX option trading post. Second, the Exchange submitted a form of Application and Agreement to be used by Exchange members in applying to use or install a telephone or a telephone line at the OEX post or to be assigned a personal identification number ("PIN") access code to make outgoing calls. Third, the Exchange has made certain clarifying revisions to the Regulatory Circular that it intends to issue following Commission approval of its proposal. Letter from Timothy Thompson, CBOE, to Michael Walinskas, Division of Market Regulation ("Division"), Commission, dated June 7, 1996 ("Amendment No. 1").

⁵ Amendment No. 2 effects several technical clarifying changes to the Exchange's proposed Application and Agreement and Regulatory Circular. Amendment No. 2 also notes that the proposed telephone policy is not intended to restrict the Exchange from maintaining a general telephone line or lines at the OEX post on which Exchange staff may make outgoing calls and receive incoming calls. Letter from Timothy Thomson, CBOE, to Michael Walinskas, Division, Commission, dated July 3, 1996 ("Amendment No. 2").

⁶ Amendment No. 3 effects two changes to the Exchange's proposal. First, a sentence is added to the preamble to the proposed Application and Agreement to make it clear that incoming calls from locations outside of the CBOE building may be received at the OEX post only on telephones or telephone lines dedicated to the exclusive use of

approved floor brokers, and may not be received on Exchange-provided general use telephone lines at the post. Although this restriction already was set forth in the proposed Regulatory Circular, it was not stated explicitly in the proposed Application and Agreement. Second, language is added to paragraphs L and M of the proposed Application and Agreement to indicate that for purposes of those paragraphs "Member" means floor brokers, their employees, or such other associated persons as are authorized to receive calls or qualified to receive orders. Letter from Timothy Thompson, CBOE, to Sharon Lawson, Division, Commission, dated July 23, 1996 ("Amendment No. 3").

⁷ The Regulatory Circular setting forth the current OEX telephone policy initially was filed by the Exchange as SR-CBOE-95-15 (noticed in Securities Exchange Act Release No. 35725 (May 17, 1995)) on May 12, 1995, under paragraph (e)(6) of Rule 19b-4 under the Exchange Act and accordingly became effective upon the date of filing and operative 30 days thereafter. The Exchange re-filed the policy for full Commission review in SR-CBOE-95-49. That second filing was approved by the Commission on December 1, 1995 (Securities Exchange Act Release No. 36546, 60 FR 63552).

⁸ Amendment No. 1, *supra* note 4.

⁹ In addition to the SEC net capital, recordkeeping, and financial reporting requirements applicable to member organizations, a member or associated person transacting business with the public must satisfy other requirements, including receiving approval from the Membership Committee, participating in certain education programs, and passing a test concerning the handling of customer accounts.

¹⁰ Floor brokers who intend to receive orders only from other Exchange members or other registered broker-dealers for their own accounts need not qualify to do a public customer business under Chapter IX, but still must apply for approval to take orders over a floor telephone.

¹¹ For these purposes, "public customer" means any person or entity other than members, member organizations, or U.S. registered broker dealers.

In its filing, the Exchange states that it is reviewing this policy and expects to decide soon whether or not market-makers at the OEX post also should be permitted to receive incoming calls.

will be amended to make clear that only floor brokers may receive incoming calls from locations outside the CBOE building at the OEX post on approved telephones or telephone lines dedicated to the exclusive use of the floor broker. Second, those floor brokers who have been approved to receive incoming calls will be able to receive incoming calls even if those calls are not for the purpose of transmitting an order to the floor broker. Finally, the Regulatory Circular also will remind members that the Exchange will charge a \$5 monthly fee for the use of the telephones for those members that use a PIN access code. This fee was noted and approved in the earlier Commission releases regarding the OEX telephone policy.¹²

The form of Application and Agreement that will be required of members who wish to install or use telephones at the OEX post has been drafted to reflect the amended telephone policy. First, only duly qualified and approved floor brokers will have access to dedicated telephones or telephone lines that are capable of directly receiving calls that originate from off the premises of the Exchange. Second, only those floor brokers who are qualified and approved to conduct a public customer business will be permitted directly to receive public customer orders over telephones at the OEX post, whether such orders are received in calls originating from off or on the floor. Third, members at the OEX post may apply to be assigned a PIN access code that will allow them to use Exchange provided telephone lines at the OEX post, but these lines may be used for outgoing calls only and may not be used to receive orders. Finally, all members in the OEX post are permitted to receive calls from and to place calls to another telephone in the CBOE building on the Exchange's internal system.¹³

Reflecting these policies, the form of Application and Agreement requires applicants to furnish in a single form all of the information pertaining to their intended use of post telephones that the Exchange will need to monitor telephone usage and enforce applicable restrictions. The form also shows whether a floor broker has received all of the several separate approvals that are needed for the installation of a dedicated telephone or line at the OEX post. The form of agreement also serves

to remind members of their obligations in respect of the use of OEX post telephones, including some contractual provisions that are not present in the proposed Regulatory Circular. These include paragraphs G and H of the agreement, which deal with liability issues pertaining to telephone usage. Specifically, paragraph G states that the Exchange shall not be liable to members or their customers for losses resulting from the installation, operation, relocation, use of, or inability to use telephones or telephone lines at the OEX post. Paragraph H requires the member to indemnify the Exchange against any liabilities arising out of OEX post telephone or lines.¹⁴ Finally, the Application and Agreement defines the terms "incoming calls from outside the CBOE building," "dedicated telephone or dedicated telephone line," and "general use telephone lines" to the extent these terms are relevant to understanding OEX telephone policy.¹⁵

To accommodate the receipt of orders, the Exchange proposes to amend Rule 6.70, Floor Broker Defined, to state that a floor broker may receive orders from registered broker-dealers without satisfying the additional requirements necessary to take orders from public customers. Currently, Rule 6.70 states that a floor broker only may receive orders from: (1) members, or (2) public customers, if, in the case of public customer orders, that floor broker is either the nominee of, or has registered his individual membership for, a member organization approved to transact business with the public in accordance with Rule 9.3. Orders from non-member registered broker-dealers do not fit into either of these categories; they are not considered public customer orders and are not orders of members. Accordingly, the change will eliminate any ambiguity and make it clear that floor brokers may accept orders from non-member broker-dealers without receiving Exchange approval pursuant to Rule 9.1.

The CBOE also proposes to amend Rule 6.70 to state explicitly the CBOE Rule 9.3 requirement that a floor broker seeking to transact business with the public must complete successfully an examination demonstrating adequate knowledge of the securities business. Currently, a floor broker must complete successfully the Series 7 examination to transact business with the public.

III. Discussion

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, and, in particular, the requirements of Section 6(b)(5) of the Act,¹⁶ in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, insurers, brokers, or dealers. Specifically, the Commission believes that the proposed change to the CBOE's telephone policy at the OEX post should help to facilitate efficient access to OEX options in a fair manner. Providing procedures whereby floor brokers in the OEX trading crowd can readily communicate with the off-floor offices of member firms as well as with other locations off of the Exchange's trading floor, including non-member customers, will allow them to obtain and transmit information and instructions more efficiently which may result in benefits to investors by improving execution of orders. At the same time, the changes, as the CBOE notes, will tend to eliminate the existing disparity between members whose booths currently are adjacent to the OEX post and those that have booths further away from the post. For similar reasons, as discussed below, the Commission finds that the CBOE's proposed Application and Agreement is consistent with the Act. The Application and Agreement is designed to make clear the duties and obligations of members respecting the installation and use of telephones on the Exchange, and to make sure that all necessary approvals are received prior to such installation and use. Accordingly, this should help ensure compliance with Exchange rules by members consistent with Section 6 of the Act.

In File No. SR-CBOE-95-49, the Exchange stated its concern regarding the ability of floor brokers to receive orders over telephones by stating that it was concerned about "how to provide customers with access to the trading floor on a fair and nondiscriminatory basis, how to assure that persons on the floor are qualified to receive orders directly from customers, and how to

¹² See Securities Exchange Act Release Nos. 35725, and 36546, *supra* note 6.

¹³ Paragraph C of the Application and Agreement states that the Exchange will retain the discretion to allow a floor broker to have only a dedicated telephone line on an Exchange-owned telephone (instead of his or her own dedicated telephone) due to space considerations in the OEX post.

¹⁴ Amendment No. 1, *supra* note 4.

¹⁵ Amendment Nos. 1 and 2, *supra* notes 4 and 5, respectively.

¹⁶ 15 U.S.C. § 78f(b)(5) (1988).

surveil order-taking activity conducted over floor telephones." The Commission believes that the proposal should not deleteriously affect customer access, given that calls now come into member firm booths, some of which are located just outside of the OEX post. In its filing, the Exchange notes that allowing calls to come directly to the post eliminates the existing disparity between those members whose booths are adjacent to the post and those whose booths are farther away. In its filing, the Exchange states its belief that it will be a business decision of the individual floor brokers and their member firms to decide whether to use telephones at the OEX post, and to determine which customers will have access to those telephones. This is similar to the current situation where firms decide which customers may call them at the booth telephones. In addition, the policy will continue to require that only those quotations that have been publicly disseminated pursuant to Rule 6.43 may be provided to customers over post telephones. Therefore, the Commission agrees with the Exchange that this policy change should not represent a material departure from the current state of customer access.

Further, the Commission believes that the CBOE's floor broker examination program and proposed Application and Agreement and Regulatory Circular adequately address concerns relating to the need to ensure compliance with rules designed to assure the qualifications of members who accept orders directly from public customers, and how to provide adequate surveillance over this activity. The Exchange's floor broker examination program has been expanded to include a review of whether a floor broker is qualified to conduct non-member customer business, and all members registered to conduct non-member customer business are examined by their designated options examining authority each year.¹⁷ Moreover, members that meet internally established criteria will be identified for a floor broker examination. The Exchange also will rely on floor officials and other members in the OEX trading crowd to surveil activity of floor brokers to ensure adequate compliance with the OEX telephone policy. Finally, the application and Agreement that members must submit to use or install a telephone or a telephone line, or to be assigned a PIN access code to make outgoing calls, as well as the Regulatory Circular, clearly state the obligations and responsibilities of members vis a vis

non-member customers and the use of telephones, which should aid in compliance. In particular, the terms of the Application and Agreement should help to ensure that the Exchange's telephone policy is understood by members, as are the members' general obligations to adhere to the applicable laws, rules, policies, and procedures of the Application and Agreement, Exchange, and Commission. In addition, the Application and Agreement should ensure that all necessary approvals are received by members prior to their installation and use of telephones.¹⁸

In summary, because the Commission believes that the CBOE's proposal to modify its policy regarding telephones at the OEX options post may result in benefits to investors by allowing improved access to the market while not impairing or diminishing the ability of the Exchange to conduct surveillance for improper trading activity, the Commission finds that the proposed rule change is consistent with the requirements of the Act. The Commission recognizes that the revised OEX telephone policy only will permit incoming calls at the OEX post from locations outside of the CBOE building on telephones or telephone lines dedicated to the exclusive use of approved floor brokers. Accordingly, other market participants, such as OEX market makers, may not receive incoming calls at the OEX post. The Commission believes that this restriction is within the discretion of the Exchange and does not raise regulatory issues. While this is not meant to imply that the Exchange is prohibited in the future from requesting such access for other participants in the OEX trading crowd, appropriate safeguards to address possible misuse of non-public information, adequate surveillance, and compliance with Exchange Rules and the Act would have to be addressed.

Finally, the Commission notes that except for the changes described above, the substance of the revised Regulatory Circular previously has been approved by the Commission. For the same reasons discussed in the Commission's previous approval order, we find those provisions, which include provisions permitting outgoing calls at the post, as well as those which prohibit the use of portable telephones or headsets, consistent with the Act.

As to the remaining proposed amendments, the Commission believes

that the Exchange's proposal to amend its Rule 6.70, Floor Broker Defined, to state that a floor broker may receive orders from broker-dealers who are not CBOE members without having to meet the additional requirements necessary to take orders from public customers is consistent with the Act. The Commission notes that the proposed amendment to CBOE Rule 6.70 merely serves to treat registered broker-dealers equally, whether CBOE members or not. The Commission also notes that this provision is consistent with the definition of "public customer of a member organization" found in CBOE Rule 6.74, "Crossing" Orders.¹⁹ The Commission also believes that the Exchange's proposal to revise its Rule 6.70 to note that among the requirements a floor broker must meet to register pursuant CBOE Rule 9.1 is the successful completion of an examination demonstrating an adequate knowledge of the securities business is consistent with the Act in that it serves to reinforce an existing provision of the CBOE's Rules relating to transacting business with the public.²⁰

The Commission finds good cause for approving Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that Amendment No. 1 clarifies the Exchange's proposal and serves to strengthen it. The Application and Agreement makes clear the duties and obligations of members with respect to the installation and use of telephones on the Exchange, and should ensure that members receive appropriate approvals prior to such installation and use. With respect to the expansion of the Exchange's floor broker examination program, the Commission believes that it is designed to ensure that only members registered and qualified to conduct non-member customer business indeed do so. Amendment No. 1 also serves to make certain non-substantive changes to the Exchange's proposal. The Commission believes that Amendment Nos. 2 and 3 clarify the existing terms of the CBOE's proposal, rather than make any substantive changes. Based on the foregoing, the Commission believes it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, and 3 to the Exchange's proposal on an accelerated basis.

¹⁸ For example, the Application and Agreement requires verification that a floor broker desiring to accept orders directly from public customers at an OEX post telephone has been approved by CBOE's Membership Committee to conduct a public customer business.

¹⁹ CBOE Rule 6.74, Interpretation and Policy .01, defines "public customer of a member organization" to mean "a customer that is neither a member nor a broker/dealer."

²⁰ CBOE Chapter IX, Doing Business with the Public.

¹⁷ Amendment No. 1, *supra* note 4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1, 2, and 3 to the proposed rule change. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 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-96-14 and should be submitted by August 26, 1996.

V. Conclusion

For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act, and, in particular, Section 6 of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-CBOE-96-14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-19761 Filed 8-2-96; 8:45 am]

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[Release No. 34-37496; File No. SR-CBOE-96-46]

Self-Regulatory Organization: Notice of Proposed Rule Change by Chicago Board Options Exchange, Incorporated Related to Tolling of the Time Period for Settlement of Disciplinary Cases Pursuant to Interpretation and Policy .01(d) Under Exchange Rule 17.8

July 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act''), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 23, 1996,¹ the Chicago

Board Options Exchange, Incorporated ("CBOE" or the "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 Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The CBOE proposes to amend Interpretation and Policy .01(d) under CBOE Rule 17.8 ("Interpretation .01(d)"), to allow Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. 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, 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 aspects of such statements.

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

The purpose of the proposed rule change is to amend Interpretation .01(d) to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period.

Pursuant to CBOE Rule 17.8, after a Respondent is served with a statement of charges for an alleged rule violation, the Respondent has 120 days to attempt to resolve the charges by submitting a written offer of settlement. Pursuant to CBOE Rule 17.4(c), within 60 days after a statement of charges has been served, the Respondent may make a written request for and obtain access to all documents concerning the case that are in the investigative file of the Exchange

except for staff investigation and examination reports and materials prepared by the staff in connection with such reports or in anticipation of a disciplinary hearing or other privileged materials. If such a request is made, Interpretation .01(d) provides that this 120-day time period shall be tolled during the number of days in excess of seven calendar days that it takes staff to provide access to documents in response to a Respondent's request for such access.

The proposed rule change would revise Interpretation .01(d) to provide that the 120 day time period shall be tolled during the number of days in excess of *thirty* calendar days that it takes staff to provide access to documents in response to a Respondent's request. CBOE has found that in most cases staff needs longer than seven days to respond to such a request. Before providing access, Exchange staff must review and organize the file to remove privileged documents or information that is not discoverable and to remove information that may identify the complainant. Consequently, the 120 day settlement period is frequently tolled under Interpretation .01(d) while staff works on responding to the access request.

Exchange staff believes that in some instances Respondents, or their attorneys, have requested access just to gain an extension of the settlement period through tolling. There have been occasions where staff has spent more than 7 days preparing the investigative file for access, but after gaining the benefit of tolling, the Respondent submits an offer of settlement without ever reviewing the file.

CBOE believes it is important to provide a Respondent with access to documents in accordance with Rule 17.4(c); however, CBOE wants to discourage access requests made for the purpose of extending the 120 day settlement period. Therefore, the proposed rule change would amend Interpretation .01(d) to toll the 120 day settlement period only if Exchange staff takes more than 30 days to respond to a Respondent's request. Exchange staff believes that 30 days is generally a realistic estimate of the amount of time needed to respond to an access request. Since in most cases staff will be able to respond within 30 days, access requests should not typically extend the 120 day settlement period.

Under the proposed rule change, a Respondent will still have a sufficient amount of time to settle the matter after obtaining the requested documents. Even if a Respondent waits until the last day the rules allow to file a written

²¹ 15 U.S.C. § 78s(b)(2) (1988).

²² 17 CFR 200.30-3(a)(12).

¹ The proposal was originally filed with the Commission on July 10, 1996. The CBOE

subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 was a minor technical amendment. See Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated July 23, 1996.