

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Documents Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Phillip F. McKee: petitioner's name and telephone number, date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, CT 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 20, 1994, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L

Street, NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 24th day of January 1995.

For the Nuclear Regulatory Commission,  
**Phillip F. McKee,**  
*Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 95-2572 Filed 2-1-95; 8:45 am]

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[Docket No. 50-213]

**Connecticut Yankee Atomic Power Co.; Notice of Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 178 to Facility Operating License No. DPR-61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance to be implemented within 30 days of issuance.

The amendment revises Technical Specifications (TS) 3.4.1.1, "Reactor Coolant Loops and Coolant Circulation," TS 3.7.1.1., "Safety Valves—Self Actuation Function," Table 3.7-1, "Steam Line Safety Valves Per Loop," and their associated Bases sections. In addition, the change adds a new TS 3.7.1.1.2, "Safety Valves—Remote Actuation Function."

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 7, 1993 (58 FR 31979). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the

issuance of the amendment will not have a significant effect on the quality of the human environment (59 FR 66564).

For further details with respect to the action see (1) the application for amendment dated May 4, 1993, as supplemented August 9 and 18, 1993, January 25, April 11, and June 22, 1994, (2) Amendment No. 178 to License No. DPR-61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, CT 06457.

Dated at Rockville, Maryland, this 26 day of January 1995.

For the Nuclear Regulatory Commission,  
**Alan B. Wang,**  
*Project Manager, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

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BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-35281; File No. SR-CBOE-94-38]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Temporary Approval of a Proposed Rule Change Relating to the Short Sale of Securities in the Nasdaq National Market**

January 26, 1995.

**I. Introduction**

On October 25, 1994, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend its Rule 15.10 regarding short sales of Nasdaq National Market ("Nasdaq/NM" or "NM") securities. The proposed rule change was published for comment and appeared in the **Federal Register** on

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1993).

November 16, 1994.<sup>3</sup> No comments were received on the proposal.<sup>4</sup>

## II. Description of the Proposal

CBOE Rule 15.10 concerns the availability to Exchange market makers of the bid test exemption from the National Association of Securities Dealers' ("NASD") short sale rule.<sup>5</sup> The Exchange is amending Rule 15.10 to expand the definition of "designated Nasdaq/NM security"<sup>6</sup> to include all Nasdaq/NM securities which underlie the options classes for which a market maker holds an appointment. Currently, the rule limits designated Nasdaq/NM securities to no more than three trading stations of a market maker, although CBOE Rule 8.3 allows market makers to have appointments, absent an exemption, in up to five trading stations. The CBOE believes the limitation to three trading stations is unnecessarily restrictive and that the proposed change is consistent with the application of the exemption for options market makers on other exchanges.<sup>7</sup>

The CBOE also is proposing to amend Interpretation .02 to CBOE Rule 15.10 to permit an options market maker, with prior notice to an Exchange Floor Official or Order Book Official, to facilitate an off-floor options or combination order and contemporaneously hedge the resulting options position with a short sale in applicable Nasdaq/NM securities as if such securities were designated securities under paragraph (c)(2) of the Rule. The Floor Official or Order Book official notified of such a transaction is required to file a report describing it

with the Department of Market Surveillance, and must give a copy of the report to the market maker.

Finally, the CBOE is proposing to amend Interpretation .03 to CBOE Rule 15.10 to allow a nominee of a market maker organization to effect bid test exempt short sales in a Nasdaq/NM security which the market maker nominee has not designated as qualifying for the exemption contained in paragraph (c)(2), provided that the security is a designated Nasdaq/NM security for another nominee of the market maker organization and such other nominee is not also present or represented by a Floor Broker in the applicable trading station at the time of the bid test exempt sale. The CBOE believes that this will allow a market maker organization to manage its obligations better when nominees are absent from the trading floor for reasons such as illness.

## III. Discussion

The Commission finds the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act, because the proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

The Commission believes that the CBOE's proposal to expand the definition of "designated Nasdaq/NM security" is consistent with the market maker exemption from the NASD's bid test rule. This exemption recognizes the need for options market makers to hedge their options positions by buying or selling (including selling short) shares of underlying stocks or certain underlying component stocks contained in stock indexes. In relevant part, the NASD's market maker bid test exemption provides that a "qualified options market maker" is an options market maker who has received an appointment as a "qualified options market maker" for certain classes of stock options on Nasdaq/NM securities and indexes pursuant to the rules of a "qualified options exchange."<sup>8</sup> The exemption further provides that a "qualified options exchange" is a national securities exchange that has approved rules and procedures providing for designating market makers as qualified options market makers that

are designed to identify options market makers who regularly engage in market making activities in the particular options classes.<sup>9</sup>

The CBOE's proposal would expand the classes of stock options for which its market makers may be deemed "qualified options market makers" by extending the definition of "designated Nasdaq/NM security" to all Nasdaq/NM securities underlying options for which a market maker holds an appointment.<sup>10</sup> The new provision is consistent with the comparable provisions adopted by other options exchanges.<sup>11</sup>

The CBOE's proposal also is consistent with NASD Rules given that the exemption's availability is limited to securities underlying options contracts in which a market maker holds an appointment. A market maker has a continuous obligation to maintain a fair and orderly market with respect to such securities, and must conduct a certain percentage of trading on the CBOE in the appointed classes.<sup>12</sup> Additionally, the CBOE requires that to qualify for the market maker short sale exemption, a short sale in a Nasdaq/NM security must be effected to hedge, and in fact services to hedge, an options transaction.<sup>13</sup> The CBOE has adopted surveillance procedures designed to monitor its market makers' use of the market maker exemption so as to ensure that short sales effected by qualified options market makers are exempt hedge transactions and that other, nonqualified market makers, are not using the exemption.<sup>14</sup>

Proposed Interpretation .02 will allow an options market maker, with prior notice to a Floor Official or Order Book Official, to facilitate an off-floor order, and contemporaneously hedge the

<sup>3</sup> See Securities Exchange Act Release No. 34947 (November 7, 1994), 59 FR 59262.

<sup>4</sup> The CBOE filed its proposal after receiving a comment letter concerning its Rule 15.10. See letter from Michael J. Carusillo, General Partner, O'Connor & Associates, to Jeff Schroer, Vice President, Market Surveillance, CBOE, dated September 21, 1994 ("O'Connor Letter").

<sup>5</sup> The Commission approved the NASD's bid test (or "short sale") rule in Securities Exchange Act Release No. 34277 (June 6, 1994), 59 FR 34885 (amending the NASD's Rules of Fair Practice ("NASD Rules"). The CBOE's proposal concerning the market maker exemption from the bid test rule, along with the proposals of the other options exchanges, was approved in Securities Exchange Act Release No. 34632 (September 2, 1994), 59 FR 46999 (approving proposals by the American Stock Exchange ("Amex"), CBOE, New York Stock Exchange ("NYSE"), Pacific Stock Exchange ("PSE"), and Philadelphia Stock Exchange ("Phlx").

<sup>6</sup> CBOE Rule 15.10(c)(2)(ii)(B).

<sup>7</sup> See O'Connor Letter, *supra* note 4.

The O'Connor Letter compares the application of the CBOE's rule to the application of the corresponding rules of the other options exchanges concerning the market maker exemption to the NASD short sale rule. It concludes that the CBOE's rule is more restrictive, causing CBOE market makers to be placed at a disadvantage relative to market makers at other exchanges. *Id.*

<sup>9</sup> NASD Rules, Art. III, section 48(h)(2)(c).

<sup>10</sup> As noted above, CBOE Rule 8.3(c) provides that a market maker's appointment is limited to the options classes trading at no more than five trading stations absent an exemption by the Market Performance Committee. The Exchange recently filed a proposal (File No. SR-CBOE-94-44) to expand market maker appointments from five trading stations to 10, stating that the current five station limit puts it at a competitive disadvantage relative to other options exchanges. See Securities Exchange Act Release No. 35192 (January 4, 1995), 60 FR 3012.

<sup>11</sup> See Amex Rule 957(d)(2)(b)(i); NYSE Rule 959A(a); PSE Rule 4.19(c)(2)(B) (these exchanges allow the short sale exemption to be available to all Nasdaq/NM securities which underlie the options classes for which a market maker holds an appointment); Phlx Rule 1072(c)(2)(ii) (the Phlx limits the short sale exemption to Nasdaq/NM securities underlying no more than 20 options allocated or assigned).

<sup>12</sup> See CBOE Rule 8.7, Obligations of Market-Makers (setting forth specific obligations of market makers).

<sup>13</sup> CBOE Rule 15.10(c)(2)(ii).

<sup>14</sup> See Securities Exchange Act Release No. 34632, *supra* note 4.

<sup>8</sup> NASD Rules, Art. III, section 20(h)(2)(b).

resulting options position with a short sale in applicable Nasdaq/NM securities as if such security was a designated Nasdaq/NM security. The Floor Official or Order Book Official who is notified of such a transaction must file a report describing the transaction with the Department of Market Surveillance and must provide the market maker with a copy of the report. The market maker, in turn, must maintain a copy of the report to demonstrate the transaction was bid test exempt. The Commission believes that this provision is consistent with the NASD's interpretation regarding hedging activities associated with the facilitation of customer transactions in options and that the procedures for reporting a transaction under the provision will ensure adequate monitoring.<sup>15</sup>

As noted above, Proposed Interpretation .03 will give a market maker organization more flexibility to manage its market making obligations by allowing a nominee of such organization to affect short sales of securities as bid test exempt even though the nominee has not designated such securities as bid test exempt eligible, provided that the securities have been designated bid test exempt eligible by another nominee of the market maker organization, and further provided that the bid test exempt eligible nominee is not present on the trading floor. The Commission believes this is a reasonable provision designed to address instances where a market maker nominee is absent from the trading floor due to illness, personal, or other business. The Commission believes that this provision is consistent with the intent of the market maker exemption to the short sale rule, in that the exemption continues to be limited to those Nasdaq/NM securities which are used to hedge options transactions in the primary classes in which the market maker organization makes markets. The CBOE will monitor the use of this provision pursuant to the short sale exemption surveillance procedures currently in place.<sup>16</sup>

Finally, it should be noted that CBOE Rule 15.10 was approved on a temporary basis, to remain in effect so long as there exists a market maker exemption to the NASD's short sale

rule.<sup>17</sup> Accordingly, the changes approved herein also are being approved for the same temporary period.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the 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,<sup>18</sup> that the proposed rule change (File No. SR-CBOE-94-38) is approved on a temporary basis, to remain in effect so long as CBOE Rule 15.10 remains in effect.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-2552 Filed 2-1-95; 8:45 am]

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[Release No. 34-35282; File No. SR-CBOE-94-53]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to a Determination of the Exchange's Office of the Chairman Pursuant to Exchange Rule 4.10(b)(3) That Certain Financial Requirements be Imposed Upon Member Organizations That Clear Options Market Maker Transactions**

January 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 22, 1994, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>17</sup> See Securities Exchange Act Release No. 34632, *supra* note 4. If the NASD later amends its short sale rule in a manner that affects the market maker exemption, including its definition, conditions, and requirements, the CBOE and other options exchanges might be required to amend their own companion market maker exemption rules so that market makers may avail themselves of any continued market maker exemption. *Id.*

<sup>18</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>19</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

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

The CBOE proposes to issue a regulatory circular ("Regulatory Circular") concerning a determination by the Exchange's Office of the Chairman pursuant to Exchange Rule 4.10(b)(3) that certain financial requirements be imposed upon member organizations that clear options market maker transactions.<sup>2</sup>

#### **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 self-regulatory organization 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 self-regulatory organization 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 Regulatory Circular is to inform the Exchange's membership that, acting pursuant to its authority under Rule 4.10(b)(3), the Office of the Chairman has determined that it is necessary to impose certain financial requirements upon Exchange members that clear the transactions of options market makers. The Exchange believes that for such members to continue in business without such requirements has the potential to threaten the financial integrity of Exchange market maker transactions.<sup>3</sup> The Office of the Chairman has determined that the current method of calculating options

<sup>2</sup> The proposed Regulatory Circular is available from the Commission and the CBOE. See *infra* Part IV.

<sup>3</sup> Exchange Rule 4.10(b)(3) provides that the Office of the Chairman may impose additional financial and operational requirements on a member that clears market maker trades when the Office of the Chairman determines that the member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange market maker transactions. Rule 4.10(b)(7) provides that the Exchange shall file notice with the Commission in accordance with the provisions of Section 19(d)(1) of the Act of all final decisions to impose extraordinary requirements pursuant to Rule 4.10(b)(3). In addition, the Exchange has elected to file the Regulatory Circular as a proposed rule change under Section 19(b)(1) of the Act.

<sup>15</sup> See letter from Richard G. Ketchum, Chief Operating Officer and Executive Vice President, NASD, to David A. Dami, First Vice President & Associate General Counsel, Global Derivatives, Paine Webber, Inc., dated September 13, 1994.

<sup>16</sup> See letter from Patricia Sizemore, Director, Department of Market Surveillance, CBOE, to Francois Mazur, Attorney, Division of Market Regulation, Commission, dated January 25, 1995.