

the Commission believes that the position and exercise limits are reasonable in light of the fact that the size of the OEX contract will be halved. Doubling the position and exercise limits, therefore, will permit market participants to maintain, after the split of the Index, their current level of investment in OEX options.

The Commission further believes that doubling the Index's divisor will not have an adverse market impact or make trading in OEX options susceptible to manipulation. After the split, the Index will continue to be comprised of the same stocks with the same weightings and will be calculated in the same manner, except for the proposed change in the divisor. The Commission notes that the CBOE's surveillance procedures also will remain the same.

Finally, the Commission notes that the Exchange provided notice of the proposed changes to the Index and the OEX contract to its membership through a circular.¹² The Commission believes that the CBOE provided adequate notice to market participants regarding this change to the Index value and the OEX contract prior to its implementation.

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CBOE-97-48) 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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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39337; File No. SR-CHX-97-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Codifying the Exchange's Clearing the Post Policy

November 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),¹ notice is hereby given that on October 23, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 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 .02 to Rule 10 of Article XX relating to clearing the post. The text of the proposed rule change is as follows: Additions are italicized.

Article XX

Rule 10. Manner of Bidding and Offering.

No change in text.

* * * Interpretations and Policies

.02 Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers on the floor of the Exchange must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price executive for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges which fail to clear the Exchange post do not constitute such a course of dealings.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange

floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to the clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals resident on the Exchange floor constitute "orders" which are "communicated" to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

Method of Clearing the Post. The Exchange's clearing the post policy requires the floor broker or market maker to be physically present at the post. A market maker, after requesting the specialist's market quote, must bid or offer the price and size of his intended interest at the post. A floor broker must clear the post by requesting a market quote from the specialist. If the specialist or any other member who has the post indicates an interest to trade at the price that was bid or offered by the market maker or the price of the floor broker's order (even though that order has not yet been bid or offered), then the trade may be consummated with the specialist (or whomever has the post) in accordance with existing Exchange priority, parity and precedence rules. If the specialist (or any other member who has the post) indicates interest to trade at that price but the member communicating the intended interest, including Instinet interest, determines not to consummate the trade with the specialist or such member, then, to preserve the Exchange's existing priority, parity and precedence rules, the trade may not be done with any other Exchange floor member. (See Article XXX, Rule 2.) If the trade is consummated with the specialist or other member who has the post, the specialist (or any customer represented by the specialist) is not required to pay any fees to the broker or market maker in connection with the execution of the order, unless such fee is expressly authorized by an Exchange Rule. If the specialist does not indicate an interest to trade, then the trade may be consummated with another Exchange

¹² See *supra* note 8.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

floor member on the Exchange floor with a resultant Exchange print.

Failure to clear the post may result in a "trade-through" or "trading ahead" of other floor interest. In addition, failure to properly clear the post may result in a violation of the Exchange's Just and Equitable Trade Principles Rule (Article VIII, Rule 7) and a market maker rule that requires all market maker transactions to constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market (Article XXXIV, Rule 1). Failure to properly clear the post may also subject the violator to a minor rule violation under the Exchange's Minor Rule Violation Plan.

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 is to codify the Exchange's existing clearing the post policies in the CHX Guide. The clearing the post policy will become an interpretation and policy of CHX Article XX, Rule 10. The Exchange's clearing the post policies are currently contained in several Notices to Members which had been approved by the Commission.² These Notices to Members, and their corresponding Approval Orders explain the Exchange's clearing the post requirements. No substantive change is being made to the clearing the post policy at this time.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the

Act³ in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

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

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

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A)⁴ of the Act and subparagraph (e) of Rule 19b-4⁵ thereunder. At any time within 60 days of the filing of such 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 purposes 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 submissions, 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. 522, 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 CHX. All submissions should refer to File No. SR-CHX-97-30 and should be submitted by December 17, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28895]

Airport Privatization Pilot Program: Application Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of amendment to final application procedures; request for comments.

SUMMARY: Section 149 of the Federal Aviation Authorization Act of 1996 establishes an airport privatization pilot program, and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. On September 16, 1997, the FAA issued a notice of final procedures for application for an exemption under the program. The notice included a provision that air carriers that submitted a proposal for the private operation of an airport but were unsuccessful would not be counted as air carriers for the purpose of the requirement that certain aspects of the privatization application be approved by 65 percent of the air carriers at the airport. In this amendment to the procedures, the FAA is clarifying that the provision does not apply retroactively to requests for proposals issued prior to the issuance of the FAA procedures on September 16, 1997. With respect to future requests for proposals, the provision is suspended until the FAA undertakes further public process on this aspect of the procedures. A separate provision of the procedures, which states that an air carrier that is a successful bidder on a privatization proposal will not be considered an air carrier under the 65 percent rule, is not affected.

² Securities Exchange Act Release No. 33806 (March 23, 1994) 59 FR 15248 (Notice of Filing and Immediate Effectiveness of file No. SR-CHX-94-03); Securities Exchange Act Release No. 17766 (May 8, 1981) 46 FR 25745 (Order approving SR-MSE-81-3 and SR-MSE-81-5); and Securities Exchange Act Release No. 28638 (November 30, 1990) 55 FR 49731 (Order approving SR-MSE-90-7).

³ 15 U.S.C. 78f(b)(5).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(e).

⁶ 17 CFR 200.30-3(a)(12).