

III. Discussion

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act⁸ in that it is designed to refine and enhance the Exchange's minor rule violation procedure as applied to position limit violations, while retaining adequate enforcement measures for violations of such rules, thereby removing impediments to a free and open market and protecting investors and the public interest.⁹

The Commission finds that by adopting formal procedures for the settlement of certain position limit summary fines that are separate from a full disciplinary hearing, the proposed rule change should increase the efficiency of the Exchange's disciplinary process by saving the time and expense of both members and Exchange staff in preparing for hearings, while continuing to ensure that position limit rules are effectively enforced. Under the CBOE's proposed rule, violations settled using new procedures, irrespective of whether the settlement amount is under \$2,500, will be subject to immediate, rather than quarterly, reporting to the Commission.¹⁰ The Commission believes this result is appropriate and makes CBOE's new rule consistent with the CBOE's minor rule reporting plan and Rule 19d-1(c)(2),¹¹ due to the fact that the members are contesting the fine amounts and have sought an adjudication on the violation which includes the opportunity to have a hearing.

For the same reasons, the CBOE has also amended their new rule to state that the acceptance of settlement offers under this new procedure must be reported on the Form BD¹² and Form U-4. Both Form BD and Form U-4 require broker-dealers to report violations of an SRO's rules, except for violations designated as "minor rule violation[s]," under a plan approved by the Commission. However, the definition of a "minor rule violation" on

Form BD and Form U-4 states that rule violations may be designated as "minor" under a plan if the sanction imposed consists of a fine of \$2,500 or less, and if the sanctioned person does not contest the fine. The Commission believes that because under the proposed rule change, the person submitting the settlement offer is contesting the fine amount, the acceptance of a settlement offer under the new procedures being adopted herein must be reported on Form BD and Form U-4 just like any decision in a contested Exchange disciplinary proceeding, even if the settlement amount does not exceed \$2,500. Amendments Nos. 2 and 3 adequately address this concern by requiring the acceptance of a settlement offer to be reported on Form BD and Form U-4 as a contested Exchange disciplinary proceeding.

In summary, the Commission believes that the development of the interim step of a settlement procedure for contesting the fine amount for position limit minor rule violations should help to make the CBOE's entire disciplinary process more efficient by avoiding unnecessarily burdening the formal disciplinary process with such actions, while still retaining adequate enforcement measures for violations of the position limit rules contained in the minor rule plan. In addition, the fact that acceptance of settlement offers under the new settlement process will be reported currently, rather than on a quarterly basis, ensures that the Commission receives adequate notice of these contested fines.

The Commission finds good cause to approve Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, as stated above in greater detail, by requiring current reporting of the acceptance of settlement offers under the new settlement procedure for position limit violations, Amendment No. 1 will ensure that the Commission receives adequate notice of contested fines which have been settled, while still providing a mechanism for effectively enforcing position limit violations. Similarly, Amendment Nos. 2 and 3 ensure that the accepted settlement offers will be reported on Form BD and Form U-4, leading to greater protection of the investors and the public interest, by clarifying that the acceptance of a settlement offer is a decision in a contested Exchange disciplinary proceeding for purposes of the Form BD and Form U-4. Accordingly, the Commission believes

that it is consistent with Section 6(b)(5) of the Act to approve Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendment Nos. 1, 2, and 3 between the Commission and any persons, 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 Room. Copies of such filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-96-57 and should be submitted by April 22, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-96-57), including Amendment Nos. 1, 2, and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38439; File No. SR-CHX-96-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., To Amend Articles IV, VII, and XII of the Exchange's Rules To Modify the Exchange's Disciplinary Procedures

March 25, 1997.

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 December 9, 1996,¹

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ The Exchange filed Amendment No. 1 with the Commission on February 18, 1997, the substance of

⁸ 15 U.S.C. 78(f)(b)(5).

⁹ In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ Amendment No. 1 specifically changes the text of CBOE's proposed rule to state that "[a] decision by the Business Conduct Committee accepting an offer of settlement hereunder shall be reported on a current basis pursuant to Rule 19d-1 under the Securities Exchange Act of 1934."

¹¹ See discussion earlier regarding the content and operation of Rules 19d-1(c)(1) and 19d-1(c)(2) of the Act and of CBOE's Rule 17.50.

¹² Form BD requires broker-dealers to report violations of Commission and Exchange rules, as well as certain criminal, civil and administrative penalties, and this information is then made available to the public and investors.

the Chicago Stock Exchange, Inc. ("CHX" 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 Exchange proposes to amend Articles IV, VII, and XII of the Exchange's Rules to modify the Exchange's disciplinary procedures.

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

1. Purpose

The purpose of the proposed rule change, which makes substantive changes to some portions of the disciplinary procedures, is to provide a balanced process for managing disciplinary matters by bringing peer review into the disciplinary process while at the same time including independent review and participation by public members of the Board of Governors or other individuals not connected to the Exchange during each stage of the disciplinary process. The proposed rule change is also meant to harmonize Exchange practice with that of other exchanges by separating key management personnel who have overall responsibility for the "business" areas of the Exchange from the disciplinary process. To accomplish this goal, the proposed rule change eliminates the active role the President

has played in the disciplinary process. The Exchange feels that it is more appropriate for the President, who runs the daily business of the Exchange, to be separated from the disciplinary process. The Exchange notes that no other exchange has its chief executive officer involved in the disciplinary process.

Additionally, as described more fully below, the proposed rule change eliminates one level of internal appeal after a hearing. Rather than permitting respondents to appeal to the Judiciary Committee and then the Executive Committee, the decision of a reconstituted Judiciary Committee will be final. The Exchange believes that the prior system of double review was an inefficient use of CHX resources.

The Exchange believes that the proposal is timely. The Governance Committee of the CHX has, for some time, been examining several governance issues affecting the Exchange. For example, the Governance Committee was instrumental in developing the recent proposal to create a class of "approved lessors" on the Exchange.² Another area that the Governance Committee focused on is disciplinary procedures and the proposal contained herein is, in large part, the completion of the Governance Committee's efforts.

The proposal extensively amends Article XII, dealing with discipline and hearing procedures, and the rules thereunder. Proposed Rule 1(a) provides that Exchange staff will investigate potential disciplinary matters brought to their attention and make a report to an Initial Determination Panel, rather than to the President, if the staff decides to recommend changes. Proposed Rule 1(b) provides for a new Hearing Pool, a standing body of individuals appointed jointly by the Chairman and the Vice Chairman, with the approval of the Executive Committee or the Board of Governors. The Hearing Pool will consist of not less than twelve and not more than twenty-five members. The Exchange feels that this range is appropriate, based on its analysis of the historical number of disciplinary procedures brought before the Exchange, together with the complexity of those proceedings. At least four Hearing Pool members must be public governors of the Exchange or other individuals not affiliated with the Exchange or with any broker or dealer. These Hearing Pool members are referred to as "Unaffiliated Panelists." These unaffiliated panelist members of the Hearing Pool may be individuals other than public governors, in part,

because of the limited number of public governors on the CHX. Moreover, the use of such "outside" Hearing Pool members will permit the Exchange to take advantage of outside expertise that is often useful in conducting disciplinary proceedings. Continued use of such expertise would assist in assuring efficient and fair disciplinary procedures. The remaining members of the Hearing Pool shall be chosen from among members of the Exchange and partners, officers, and directors of member firms.

The Exchange intends to require each member of the Hearing Pool to complete a questionnaire upon such member's appointment to either an Initial Determination Panel or a Hearing Panel. The purpose of such questionnaire will be to assist in identifying any potential conflicts of interest. In addition, under the proposed rule change, each Hearing Pool member has an affirmative obligation to bring actual and potential conflicts of interest to the attention of the Chairman and the Vice Chairman.

Under proposed Rule 1(c), reports of staff investigations of possible disciplinary violations will be made to an Initial Determination Panel selected for that disciplinary matter, consisting of three disinterested individuals, chosen from the Hearing Pool, appointed jointly by the Chairman and the Vice Chairman with the approval of the Executive Committee or the Board. For purposes of proposed Rule 1(c) and related proposed Rule 1(g), "disinterested" means that the individual cannot have any direct or indirect interest in the disciplinary matter, or any other conflict of interest, which might preclude the individual from rendering an objective and impartial determination. The Exchange will determine if an individual is disinterested using the questionnaire described above and the provisions in proposed Rule 1(c) and proposed Rule 1(g) that put an affirmative obligation on the individual to report any actual or potential conflicts of interest to the Chairman or Vice Chairman. Each Initial Determination Panel will include at least one Hearing Pool member who is an Unaffiliated Panelist.

All decisions of the Initial Determination Panel will be made by majority vote. Each Initial Determination Panel will have the authority to determine the manner in which it will proceed, consistent with the other disciplinary rules. An Initial Determination Panel will be automatically dissolved once it completes all of its duties, either immediately if no charges are brought by the Initial Determination Panel (or by

which is incorporated into this notice. See letter from David Rusoff, Attorney, Foley & Lardner, to Katherine England, Assistant Director, Market Regulation, Commission, dated February 17, 1997.

² See SR-CHX-96-30.

the Executive Committee on appeal of the Initial Determination) or, if the disciplinary matter proceeds, after the Hearing Panel has issued a decision or has otherwise completed its work. If a member of the Initial Determination Panel is unable to continue serving on the Panel without causing undue delay, or is not qualified to continue serving on the panel, a new member of the Hearing Pool will be selected to replace him or her and will be given adequate opportunity to review the proceedings of the Initial Determination Panel and familiarize him or herself with the evidence and documents. The Exchange has determined that a period of two weeks or less will not constitute "undue delay."

Under proposed Rule 1(d), the Initial Determination Panel, rather than the President, as is the case under the current rules, determines whether or not to bring charges. The Exchange staff may appeal the decision of the Initial Determination Panel not to bring charges to the Executive Committee or the Board, not including Executive Committee members, if any, who have been involved in that particular disciplinary proceeding up to that time. Review by the Executive Committee or Board will be de novo review and that decision will be final. Proposed Rule 1(e) provides that if either the Initial Determination Panel (or the Executive Committee or Board on appeal) decides that it appears that the accused has committed a default or other offense in violation of the Exchange's Constitution or rules, the Initial Determination Panel (or Executive Committee or Board on appeal) shall direct the Exchange staff to bring charges, a copy of which shall be served in writing on the accused. The proposed rule change modifies the title of proposed Rule 1(f) from "Serving Instruments on the Accused" to "Serving Charges."

Proposed Rule 1(g) provides for the appointment of a Hearing Panel by the Chairman and Vice-Chairman, with the approval of the Board. The Hearing Panel will consist of three persons chosen from the Hearing Pool and one member of the Hearing Panel must be an Unaffiliated Panelist. The Hearing Panel may not include any Hearing Pool members who were members of the Initial Determination Panel for that particular matter. Hearing Panel members must be disinterested³ and will be required to report any actual or potential conflicts of interest to the Chairman or Vice Chairman.

Under proposed Rule 1(g), the Hearing Panel will consider the charges, will conduct a hearing if requested, and will decide whether the accused has committed the violations alleged and, if so, what sanction should be imposed. As with the Initial Determination Panel, all decisions of the Hearing Panel will be made by majority vote; the Hearing Panel will automatically dissolve after completing its duties and notifying the Secretary in writing of its decision. Each Hearing Panel will have the authority to determine the manner in which it proceeds consistent with these Rules. If a member of the Hearing Panel is unable to continue serving on the Panel without causing an undue delay, or is not qualified to continue serving on the Panel because of the existence of a relationship between him or her and the person or persons involved in the matter, a new member of the Hearing Pool will be selected to replace him or her and will be given adequate opportunity to review the proceedings of the panel and familiarize himself or herself with the evidence and documents so far presented to the Hearing Panel.

As mentioned above, all Initial Determination Panels and Hearing Panels will have the authority under the proposed rule change to determine their own procedures. The Exchange believes that this is appropriate, given the limited number of disciplinary cases brought by the CHX. The Exchange believes that this is appropriate, given the limited number of disciplinary cases brought by the CHX. The Exchange believes that flexibility in procedures is necessary because each case differs in the complexity of issues and the need for particular procedures. For example, a very complex case may require a lengthy briefing schedule to adequately address all issues raised. On the other hand, a simple case with few contested issues may be conducted much more efficiently on an expedited basis. Therefore, the Exchange does not believe that it would be appropriate to establish one set of procedures that would necessarily apply to all disciplinary procedures.

The Exchange proposed to modify current Rules 2(a) (Minor Infractions) and 2(b) (Summary Hearing and Sanction) to make those parts of these summary proceedings that were formerly the responsibility of the President the responsibility of an Initial Determination Panel. Summary proceedings for minor infractions under Rule 2(a) and for summary hearings and sanctions under Rule 2(b) will be used only if the investigation and report provided for in Rule 1(a) expressly

recommend that the Initial Determination Panel proceed according to Rule 2(a) or Rule 2(b). Appeals of summary proceedings under Rule 2(a) will now be made to a Judiciary Committee, rather than the Executive Committee, in order to harmonize the minor infraction proceedings appeals process with the regular disciplinary proceedings appeals process. The Exchange believes that because the maximum fine that can be imposed pursuant to Rule 2(a) has not been changed in many years, and inflation has eroded the desired impact of the fine, the maximum fine amount should be increased. As a result, the proposed rule change will increase the fine amount that the Initial Determination Panel may impose pursuant to Rule 2(a) will be increased from \$500 to \$5,000.

The Exchange also proposes to amend Rule 2(b) to remove all references to Midwest Clearing Corporation and Midwest Securities Trust Company, and replace the term "penalty" with "sanction" whenever it occurs. The proposed changes to Rule 2(b) also make clear that Rule 2(b) may only be used upon the agreement by the accused to have his proceeding heard by an Initial Determination Panel, rather than the President, as the rule currently states.

The proposed rule change renumbers current Rule 2(c), relating to settlement procedure, as Rule 3. Under proposed Rule 3, the Initial Determination Panel will assume the role the President previously held under this section. Proposed Rule 3 will explicitly permit the accused to propose an offer of settlement to the Initial Determination Panel at any time before a judgment is rendered by a Hearing Panel. In addition, the Initial Determination Panel may accept an offer of settlement up until a judgment is rendered by the Hearing Panel hearing the case as long as the offer is not otherwise withdrawn. The accused cannot withdraw an offer of settlement once the Initial Determination Panel has accepted it. An offer of settlement must contain a proposed sanction and a waiver of appeal rights. If the offer of settlement is submitted within fifteen days from the date of service of the charges, the accused will receive an additional ten-day period from the time of the receipt of the Initial Determination Panel's non-acceptance of the offer of settlement to file any response required by proposed Rule 7(a).⁴

The proposed rule change renumbers current Rule 2(d), relating to actions by other self regulatory organizations, as

³ See *supra* discussion relating to the definition of "disinterested."

⁴ Proposed Rule 7(a), current Rule 5, deals with the conduct of the disciplinary hearing.

Rule 4. The proposed rule change modifies proposed Rule 4 to harmonize the language in proposed Rule 4 with the definition of statutory disqualification contained in the Act by adding "person associated with a member" to the list of those entities affected by proposed Rule 4 and by replacing the phrase "exchange or association" with the phrase "self-regulatory organization." The proposed rule change to proposed Rule 4 also adjusts internal cross-references to the Rule.

The proposed rule change renumbers current Rule 2(d)(1) as Rule 4(a) and amends proposed Rule 4(a) to provide that if an entity is the subject of an action by another self-regulatory organization and as a result falls within proposed Rule 4(a), the staff may so advise an Initial Determination Panel, instead of the President. The Initial Determination Panel may then proceed under proposed Rule 4(b) (current Rule 2(d)(2)). If the staff recommends to the Initial Determination Panel that it proceed under Rule 4(b) but the Initial Determination Panel elects not to proceed, the staff will have the right to appeal the Initial Determination Panel's decision to the Board; provided, however, that the Chairman, the Vice Chairman, the President, and any other member of the Initial Determination Panel that denied the staff's request who is also on the Board shall not hear any such appeal. The Board will review de novo the decision of the Initial Determination Panel; the decision of the Board as to whether to proceed under proposed Rule 4(b) will be final.

The existing language in current Rule 2(d)(1) regarding commencement of sanctions being concurrent with and no greater than the sanctions of other sanctioning bodies upon whose action the Exchange's action is based has been moved to new Rule 4(b). The proposed rule change also modifies proposed Rule 4(a) to clarify that nothing in Rule 4(a) precludes the taking of any action against any person against whom action may be taken under any other Section of this Article or Rule of the Exchange. The current rule language states that nothing in the Rule (prior to Rule 2(d)(1), proposed Rule 4(a)) precludes the Exchange from *proceeding* against any person, as opposed to the *taking of any action* against any person. Proposed Rule 4(b) will state that the Initial Determination Panel will occupy the role previously occupied by the President. Additionally, the proposed rule change renumbers current rule 2(d)(3) as proposed Rule 4(c) and amends it to replace the word "penalty" with the word "sanction" and the word

"President" with the phrase "Initial Determination Panel."

The proposed rule change renumbers current Rule 3 as Rule 5 and adjusts internal cross-reference to the Rule accordingly. The proposed rule change renumbers current Rule 4 as Rule 6 and replaces the phrase "the President" with the phrase "the Initial Determination Panel" and the word "penalty" with the word "sanction."

The proposed rule change renumbers current Rule 5, relating to the conduct of hearing, as Rule 7 and replaces the term "trial" with the word "hearing" whenever it occurs. Proposed Rule 7(a) states that hearings will be conducted by a Hearing Panel appointed in accordance with Rule 1 instead of by a Hearing Examiner appointed by the President. Under proposed Rule 7(a), the Initial Determination Panel, rather than the President, will have the authority to grant extensions of time for answering charges. In addition, the proposed rule change replaces the word "should" with the word "shall" when describing what is required in an answer to the charges.

Proposed Rule 7(b) eliminates the role of the Hearing Examiner and the President in determining guilt and sanctions. Under proposed Rule 7(b), the Hearing Panel will render its judgment, and may find that the accused has committed all or some of the violations as charged, or that the accused has committed none of the violations charged. Under proposed Rule 7(b), the Hearing Panel will have the authority to impose appropriate sanctions. The decision of the Hearing Panel will be in writing, three copies of which will be signed by the Chairman of the Hearing Panel.

Proposed Rule 7(c) provides that prosecution of charges will be the responsibility of senior Exchange staff members who will no longer necessarily be appointed by the President. Proposed Rule 7(c) also states that Exchange counsel shall be present as counsel to the Hearing Panel. Proposed Rule 7(d) provides all members of a Hearing Panel must be impartial and independent of the staff members who prepared and prosecuted the charges. Proposed rule 7(d) also provides that Exchange counsel may assist the Hearing Panel in preparing its judgment.⁵

⁵The Commission notes that the Exchange has stated that the Exchange staff prosecuting the charges are different from Exchange counsel that is counsel to the Hearing Panel. Phone conversation between David Rusoff, Foley & Lardner, Craig Long, Foley & Lardner, Katherine England, Assistant Director, Market Regulation, Commission, and Heather Seidel, Attorney, Market Regulation, Commission, on January 22, 1997.

The proposed rule change renumbers current Rule 6, the review section, as Rule 8. Under proposed Rule 8 the accused and the Exchange staff will have fifteen days from the date of service of any judgment imposed under Rules 4(b), 6(b), or Rule 7, rather than from the date of notice of a penalty imposed, to demand review of the judgment. Appeals under these sections will be made to a reconstituted Judiciary Committee.⁶ The standard of review on appeal will be similar to what it currently is; the Judiciary Committee may not reverse or modify the judgment under review unless the majority of the Judiciary Committee finds that the applicable panel's decision (either the Initial Determination Panel or the Hearing Panel) is not supported by substantial evidence or that the decision is arbitrary, capricious or an abuse of discretion.⁷ Proposed Rule 8 provides that the Judiciary Committee's decision will be final and deletes current Rules 6(b) and 6(c), which provide for appeal to the Executive Committee and the Board of Governors. The Exchange notes that this change will eliminate the system of double review. Proposed Rule 8 also make clear that all final determinations by the Judiciary Committee are appealable to the commission in accordance with applicable Commission Rules.

The proposed rule change renumbers current Rule 7 as Rule 9 and deletes references to appeals to the Executive Committee or the Board of Governors. The proposed rule change also renumbers current Rule 8 as Rule 10, current Rule 9 as Rule 11, and current Rule 10 as Rule 12. Proposed Rule 11, Minor Rule Violations, corrects internal cross-references to the rules amended by this rule filing and provides that reports of a Minor Rule Violation Panel recommending that disciplinary charges be brought will now be made to an Initial Determination Panel, rather than the President.

The proposed rule change amends Article IV, Rule 5 to modify the manner of appointment of a Judiciary Committee. The Chairman, rather than the President, will appoint five members of the Board of Governors, excluding the Chairman, Vice

⁶ See *infra* amendments to Article IV, Rule 5, relating to the manner or appointment of the Judiciary Committee.

⁷ The language of current Rule 6 states that "[t]he Judiciary Committee may not reverse, or modify, in whole or in part, the decision of the Hearing Examiner and Final Judgment of the President under paragraph (b) of Rule 4 or under Rule 5 if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion."

Chairman, President, and all governors who have already served on the Initial Determination Panel or Hearing Panel convened in connection with a disciplinary matter to be reviewed. Two of the five members of the Judiciary Committee will be non-member (public) governors. The proposed rule change also amends Article VII, Rule 5(a) in order to clarify that the President's power of emergency suspension extends to persons associated with members, in addition to members and member organizations. The Exchange believes that this change codifies the Exchange's authority, as set forth in Section 6(b)(6) of the Act, in CHX rules.

The Exchange proposes that the proposed rule change become effective sixty days after approval by the Commission. This time period will give the Exchange adequate time to implement the new procedures and appoint a Hearing Pool. The Exchange proposes that, in general, if a disciplinary action has commenced and is pending as of the date of effectiveness of the proposed rule change, all of the new rules and procedures should apply. However, if a Hearing Officer has already been appointed pursuant to the old rules then the old hearing rules should apply. In any event, so long as no appeal has been filed by the date of effectiveness of the proposal, the new appellate rules and procedures shall apply except that, if a Hearing Officer presided at the hearing, references in the appeal rules to decisions of the Initial Determination panel or Hearing Panel, as the case may be, should be changed to "hearing officer and final judgment of the President."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is also consistent with Section 6(b)(7) of the Act⁹ in that it provides a fair procedure for the disciplining of members and persons associated with members.

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 either solicited or received.

III. Date of Effectiveness of 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 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 Room. 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-96-31 and should be submitted by April 22, 1997.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-38421; File No. SR-OCC-97-03]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Modifying The Options Clearing Corporation's Restated Certificate of Incorporation and By-Laws

March 19, 1997.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on February 18, 1997, The Options Clearing Corporation ("OCC") 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 primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change 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 proposed rule change modifies OCC's Restated Certificate of Incorporation and By-Laws to extend each public director's term on OCC's Board of Directors ("Board") from a maximum of four consecutive years to a maximum of six consecutive years.

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

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(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 modify OCC's Restated Certificate of Incorporation and By-Laws in order to provide greater continuity of leadership and more meaningful representation on OCC's Board by

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by OCC.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(7).