

enriched or plutonium fuel facilities must be justified but will generally be found acceptable, with the caveats discussed above³.

For facility processes involving unusual materials or new process conditions, the validation should be reviewed in detail to ensure that there are no anomalies associated with unique system characteristics.

In any case, the MoS should not be reduced below a minimum of 0.02.

Reducing the MoS below 0.05 for low-enriched processes or 0.1 for high-enriched or plutonium processes requires substantial additional justification, which may include:

1. An unusually high degree of similarity between the chosen benchmarks and anticipated normal and credible abnormal conditions being validated.

2. Demonstration that the system k_{eff} is highly insensitive to changes in underlying system parameters, such that the worst credible modeling or cross section errors would have a negligible effect on the bias.

3. Demonstration that the system being modeled is known to be subcritical with a high degree of confidence. This requires that there be other strong evidence in addition to the calculations that the system is subcritical (such as comparison with highly similar systems in published references such as handbooks or standards).

4. Demonstration that the validation methodology is exceptionally rigorous, so that any potential sources of error have been accounted for in calculating the USL.

5. Demonstration that there is a dependable and consistent amount of conservatism in k_{eff} due to the conservatism in modeling practices.

In addition, justification of the MoS for abnormal conditions may include:

6. Demonstration that the increased likelihood of a process calculated as subcritical being critical is offset by the unlikelihood of achieving the abnormal condition.

This list is not all-inclusive; other technical justification demonstrating that there is a high degree of confidence in the calculation of k_{eff} may be used.

³NUREG-1718, Section 6.4.3.3.4, states that the applicant should submit justification for the MoS, but then states that an MoS of 0.05 is "generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible." These statements are inconsistent. The statement about 0.05 being generally acceptable without additional justification is in error and should be removed from the next revision to the SRP.

Recommendation

The guidance in this ISG should supplement the current guidance in the NCS chapters of the fuel facility SRPs (NUREG-1520 and -1718). In addition, NUREG-1718, Section 6.4.3.3.4, should be revised to remove the following sentence: "A minimum subcritical margin of 0.05 is generally considered to be acceptable without additional justification when both the bias and its uncertainty are determined to be negligible."

References

- NUREG-1520, "Standard Review Plan for the Review of a License Application for a Fuel Cycle Facility"
- NUREG-1718, "Standard Review Plan for the Review of an Application for a Mixed Oxide (MOX) Fuel Fabrication Facility"
- NUREG/CR-6698, "Guide for Validation of Nuclear Criticality Safety Calculational Methodology"
- NUREG/CR-6361, "Criticality Benchmark Guide for Light-Water-Reactor Fuel in Transportation and Storage Packages"

Approved: _____

Date: _____

Director, FCSS

[FR Doc. 04-26688 Filed 12-3-04; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Form DPRS-2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. DPRS-2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment or to Receive Plan Brochures, is used by former spouses, Temporary Continuation of Coverage enrollees, and direct pay annuitants to change health benefits enrollment or request plan brochures for plans they wish to consider for enrollment during open season.

Approximately 27,000 DPRS-2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via E-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ellen Korcchek, CEBS, Chief, Program Planning & Evaluation Group, Insurances Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415-3650

and
Joseph F. Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination—Contact:

Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606-0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04-26729 Filed 12-3-04; 8:45 am]

BILLING CODE 6325-38-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 50747]

Securities Exchange Act of 1934; Order Delaying Pilot Period for Suspension of the Operation of Short Sale Price Provisions

November 29, 2004.

On July 28, 2004, we issued an order ("Pilot Order") establishing a one year Pilot ("Pilot") suspending the provisions of Rule 10a-1(a) under the Securities Exchange Act of 1934 (the "Act")¹ and any short sale price test of any exchange or national securities association for short sales² of certain securities.³ The Pilot Order provided

¹ 17 CFR 240.10a-1.

² "Short sale" is defined in Rule 200 of Regulation SHO, 17 CFR 242.200.

³ Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004). Specifically, the Pilot Order suspended price tests for the following: (1) Short sales in the securities identified in Appendix A to the Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the effective transaction reporting plan of the Consolidated Tape Association ("consolidated

that the Pilot would commence on January 3, 2005 and terminate on December 31, 2005, and that we may issue further orders affecting the operation of the Pilot Order.⁴ In response to information that we have received from market participants, we are issuing this Order ("Second Pilot Order") to reset the Pilot to commence on May 2, 2005 and end on April 28, 2006. All other terms of the Pilot Order remain unchanged. We may issue further orders affecting the operation of the Pilot. We find that the delay of the commencement of the Pilot is necessary and appropriate in the public interest and consistent with the protection of investors.⁵

I. New Pilot Period

We established the Pilot as part of our review of short sale regulation in conjunction with the adoption of Regulation SHO.⁶ The Pilot is designed to assist us in assessing whether changes to short sale regulation are necessary in light of current market practices and the purposes underlying short sale regulation.⁷ In order to achieve this goal, it is critical that the data we receive on short sales of Pilot securities during the term of the Pilot is accurate and comprehensive. This is possible only if market participants execute all short sales of Pilot stocks without regard to any short sale price test.

Pursuant to Regulation SHO, brokers and dealers are required to mark short sale orders of Pilot stocks effected during any Pilot period as "short exempt" so that such orders are not subject to price tests.⁸ Since the adoption of Regulation SHO and the order establishing the Pilot, our staff has communicated extensively with self-regulatory organizations and brokers and dealers in order to facilitate the implementation of Regulation SHO and the Pilot. During the course of this

tape") on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day.

⁴ 69 FR at 48033.

⁵ See Section 36 of the Act. In addition, pursuant to Section 3(f) of the Act, we considered the impact of these modifications on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 69 FR at 48032; Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004) (the "Adopting Release").

⁷ 69 FR at 48032.

⁸ Rule 200(g) of Regulation SHO requires that brokers and dealers mark all sell orders of any equity security as "long," "short," or "short exempt." 17 CFR 242.200(g). The Adopting Release states that short sales of pilot securities effected during any pilot period should be marked "short exempt." 69 FR at 48012.

process, our staff was informed that a large number of brokers and dealers believe it would be inefficient and very costly for them to comply with this marking requirement for Pilot stocks under the time frame established by the Pilot Order. According to these brokers and dealers, they and their customers would need to make significant systems changes to be sure that short sale orders for Pilot stocks are marked properly and that the marking is maintained at each stage of processing the order. They also assert that these systems changes will be more extensive, costly and time-consuming to implement than they had anticipated during the comment period for Regulation SHO.

The order processing systems of brokers and dealers and their customers are predominantly electronic. Currently, many of these systems are not programmed to automatically identify and mark Pilot stocks as "short exempt" or to recognize a "short exempt" marking. A broker-dealer may have many different internal systems that are linked together, and each of its customers may have different systems through which the customer communicates orders to the broker-dealer. According to the market participants, modifying these systems and their interconnections presents significant programming challenges.

For example, market participants state that these systems currently are not equipped to change orders marked "short" to "short exempt." Broker-dealer firms have advised our staff that it will be difficult to implement systems changes under the time frame established by the Pilot Order to identify and change all orders marked short so that all short sales of Pilot stocks are processed as intended by Regulation SHO and the Pilot, *i.e.*, without regard to any short sale price test.

Finally, broker-dealer firms have asked us to consider the possibility that the systems changes may be in effect only for the one-year duration of the Pilot. Even if the brokers and dealers and their customers were able to make the necessary systems changes with reasonable expenditure of time and money, at the conclusion of the Pilot, brokers and dealers and their customers may be required to change their systems again, which would result in additional costs.

In this context, we have been informed that a number of market centers have offered to assist their broker-dealer members in executing short sales in Pilot stocks in a manner consistent with Regulation SHO. According to these market centers, they

would process all short sale orders of Pilot stocks without any short sale price test, regardless of whether the broker-dealers had marked the orders as "short exempt." The market centers would do this by "masking" short sale instructions on Pilot stocks and executing the short sales as "short exempt." Therefore, brokers and dealers and their customers would not be required to make extensive, and possibly temporary, systems changes, and short sales of Pilot stocks would be executed appropriately.

We have been informed that both the brokers and dealers and the market centers agree that the market centers' proposals to "mask" short sale orders in Pilot stocks for the duration of the Pilot would be more efficient than having the brokers and dealers and their customers make necessary systems changes. Some market centers, however, would be required to make significant changes to their systems, and we understand that some of the market centers would not be able to complete all the necessary systems changes by January 3, 2005. We have been informed that the market centers would be ready to "mask" orders on May 2, 2005.

Based on the forgoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to delay the commencement of the Pilot until May 2, 2005. For the Commission to fully evaluate the effectiveness of short sale price restrictions, the data must be complete and accurate. The delay will provide an opportunity for systems to be modified in a manner that will help achieve the purposes of the Pilot.⁹ Accordingly, the Pilot will now commence on May 2, 2005 and will end on April 28, 2006.

The compliance date for all other provisions of Regulation SHO remains January 3, 2005. This Second Pilot Order does not affect the responsibility of brokers and dealers to comply with the requirements of Regulation SHO, including the order marking requirements.¹⁰ By issuing this Second Pilot Order, we are providing an opportunity for firms to work with the

⁹ In addition, resetting the commencement date of the Pilot would allow the market centers to continue implementation of systems to electronically record all short sale orders, including manual orders.

¹⁰ We believe that an exemption from the order marking requirements may be necessary and appropriate to allow broker-dealers to avail themselves of the order "masking" process described above for Pilot stocks, if implemented by the market centers. Accordingly, prior to the commencement of the Pilot, we will consider written requests for appropriate relief from the order marking requirements for Pilot stocks.

market centers to develop cost effective means of executing trades of Pilot stocks. Brokers and dealers, however, retain the responsibility to appropriately mark the orders of Pilot stocks upon commencement of the Pilot on May 2, 2005.

II. Conclusion

We find that delaying implementation of the Pilot until May 2, 2005, for the reasons stated above, is necessary and appropriate in the public interest and consistent with the protection of investors.

Accordingly, it is hereby ordered that the suspension of the provisions of Rule 10a-1(a) and any short sale price test of any exchange or national securities association shall commence on May 2, 2005 and shall terminate on April 28, 2006. The Commission from time to time may issue further orders affecting the operation of the Second Pilot Order.

All other provisions of the Pilot Order shall remain in effect.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4-3469 Filed 12-3-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50755; File No. SR-CBOE-2004-77]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Systematizing of Orders in Connection With the Requirement To Design and Implement a Consolidated Options Audit Trail System ("COATS")

November 30, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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.

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

CBOE proposes to amend its rules relating to the systematizing of orders in connection with the requirement to design and implement a consolidated options audit trail system ("COATS"). The text of the proposed rule change is provided below. Proposed additions are in italics and proposed deletions are in brackets.

* * * * *

CHAPTER VI

Section B: Member Activities on the Floor

[Orders Required to Be in Written Form] Required Order Information

Rule 6.24

(a) [Transmitted to the Floor. Each order transmitted to the floor must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor. Each such order must be in legible written form when taken to the post for attempted execution.] *Orders Must Be Systematized. The Exchange has undertaken with the other options exchanges to develop a Consolidated Options Audit Trail System ("COATS"), which when fully developed and implemented, will provide an accurate, time-sequenced record of electronic and other orders, quotations, and transactions in certain option classes listed on the Exchange. Unless otherwise provided, the requirements of this Rule shall commence on January 10, 2005. In connection with the implementation of COATS:*

(1) *Except as provided in paragraphs (a)(2) through (a)(4), and (b), of this Rule, each order, cancellation of, or change to an order transmitted to the Exchange must be "systematized", in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if: (i) the order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (e.g., telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.*

(2) *Market and Marketable Orders. With respect to non-electronic, market and marketable orders sent to the Exchange, the member responsible for systematizing the order shall input into the Exchange's systems at least the following specific information with respect to the order prior to the representation of the order: (i) The*

option symbol; (ii) the expiration month; (iii) the expiration year; (iv) the strike price; (v) buy or sell; (vi) call or put; (vii) the number of contracts; and (viii) the Clearing Member. Any additional information with respect to the order shall be input into the Exchange's systems contemporaneously upon receipt, which may occur after the representation and execution of the order.

(3) *Orders in Certain Index Option Classes. The requirement to systematize orders as set forth in this Rule shall commence on March 28, 2005, in the following option classes: the S&P 500 index option class (SPX), the S&P 100 index option class (OEX), and the European-style S&P 100 index option class (XEO).*

(4) *In the event of a malfunction or disruption of the Exchange's systems such that a member is unable to systematize an order, the member or member organization shall follow the procedures as described in paragraph (b) of this Rule during the time period that the malfunction or disruption occurs. Upon the cessation of the malfunction or disruption, the member shall immediately resume systematizing orders. In addition, the member shall exert best efforts to input electronically into the Exchange's systems all relevant order information received during the time period when there was a malfunction or disruption of the Exchange's systems as soon as possible, and in any event shall input such data electronically into the Exchange's systems not later than the close of business on the day that the malfunction or disruption ceases. If, following a malfunction or disruption, the Exchange's systems were to become available for the systemization of orders after the close of business, the member would be expected to input electronically into the Exchange's systems all relevant order information received during the malfunction or disruption on the next business day.*

(b) *With respect to orders received during a malfunction or disruption of the Exchange's systems under paragraph (a)(4) above:*

(1) *Transmitted to the Floor. Each order transmitted to the Exchange must be recorded legibly in a written form that has been approved by the Exchange, and the member receiving such order must record the time of its receipt on the floor and legibly record the terms of the order, in written form.*

(2) *Cancellations and Changes. Each cancellation of, or change to, an order that has been transmitted to the floor must be recorded legibly in a written form that has been approved by the*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.