

Act") to any 10% shareholder, director, officer, member of an investment advisory board, investment adviser or affiliated person of any investment adviser of a registered closed-end investment company. Applicants request relief from section 30(f) to exempt each General Partner, members of the board of directors of any such General Partner, and any other persons who may be deemed members of an advisory board of a Partnership from filing reports under section 16 of the Exchange Act with respect to their ownership of Interests in such Partnership. There is no trading market for the Interests in the Partnerships and transferability of the Interests will be severely restricted. In view of the foregoing, the purpose intended to be served by section 16 is not readily apparent and applicants believe the filings are therefore unnecessary for the protection of investors and burdensome to those who would be required to file them.

#### Applicants' Conditions

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

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d-1 thereunder (the "Section 17 Transaction") will be effected only if the board of directors of the Company Controlled General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the partners and do not involve overreaching of the Partnership or its partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the partners and the Partnership's organizational documents, and the Partnership's reports to its partners. In addition, the board of directors of the Company Controlled General Partner will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the SEC and its staff. Each Partnership will preserve the accounts, books and other documents required to be maintained by the order in an easily accessible place for the first two years.

2. In connection with the Section 17 Transactions, the board of directors of the Company Controlled General Partner will adopt, and periodically

review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any such transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

3. A General Partner will not invest the funds of any Partnership in any investment in which an "Affiliated Co-Investor," as defined below, has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and an Affiliated Co-Investor are participants, unless any such Affiliated Co-Investor, prior to disposing of all or part of its investment, (a) gives such General partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on generally the same terms as, and *pro rata* with the Affiliated Co-Investor. The term "Affiliated Co-Investor" means the Company, and any person who is (1) an "affiliated person" (as such term is defined in the Act) of the Partnership, or controlled by a member of the Company Group (which persons shall not include any parties who may be "affiliated persons" of the Partnership solely because they have co-invested in an investment vehicle or joint enterprise, where neither the Partnership nor any member of the Company Group exercises control over such persons); (2) a member of the Company Group, or other entity controlled by a member of the Company Group; (3) an officer or director of a member of the Company Group; or (4) any entity with respect to which a General Partner of such Partnership or another member of the Company Group acts as a general partner or in a similar capacity or has a similar capacity to control the sale or other disposition of such entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by an Affiliated Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Affiliated Co-Investor is a direct or indirect wholly-owned subsidiary, or to direct or indirect wholly-owned subsidiary of its parent; (b) to immediate

family members of the Affiliated Co-Investor or a trust established for any Affiliated Co-Investor or any such family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11a2-2(T) thereunder.

4. Each Partnership and its General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the financial statements that are to be provided to the partners, and each annual report of such Partnership required by the terms of the applicable partnership agreement to be sent to the partners, and agree that all such records will be subject to examination by the SEC and its staff.

5. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer, or employee of a member of the Company Group or any of its affiliates, such individual will not participate in the applicable General Partner's determination of whether or not to effect such purchase or sale.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 96-20083 Filed 8-6-96; 8:45 am]

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[Release No. 34-37500; File No. SR-CBOE-96-45]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Disciplinary Hearing Procedures and Publication of Disciplinary Decisions

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 10, 1996,<sup>1</sup> the Chicago Board Options Exchange,

<sup>1</sup> On July 25, 1996 the Exchange filed Amendment No. 1 to the proposed rule change. Amendment No. 1 is a technical amendment clarifying the language of amended Rule 17.6(b) to include situations where there are more than two parties to a hearing. See letter from Arthur B. Reinstein, Senior Attorney, Chicago Board Options Exchange to Ethan Corey, Special Counsel, Division of Market Regulation, Commission (July 25, 1996).

Incorporated ("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.

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

The CBOE proposes to amend CBOE Rule 17.6 to adopt certain procedures for hearings in disciplinary cases, and proposes to amend CBOE Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions.

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, the 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

###### 1. Purpose

The purpose of the proposed rule change is to amend Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions, and to amend Rule 17.6 to adopt the following additional hearing procedures for disciplinary cases: (i) the hearing Panel or the hearing Panel Chairperson will decide any unresolved pre-hearing issues at [either] any party's request; (ii) interlocutory review of hearing Panel decisions is prohibited unless authorized by the hearing Panel; (iii) the hearing Panel will decide the location of the hearing; (iv) the Respondent will be permitted to submit a written request to the hearing Panel asking the Panel to compel the production of non-privileged documents by the Exchange, a member or associated person, or the testimony of a member, associated person or a person within the Exchange's control and; (v) parties must

provide a witness list prior to the scheduled hearing. The Exchange believes that the proposed procedures, some of which are presently in practice, will improve the speed, fairness, and efficiency of disciplinary hearings.

###### Publication of Decisions

It is presently the Exchange's practice to publish summaries of Business Conduct Committee hearing decisions in the Exchange's Bulletin after those decisions are final. A decision is considered final after the CBOE Board of Directors ("Board") concludes its review of the decision or after the time for such review has expired. Only the parties to the case are permitted access to the decision prior to the time the decision is considered final.<sup>2</sup> The proposed rule change would codify this practice.

###### Decisions Regarding Pre-hearing Issues

Pursuant to existing CBOE Rule 17.6(b), the parties to a disciplinary hearing are to meet in a pre-hearing conference if the time and the nature of the proceedings permit such a meeting. The purpose of this pre-hearing conference is to clarify and simplify issues, and otherwise expedite the proceedings. The parties should attempt to reach agreement respecting the authenticity of documents, facts not in dispute, and other items which will serve to expedite the hearing. Should the parties fail to reach agreement on pre-hearing issues, Exchange rules do not presently address how those issues will be resolved. In practice, when such pre-hearing conferences are held, the hearing Panel or the Chairperson of the hearing Panel decides contested issues and any other appropriate pre-hearing issues. The Exchange is proposing to amend Rule 17.6(b) to reflect this practice.

###### Interlocutory Review

Currently, Exchange rules do not address whether, prior to the conclusion of a hearing, a Respondent may request Board review of a decision made by the hearing Panel. The Exchange believes such interlocutory review would be inefficient and would cause unnecessary delays in the disciplinary hearing. After the hearing is concluded and the Business Conduct Committee has issued its decision, a Respondent may request review of any issue raised during the disciplinary proceeding. The proposed rule change would provide that interlocutory Board review of any decision made by the Panel prior to

<sup>2</sup> In accordance with CBOE Rule 17.14, decisions are also reported to the Central Registration Depository prior to the time the decision is considered final.

completion is generally prohibited. Such interlocutory review shall be permitted only if the Panel agrees to such review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case.

The Exchange believes this proposed amendment to Rule 17.6(b) will allow the hearing process to proceed efficiently and on a timely basis.

###### Hearing Location

Rule 17.6(b) currently provides that the parties will be given 15 days notice of the time and place of the hearing. However, the rules do not presently address who will decide the hearing location. In practice, most hearings are held in Chicago at the Exchange's offices. However, the Exchange believes that the hearing Panel should have the authority to decide where the hearing will take place. It could be that a location outside of Chicago is more appropriate. The proposed rule change would amend Rule 17.6(b) to provide that the hearing Panel may decide to hold a hearing outside Chicago to accommodate the parties, witnesses, Exchange staff or the Panel members.

###### Hearing Witnesses and Documents

Rule 17.6(c) presently provides that the hearing Panel may request the production of documentary evidence and witnesses. This rule also provides that no member or person associated with a member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Panel.<sup>3</sup> Pursuant to Rule 17.2(b), Exchange staff may require a member or associated person to testify at a hearing or to produce documents. There is currently no procedure for a Respondent to compel a member or associated person to testify at a hearing or to produce documents. According to the present hearing procedures, a Respondent lacks the right to compel a particular member to testify or produce documents in order to defend a disciplinary case if that member does not voluntarily cooperate.

Pursuant to Rule 17.4(c), a Respondent has access to non-privileged documents in the Exchange's investigative file. However, a Respondent has no right to compel

<sup>3</sup> The proposed rule change would move the language regarding the Panel's power to request the production of documentary evidence and witnesses from Rule 17.6 subsection (c) to the proposed subsection (d) so that the topics of documents and witnesses are addressed in one subsection of Rule 17.6. This language has been slightly revised to clarify that the Panel does not have to wait until during the hearing to make its request.

Exchange staff to produce documents not in the investigative file, nor does a Respondent have the right to require Exchange employees to appear as witnesses at a hearing.

The proposed rule change provides that if the Exchange, a member or a person associated with a member will not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, the Respondent may submit a written request to the Panel asking the Panel to enter an order compelling the production of such non-privileged documents or compelling the testimony of the member, associated person, or a person within the Exchange's control.

To obtain such an order from the hearing Panel, a Respondent would need to demonstrate that the witnesses and documents requested are relevant and material to the Respondent's case. Before the hearing Panel enters its order, Exchange staff would have the opportunity to argue why no such order should be issued. In making their decision whether to issue the requested order, the hearing Panel would have to weigh the probative value of the evidence against considerations such as undue delay, waste of time, confusion, unfair prejudice or needless presentation of cumulative evidence. The hearing Panel could require the Respondent who requested the order to pay the witness's travel expenses or other costs of complying with the order.

#### *Witness List*

Rule 17.6(b) presently provides that not less than five business days in advance of a hearing, each party will furnish the Panel and the other parties copies of all documentary evidence such party intends to present at a hearing. The proposed rule change would also require that parties to provide a list of witnesses they intend to present at a hearing. The Exchange believes this additional requirement will make the hearing run more efficiently as both sides will know in advance which witnesses will testify and be available for cross examination.

## 2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(7) of the Act by providing fair procedures for hearings in disciplinary cases brought against members and persons associated with members.

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

The Exchange believes the proposed rule change will impose no burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested copies 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 Commissions Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-45 and should be submitted by August 28, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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<sup>4</sup> 17 CFR 200.30-3(a)(12).

[Release No. 34-37505; File No. SR-CBOE-96-53]

## **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by Chicago Board Options Exchange, Incorporated To Extend for an Additional Fifteen Day Period a Pilot Operation of a System for Monitoring News Announcements Made After the Close of Trading in the Primary Market for the Underlying Stock**

July 31, 1996.

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> notice is hereby given that on July 30, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

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

The Exchange proposes to extend for an additional 15 day period a pilot test of a system that, shortly before the close of trading each day, monitors news announcements pertaining to underlying securities, and automatically suspends the Exchange's automatic execution system in respect of options on those securities that are the subject of such announcements. 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.

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

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