

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are the identical procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.²²

It is therefore ordered, pursuant to Section 19(b)(2),²³ that the proposed rule change (SR-Amex-95-01) is hereby approved until July 21, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁴

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35300; File No. SR-CBOE-94-46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Amendments to the Minor Rule Violation Fine Plan

January 31, 1995.

On November 21, 1994, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain provisions of CBOE Rule 17.50, "Imposition of Fines for Minor Rule Violations."

Notice of the proposed rule change appeared in the **Federal Register** on December 5, 1993.³ No comments were received on the proposal.⁴

²² No comments were received in connection with the proposed rule change which implemented these procedures. See 1992 Approval Order, *supra*, note 3.

²³ 15 U.S.C. 78s(b)(2) (1988).

²⁴ 17 CFR 200.30-3(a)(12) (1991).

¹ 15 U.S.C. 78s(b)(1) (1998).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35014 (November 28, 1994), 59 FR 62429 (December 5, 1994).

⁴ On January 10, 1995, the CBOE amended its proposal to provide that fines imposed pursuant to CBOE Rule 17.50(b)(7) are subject to review by the Exchange's Appeals Committee. See Letter from Arthur B. Reinstein, Attorney, CBOE, to Sharon Lawson, Assistant Director, Division of Market

The CBOE proposes to amend CBOE Rule 17.50 to (1) extend the "lookback period" for determining certain sanctions; (2) limit the number of transactions for which a member may request verification; (3) clarify appeal procedures; (4) provide for the waiver of certain fees for appeals; (5) conform procedures for requests for review under CBOE Rule 17.50 with other CBOE rules; and (6) clarify certain provisions of the rule.

Specifically, the Exchange proposes to (1) amend CBOE Rule 17.50(g)(4) to extend from nine to 18 months the "lookback period" for failure to submit accurate trade information pursuant to CBOE Rule 6.51, "Reporting Duties;" and (2) amend CBOE Rule 17.50(g)(5) to create an 18-month "lookback period" for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51. The Exchange also proposes to amend CBOE Rule 17.50(g)(6) to provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if warranted under the circumstances in the view of the Floor Officials Committee.

The CBOE proposes to amend Exchange Rule 17.50, Interpretation and Policy .03 to impose a cap on the number of transactions during a particular month for which a member fined more than twice in an 18-month period for failure to submit accurate trade information or failure to submit trade information to the price reporter may request verification. Under Interpretation and Policy .03, as amended, a member fined more than twice in an 18-month period may request verification of the greater of 50 transactions during a month or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 6.51.

The CBOE also proposes several amendments to revise the procedures applicable to the appeal and review of fines imposed under CBOE Rule 17.50. First, the CBOE proposes to amend Exchange Rule 17.50(c)(1) to state explicitly the rights of members fined under the rule. The CBOE also proposes to add paragraph (d)(1) to clarify the procedures applicable to appeals from fines imposed for trading conduct and decorum violations to note that, among other things, a person fined for such violations may contest the Exchange's determination by filing a written application with the Secretary of the

Regulation, Commission, dated January 9, 1995 ("Amendment No. 1"). CBOE Rule 17.50(g)(7) establishes a fine schedule for failures to submit trade data on the trade date. See order approving File No. SR-CBOE-94-50.

Exchange pursuant to CBOE Rule 19.2, "Submission of Application to Exchange," and that a hearing, if requested, will be conducted in accordance with the provisions of CBOE Rules 19.3, "Procedure Following Applications for Hearing," and 19.4, "Hearing." Under paragraph (d)(2), the Appeals Committee may waive the forum fee if the Appeals Committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the Appeals Committee is a fine which is less than the total fine initially imposed by the Exchange.

In addition, the CBOE proposes to amend CBOE Rule 17.50(c) to provide the Exchange's Business Conduct Committee ("BCC")⁵ and the Appeals Committee with the discretion to waive the forum fee provided for if the applicable committee finds that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed is a fine which is less than the total fine initially imposed by the Exchange. The CBOE believes that this amendment will lead to a more equitable resolution of certain appeals under CBOE Rule 17.50 in situations where the committees believe that a waiver of the forum fee is warranted; such situations arise, for example, when a fine is reduced on appeal.

The CBOE also proposes to amend CBOE Rule 17.50(c)(3) and to add (d)(3) to make the procedures applicable to requests by the Board of Directors ("Board") for review by the Board of determinations of the Appeals Committee under CBOE Rule 17.50 consistent with the procedures applicable to similar requests regarding other decisions of these committee as provided in CBOE Rules 17.10(c) and 19.5(a).

Finally, the CBOE proposes a nonsubstantive change to clarify CBOE Rule 17.50(g)(1), "Violation of position limit rules," by deleting a potentially confusing reference to CBOE Rule 24.4, "Position Limits for Broad-Based Index Options." Currently, CBOE Rule 17.50(g)(1), which applies to violations of all of the Exchange's position limit rules, only specifically references CBOE

⁵ The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC reviews CBOE staff investigatory reports and issues statements of charges, accepts or rejects offers of settlement and letters of consent, holds hearings and conducts summary proceedings, serves written decisions on the parties to proceedings, and, when appropriate, imposes sanctions, including expulsions, suspensions, fines, censures, and other fitting sanctions.

Rules 4.11, "Position Limits," and 24.4(a), and does not specifically reference the other CBOE rules which determine compliance with CBOE Rule 4.11, the Exchange's general rule governing position limits.⁶ Although the CBOE states that this is not technically incorrect—because all position limit violations, no matter what type of option they relate to, are violations of CBOE Rule 4.11—the current references are potentially confusing. Therefore, to eliminate potential confusion, the CBOE proposes to delete the reference to CBOE Rule 24.4(a), so that CBOE Rule 17.50(g)(1), as amended, will refer only to CBOE Rule 4.11.

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(7), in particular, in that it enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

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, with the requirements of Sections 6(b)(5), 6(b)(6), and 6(b)(7).⁷ Section 6(b)(6) of the Act requires that the rules of the Exchange provides that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules. As noted above, the CBOE proposes to amend CBOE Rule 17.50 to (1) extend to 18 months the "lookback period" for failure to submit accurate trade information pursuant to CBOE Rule 6.51;⁸ (2) create an 18-month "lookback period" for failure to submit trade information to the price reporter pursuant to CBOE Rule 6.51;⁹ and (3) provide that the maximum fine authorized under the Exchange's trading and decorum policies may be imposed for a first or second offense if the Floor Officials Committee believes that such action is warranted. The Commission believes that these amendments to CBOE Rule 17.50 will provide for prompt, effective and appropriate discipline of CBOE Rule 6.51 and of the

Exchange's trading and decorum policies.

In addition, the Commission notes that the current fine schedules provided in CBOE 17.50 for violations of CBOE rule 6.51 are graduated to account for repeat offenders and that allowing the Exchange to create 18-month "lookback periods" is consistent with the existing framework of graduated fines and may increase the CBOE's ability to deter repeat offenders. By encouraging market makers and floor brokers to submit accurate trade information and to submit information to the price reporter, the proposal should enhance the accuracy of the CBOE's audit trails and, in turn, protect investors and the public interest by helping the CBOE to enforce compliance by its members with the federal securities laws and the CBOE's rules.

The Commission also believes that it is reasonable for the CBOE to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a month for which a member fined more than twice during an 18-month period under CBOE Rule 17.50(g)(4) or (g)(5) may request verification of the fine. Specifically, under the proposal, if a member receives three or more such fines during an 18-month period he will be permitted to request verification of the greater of 50 transactions or 10% of the number of transactions deemed not to be in compliance with CBOE Rule 17.50(g)(4) or 17.50(g)(5). The proposed cap will apply separately to fines imposed under CBOE Rules 17.50(g)(4) and 17.50(g)(5).

The Commission believes that the proposal to amend CBOE Rule 17.50, Interpretation and Policy .03 to limit the number of transactions during a particular month for which a member may request verification strikes a reasonable balance between providing CBOE members with a reasonable opportunity to request verification of fines imposed for failure to submit accurate trade information or failure to submit trade information to the price reporter and limiting the administrative burden associated with verification of the transactions. In this regard, the CBOE states that the majority of verification requests involve the review of between 30 and 150 transactions and that the Exchange has had to devote an increasing amount of CBOE staff time and resources to processing the verification requests. According to the CBOE, the proposed cap will affect a small percentage of the members requesting verification and will materially reduce the total number of

transactions that will be reviewed by the Exchange's surveillance staff.

At the same time, the Commission believes that the proposed amendment to CBOE Rule 17.50, Interpretation and Policy .03 does not compromise members' rights to fair procedures in CBOE disciplinary proceedings. Specifically, the Commission notes that the limit on verification requests does not apply to members who receive less than three fines for violations of either CBOE Rule 17.50(g)(4) or 17.50(g)(5) during an 18-month period and that the proposal limits, but does not eliminate, a member's ability to request verification of transactions during a particular month. In addition, the Commission notes that a member fined under CBOE Rule 17.50 may contest the fine imposed pursuant to CBOE Rule 17.50 through the submission of a written answer as provided in CBOE Rule 17.5, "Answer," when the matter will become subject to review by the Exchange's BCC.¹⁰

The Commission believes that it is reasonable for the CBOE to amend CBOE Rule 17.509c(1) to state explicitly the right of members fined under CBOE Rule 17.50, including members who receive fines exceeding \$2,500 for trading conduct and decorum policy violations, to contest the Exchange's determination by filing an answer under CBOE Rule 17.5. In addition, the Commission believes that it is reasonable for the Exchange to add paragraph (d) to CBOE Rule 17.50, which specifies the procedures applicable to appeals of trading conduct and decorum policy violation fines not exceeding \$2,500 imposed pursuant to CBOE Rule 17.50(g)(6) and fines imposed pursuant to CBOE Rule 27.50(g)(7).¹¹

The Commission believes that the amendments to CBOE Rule 17.50(c) and addition of paragraph (d) clarify the appeal procedures available to members fined under CBOE Rule 17.50, thereby helping to ensure that the Exchange provides fair procedures for the disciplining of members, consistent with Section 6(b)(7) of the Act. The Commission believes that right to appeal sanctions imposed under CBOE Rule 17.50 will help to safeguard the procedural rights of sanctioned persons while preserving the Exchange's ability to adjudicate minor rule violations in a timely and efficient manner through the process established in CBOE Rule 17.50.

In addition, the Commission believes that it is reasonable for the Exchange to amend its rules to provide BCC and the

⁶ Other CBOE position limit rules which establish ways to determine compliance with CBOE Rule 4.11 with respect to particular types of options include CBOE Rule 24.A, "Position Limits for Industry Options," CBOE Rule A.7, "Position Limits" (Flexible Exchange Options), CBOE Rule 21.3, "Position Limits" (Treasury Bonds and Notes), and CBOE Rule 23.3, "Position Limits" (interest rate options).

⁷ 15 U.S.C. 78f(b)(5), (6), and (7) (1988).

⁸ See CBOE Rule 17.50(g)(4).

⁹ See CBOE Rule 17.50(g)(5).

¹⁰ See CBOE Rule 17.50(c).

¹¹ See Amendment No. 1, *supra* note 4.

Appeals Committee with the discretion to waive the forum fee established in CBOE Rule 17.50 if the BCC or the Appeals Committee determines that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the BCC or the Appeals Committee is a fine which is less than the total fine initially imposed for the violation. By allowing the BCC and the Appeals Committee to waive the forum fees, the Commission believes that the proposal should enhance the fairness of the CBOE's disciplinary system and help to ensure that appropriate and equitable discipline is imposed under CBOE Rule 17.50.

The Commission believes that it is reasonable for the Exchange to amend CBOE Rule 17.50 to provide that the Exchange department which commenced an action under CBOE Rule 17.50, the person charged, the President of the Exchange, and the Board may require a review by the Board of any determination of the Appeals Committee under CBOE Rule 17.50 by proceeding in the manner provided in CBOE Rule 19.5, "Review." The Commission notes that the provision is similar to the current CBOE rule governing requests for review of BCC determinations.

Finally, the Commission believes that the CBOE's proposal to make nonsubstantive changes to CBOE Rule 17.50(g)(1) is consistent with the Act because it is designed to clarify the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to establish procedures applicable to appeals of fines imposed pursuant to CBOE Rule 17.50(g)(7). By providing members with a means to appeal such fines, the Commission believes that the procedures set forth in Amendment No. 1 should help to ensure that fines are imposed fairly under CBOE Rule 17.50(g)(7). Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-CBOE-94-46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35314; File No. SR-NASD-94-10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Procedures for Large and Complex Arbitration Cases

February 1, 1995.

On January 31, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")¹ a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")², and Rule 19b-4 thereunder.³ The rule change amends the Code of Arbitration Procedure ("Code")⁴ by amending Part III, Sections 43⁵ and 44⁶ and adding new Section 46 to provide procedures for large and complex arbitration cases as a one year pilot program.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34998, Nov. 22, 1994) and by publication in the **Federal Register** (59 FR 61010, Nov. 29, 1994). Two comment letters were

¹ The NASD initially submitted the proposed rule change on February 15, 1994. Amendment No. 1, submitted on October 12, 1994, clarified various aspects of the proposed rule change, altered the manner in which arbitrators are selected to a panel and altered the disclosures required with respect to unsuccessful settlement discussions. Amendment No. 2, submitted on November 18, 1994, amended proposed Section 46(g) to clarify that arbitrators may, at their own initiative, issue an award accompanied by a statement of reasons or basis of award and that parties may specifically agree to require arbitrators to issue a statement of reasons when they issue an award. Amendment No. 3, submitted on December 12, 1994, and Amendment No. 4 were minor technical amendments. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (December 9, 1994) (available in Commission's Public Reference Room); Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (January 31, 1994) (available in Commission's Public Reference Room).

² 15 U.S.C. 78s(b)(1) (1988).

³ 17 CFR 240.19b-4.

⁴ NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶ 3701 *et. seq.*

⁵ NASD Manual, Code of Arbitration Procedure, Part III, Sec. 43 (CCH) ¶ 3743.

⁶ NASD Manual, Code of Arbitration Procedure, Part III, Sec. 44 (CCH) ¶ 3744.

received.⁷ This order approves the proposed rule change.

I. Background

The Code governs arbitration of any dispute arising out of or in connection with the business of any NASD member, or arising out of the employment or termination of employment of associated persons with a member, other than disputes involving the insurance business of any member which is also an insurance company, if the dispute is: (1) Between or among members; (2) between or among members and associated persons; (3) between or among members of associated persons and public customers, or others; or (4) between or among members, registered clearing agencies with which the NASD has entered into an agreement to use the NASD's arbitration facilities and procedures, and participants, pledges or other persons using the facilities of a registered clearing agency.⁸

The Code contains specialized procedures for certain categories of cases. Part II of the Code⁹ contains procedures applicable solely to industry and clearing controversies. Section 13 of the Code¹⁰ contains certain specialized procedures applicable to controversies involving public customers and associated persons or members if these controversies involve a dollar amount not exceeding \$10,000.

The NASD submitted this rule change because it believes that certain large and complex cases may require special management beyond that currently afforded by the Code. Therefore, the NASD is adding new Section 46 to the Code setting forth procedures for handling and managing large and complex cases. In part, some of the procedures contain certain features of rules adopted by the American Arbitration Association ("AAA") for processing large and complex cases. Section 46 also contains certain features of the arbitration rules of the National Futures Association. Many of the procedures in Section 46 also are provided elsewhere in the Code; however, the NASD believes that grouping these procedures together in a

⁷ See letter from Cliff Palefsky, Esq., Chairman, Securities Industry Arbitration Committee, National Employment Lawyers Association ("NELA"), to Jonathan G. Katz, Secretary, SEC, dated December 12, 1994 ("NELA Letter"); letter from Seth E. Lipner, Esq., Deutsch & Lipner, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1994 ("Lipner Letter").

⁸ NASD Manual, Code of Arbitration Procedure, Part I, Sec. 1 (CCH) ¶ 3701.

⁹ NASD Manual, Code of Arbitration Procedure, Part II, Secs. 8-11 (CCH) ¶ 3708-3711.

¹⁰ NASD Manual, Code of Arbitration Procedure, Part III, Sec. 13 (CCH) ¶ 3713.

¹² 15 U.S.C. 78s(b)(2) (1982).

¹³ 17 CFR 200.30-3(a)(12) (1994).