

short sales. Specifically, the CBOE proposes to delay, until March 30, 1996, the effectiveness of that portion of the rule change that prohibits CBOE members from using blanket or standing assurances that securities are available for borrowing to satisfy their affirmative determination requirements.

The previously approved rule requires members to annotate, on the trade ticket or some other record maintained for that purpose by the member firm, the following information:

1. if a customer assures delivery, the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member within three (3) business days; or
2. if the member locates the stock, the member must annotate the identity of the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date and the number of shares needed to cover the short sale.

The rule also provides that the manner by which a member or person associated with a member annotates compliance with this "affirmative determination" requirement (e.g., marking the order ticket, etc.) is left for each individual member to decide. In addition, the rule clarifies that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement ("standing assurance provision"). Thus, a firm that relies on a fax sheet or other standing assurance as to stock availability must annotate such reliance for each short sale transaction. By requiring firms to annotate each and every affirmative determination, the rule makes clear the CBOE's policy that firms cannot rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under the Interpretation .04 to Rule 30.20.

As the rule change was filed for immediate effectiveness as a non-controversial rule change, the rule became operative thirty days after the rule change was filed with the Commission.² This rule is based upon a similar rule that has been adopted by the National Association of Securities Dealers ("NASD"). The NASD has

² It should be noted at this time the CBOE does not trade any product that would be subject to this rule, although, by its terms, the rule applies to transactions by CBOE members on another national securities exchange or in the over-the-counter market.

decided to delay the effectiveness of the standing assurance provision until February 20, 1996 because of the feedback from a broad spectrum of NASD members and because the NASD believes the standing assurance provision may have created an unnecessarily burdensome regulatory requirement on NASD members. As a result, the NASD is in the process of evaluating comments raised by market participants concerning the provision to determine what further action should be taken. The CBOE plans to consult with the NASD regarding their review of this provision and anticipates that it will decide whether it should take action regarding the standing assurance provision by March 30, 1996.

By delaying the effectiveness of the standing assurance provision until March 30, 1996, this rule proposal will give members an opportunity to take the necessary actions to comply with the rule. In addition, the delay will allow the CBOE to consult with the NASD to determine whether to retain this provision or modify it, thereby assuring that the CBOE rules are crafted to achieve their regulatory purpose in a manner that is the least burdensome for its membership. Therefore, CBOE, represents that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(4) of the Act in particular, in that it is designated by the Exchange as constituting a stated policy with respect to the enforcement of an existing rule.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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

Because the foregoing rule change constitutes a stated policy, practice or interpretation with respect to the enforcement of an existing CBOE rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily

abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 the File No. SR-CBOE-95-72 and should be submitted by February 13, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36723; File No. SR-CHX-95-29]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Revisions to Its Rules in Connection With the Chicago Stock Exchange, Incorporated's Decision To Withdraw From the Clearance and Settlement and Securities Depository Businesses

January 16, 1996.

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 December 26, 1995, the Chicago Stock Exchange,

³ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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.

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

The Exchange proposes to add Interpretation and Policy .01 to Rule 3 of Article XXI, add Rule 14 to Article XXI, and amend Rule 4, Rule 12 and Rule 13 of Article XXI of the Exchange's rules.

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 III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

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

1. Purpose

In Securities Exchange Act Release No. 36684 (January 5, 1996) File No. SR-CHX-95-27, the Commission approved a proposed rule change by the Exchange relating to a decision by the CHX to withdraw from the clearance and settlement and securities depository businesses, conducted through its subsidiaries, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC"), among other things.³ The purpose of the current proposed rule change is to make certain changes to the CHX rules, which changes have been necessitated because of the arrangements between the CHX, MCC, MSTC, The Depository Trust Company ("DTC"), the National Securities Clearing Corporation, and the

³In connection with the CHX's withdrawal from these businesses, in SR-CHX-95-27 the Exchange also eliminated the Participant Governor positions from the CHX Board of Governors.

Securities Trust Company of New Jersey that are described in SR-CHX-95-27.⁴

Amended Rule 4 of Article XXI will codify an existing policy that all CHX members that clear transactions executed on the floor of the Exchange maintain an account at a Registered Clearing Agency⁵ that, among other things, has entered into appropriate agreements with the Exchange for the recording of all their transactions (a "Qualified Clearing Agency"). Rule 4 also will require all specialists and market makers to maintain special, designated accounts at a Qualified Clearing Agency, either directly or through a clearing member, in which all transactions that the specialist or market maker effects in its capacity as a specialist or market maker are recorded.

The Exchange is also adding Interpretation and Policy .01 to Article XXI, Rule 3—Delivery of Tickets to be Compared, which states that members shall only submit to the Exchange trade data for executions on the CHX floor pursuant to this rule for dissemination or forwarding to a Qualified Clearing Agency.

In addition to the changes to Rules 3 and 4 of Article XXI, the Exchange is amending existing Rule 12 and Rule 13 of Article XXI to delete references to services provided by MSTC. Furthermore, the Exchange is adding a new Rule 13 to Article XXI to enable the Exchange to provide special services to, and act as agent for, specialists, market makers and floor brokers. Such services may include making deposits or withdrawals from a bank account, borrowing securities, providing and keeping reports and records, and special cashing, among other things. Finally, the Exchange is adding a new Rule 14 to Article XXI relating to its guaranty of certain obligations of MCC and MSTC to a Qualified Clearing Agency and to DTC, as the case may be. Members of the Exchange that are Sponsored

⁴The arrangement relevant to this proposed rule change provide for the following: (1) MSTC and MCC would cease providing securities depository and clearing services by January 15, 1996; (2) MSTC and MCC sole participants would be offered the opportunity to become DTC and NSCC participants if they met DTC and NSCC qualifications; (3) DTC and NSCC would cooperate with MSTC and NSCC to assure the orderly transfer of securities and positions from MSTC and NSCC participants that authorize such transfers; and (4) under certain circumstances, CHX and its subsidiaries would be free to provide certain specified securities depository and clearing-related services and products to CHX members and certain third parties.

⁵Article XXI, Rule 4, Interpretation and Policy .01 of the proposed rule change defines a Registered Clearing Agency as an entity that meets the definition of "clearing agency" as that term is defined in Section 3(a)(23) of the Act, 15 U.S.C. 78c(a)(23), and is registered with the SEC pursuant to Section 19(a) of the Act, 15 U.S.C. 78s(a).

Participants or Temporary Sponsored Participants of MCC and MSTC will indemnify the Exchange and hold it harmless against any losses and liabilities incurred by the Exchange under the guaranty.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interests.

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

The Exchange 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 either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-CHX-95-29 and should be submitted by February 13, 1996.

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

The Commission finds that the CHX's proposal to revise its rules in

⁶15 U.S.C. 78f(b)(5).

connection with the Exchange's withdrawal from the clearance and settlement and securities depository businesses is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.⁷ Section 6(b)(5) requires, among other things, that the rules of an exchange are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Commission believes that the proposed amendments to Article XXI, Rules 3 and 4, regarding members' submission of trade data to the Exchange and maintenance of accounts with Qualified Clearing Agencies for recording purposes, fosters such cooperation and coordination with Qualified Clearing Agencies by providing an appropriate mechanism for the submission and recording of CHX members' trade information.

The Commission also believes that Article XXI, Rules 12 and 13, as amended, which allows the Exchange to adopt procedures for the closure of overdue contracts in securities and to provide certain special services for its members (including making deposits or withdrawals from a bank account, borrowing securities, providing and keeping reports and records, and special cashing), respectively, give the Exchange appropriate authority to perform such services and thereby facilitates the implementation of the proposed arrangements relating to the CHX's decision to withdraw from the businesses it conducted through MCC and MSTC.⁸

Finally, the Commission believes that the proposed Article XXI, Rule 14, which indemnifies the Exchange for providing a guaranty to DTC or a Qualified Clearing Agency to guarantee the obligations of MSTC and MCC to DTC or such Qualified Clearing Agency, should ensure that the Exchange is not discouraged from providing such guaranties, thus fostering cooperation and coordination with those persons engaged in the clearance and settlement of Exchange transactions.

The Commission finds good cause for approving the proposed rule change

prior the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate to ensure that adequate rules are in place as of January 16, 1996, the date by which CHX members must find substitute service providers as a result of the Exchange's withdrawal from the securities clearing services and depository businesses it conducted through MCC and MSTC. Further, the proposal involving the arrangements relating to the CHX's decision to withdraw from such businesses was noticed previously in the Federal Register for the full statutory period and has been approved by the Commission.⁹

It is therefore ordered, pursuant to Section 19(b)(2)¹⁰ that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-833 Filed 1-22-96; 8:45 am]

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[Release No. 34-36717; File No. SR-NASD-95-62]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Members' Use of Blanket or Standing Assurances as to Stock Availability To Satisfy Their Affirmative Determination Requirements Under the Prompt Receipt and Delivery of Securities Interpretation When Effecting Short Sales

January 16, 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 January 11, 1996,¹ the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to

⁹ See *supra* text accompanying note 3.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ The proposed rule change was initially submitted on December 27, 1995, but was amended prior to publication in the Federal Register. The amendment corrects a technical error in the proposed amended language and is available for copying in the Commission's Public Reference Room.

solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to change the NASD's Prompt Receipt and Delivery of Securities Interpretation ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice. Specifically, the NASD proposes to amend the Interpretation to provide that under certain circumstances members may rely on "blanket" or standing assurances as to stock availability to satisfy their affirmative determination requirements under the Interpretation. The following is the complete text of the proposed rule change. Additions are italicized and deletions are bracketed.

••• Interpretation of the Board of Governors
Prompt Receipt and Delivery of Securities

* * * * *

Section (b)(4)(c)

The manner by which a member or person associated with a member annotates compliance with the "affirmative determination" requirement contained in subsection (b)(2) above (e.g., marking the order ticket, recording inquiries in a log, etc.) is not specified by this Interpretation and, therefore, shall be decided by each member. [However, an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement.] *Members may rely on "blanket" or standing assurances that securities will be available for borrowing on settlement date to satisfy their affirmative determination requirements under this Interpretation, provided: (1) the information used to generate the "blanket" or standing assurance is less than 24-hours old; and (2) the member delivers the security on settlement date. Should a member relying on a blanket or standing assurance fail to deliver the security on settlement date, the Association shall deem such conduct inconsistent with the terms of this Interpretation, absent mitigating circumstances adequately documented by the member.*

⁷ 15 U.S.C. 78f(b)(5).

⁸ See *supra* note 4 and accompanying text.