*Offer of Exchange*

38. The owners of a Policy may ask, so long as both insureds are alive, to exchange the Policy for two individual policies insuring each of the insureds separately. Since the individual policies may be variable life policies issued by a separate account of Minnesota Mutual, including the Account, which is registered under the Act as a unit investment trust, the exchange provision may be viewed as an offer of exchange within the prohibition of Sections 11 (a) and (c). Applicants request an order pursuant to Section 11 of the Act permitting the exchange of a Policy for two individual variable insurance policies in accordance with the provision described above.

39. An exchange pursuant to the Policy provision is subject to satisfactory evidence of insurability of both insureds. If the exchange is permitted by Minnesota Mutual, each of the new individual policies issued will have one-half of the death benefit, Policy value and Policy loan of the Policy surrendered, and the scheduled premiums to be paid to the new policies will be based on the age, gender and risk class of each insured on the date of exchange. The purpose of Section 11 is to prevent ''switching.'' ''Switching'' is a term of art that refers to the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Because the new policies together will have a policy value equal to the policy value of the surrendered security, the exchange will be made on the basis of the relative net asset values of the policies involved. Furthermore, no charge, administrative or otherwise, will be made in connection with the exchange, and no sales charge will be imposed under the new policies on policy values transferred to the new policies in connection with the exchange. Applicants conclude that the terms of the proposed offer of exchange do not involve any of the switching abuses that led to the adoption of Section 11 of the Act.

*Class Relief*

40. Extending the relief herein requested to Future Contracts, Future Accounts and Future Underwriters is appropriate in the public interest. An order so providing should promote competitiveness in the variable life insurance market by eliminating the need for filing redundant exemptive applications, thereby reducing Minnesota Mutual's costs. The delay and expense of repeatedly seeking exemptive relief for substantially similar contracts, new separate accounts or new principal underwriters could impair Minnesota Mutual's ability to take effective advantage of business opportunities that might arise. There is no benefit or additional protection afforded to investors by requiring Applicants to repeatedly seek exemptive relief with respect to the same issues addressed in this application.

Conclusion

For the reasons summarized above, Applicant represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–18173 Filed 7–17–96; 8:45 am]

BILLING CODE 8010–01–M

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## Agency Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [61 FR 36944, July 15, 1996].

**STATUS:** Closed Meeting.

**PLACE:** 450 Fifth Street, N.W., Washington, D.C.

**DATE PREVIOUSLY ANNOUNCED:** July 15, 1996.

**CHANGE IN THE MEETING:** Cancellation.

The closed meeting scheduled for Wednesday, July 17, 1996, at 10:00 a.m., has been cancelled.

Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

July 15, 1996.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–18300 Filed 7–15–96; 4:41 pm]

BILLING CODE 8010–01–M

**[Release No. 34–37421; File No. SR–CBOE–96–02]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Liability of the Exchange and its Directors, Officers, Employees, and Agents, Precluding Certain Types of Legal Actions by Members Against Such Persons, and Requiring Members to Pay the Exchange's Costs of Litigation Under Specified Circumstances

July 11, 1996.

I. Introduction

On January 18, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various Exchange rules pertaining to the liability of the Exchange, to adopt new Rule 6.7A prohibiting a member from instituting certain types of legal proceedings against Exchange officials, and to adopt new Rule 2.24 requiring a member to pay the Exchange's costs of litigation under specified circumstances.

Notice of the proposed rule change appeared in the Federal Register on February 27, 1996.[3] No comments were received on the proposed rule change.[4] This order approves the CBOE's proposal.

II Background and Description

*A. Exchange Liability*

The principal rule concerning Exchange liability is Rule 6.7(a), which currently provides that the Exchange shall not be liable to members, member organizations, or to associated persons for loss, damages, or claims arising out of the use or enjoyment of the facilities afforded by the Exchange, whether the loss, damages, or claims resulted from negligence or other unintentional errors or omissions, or from a cause not within the control of the Exchange. The proposed amendment to Rule 6.7(a) clarifies that, except as otherwise specifically provided in the rules of the Exchange, neither the Exchange nor its

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 36863 (February 20, 1996), 61 FR 7285 (February 27, 1996).

[4] The CBOE submitted a letter regarding the enforceability of the proposed rules under state law. *See* letter from Michael L. Meyer, Schiff Hardin & Waite, to Matthew Morris, Division of Market Regulation, Commission, dated June 27, 1996.

directors, officers, committee members, employees, or agents shall be liable to members or their associated persons except where the Exchange's liability is attributable to willful misconduct, gross negligence, bad faith, fraud, or criminal acts.

The proposed amendment to Rule 6.7 also incorporates, without material change, certain provisions which are currently set forth in Rules 23.14 and 24.12 to the effect that the Exchange is not liable for errors, omissions, or delays in collecting or disseminating various kinds of data, and the Exchange does not warrant such data. According to the Exchange, the purpose of moving these limitations of liability and disclaimers of warranty in Rule 6.7 is to place related subjects in a single rule.

In addition, the CBOE proposes to make non-substantive amendments to Rules 7.11, 23.14, and 30.75, and to delete Rule 24.12 in order to eliminate provisions that duplicate what is set forth in Rule 6.7, as well as to clarify and conform the language of all of the rules pertaining to the liability of the Exchange.

The CBOE also proposes certain changes to Interpretation and Policy .03 to Rule 6.7, which currently limits the Exchange's liability with respect to orders routed through the Exchange's Order Routing System (''ORS'') once the orders are printed at printers located on the Exchange floor. These changes clarify the description of the printers to which orders may be routed, and limits the liability of the Exchange once an order routed through ORS appears on a public automated routing (''PAR'') system terminal screen.

*B. Legal Proceeding Against Exchange Directors, Officers, Employees, or Agents*

The proposed amendment adds new Rule 6.7A, which prohibits a member or associated person from instituting a lawsuit or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary, for actions taken or omitted to be taken in connection with the official business of the Exchange or any subsidiary. Rule 6.7A, however, does not apply to violations of the federal securities laws where a private right of action exists, to appeals of disciplinary actions, or to other actions by the Exchange as provided for in the rules of the Exchange. According to the Exchange, the purpose of disallowing lawsuits or other legal proceedings against Exchange officials or agents when they are acting on Exchange business is to eliminate the potential exposure to personal liability of such persons, which impairs their ability to perform their duties.

*C. Exchange's Cost of Defending Legal Proceedings*

The proposed amendment adds new Rule 2.24, which requires a member or associated person who fails to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceeding. This provision is applied only in the event that the Exchange's expenses exceed $50,000. According to the Exchange, this rule is intended to discourage unfounded, vexatious litigation against the CBOE where the Exchange's costs of defense are significant, without having any undue chilling effect on legitimate claims or members. The proposed rule would apply to all types of legal proceedings that might be instituted by members against the Exchange or any of its directors, officers, committee members, employees, or agents, except that it expressly would not apply to disciplinary actions by the Exchange or to appeals therefrom, to other administrative appeals of Exchange actions, or to any specific instance where the Board has granted a waiver of this provision.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[5] Specifically, the Commission believes that by limiting the liability of the Exchange and its directors, officers, employees, and agents, by precluding certain types of legal actions by members against such persons individually, and by discouraging frivolous lawsuits against the Exchange, the costs of the Exchange in responding to claims and lawsuits will be reduced, thereby permitting the resources of the Exchange to be better utilized for promoting just and equitable principles of trade and for protecting investors and the public interest.

*A. Exchange Liability*

The Commission believes the rule change limiting the liability of the Exchange and its directors, officers, committee members, employees, and agents, to situations attributable to willful misconduct, gross negligence, bad faith, fraud, criminal acts, or actions otherwise specifically prohibited in the rules of the Exchange, will adequately preserve members' right to pursue actions in circumstances where the Exchange and its officials should be held accountable, or where there has been a violation of the federal securities laws.

In addition, the Commission believes that the CBOE's proposal to: (i) Incorporate Rules 23.14 and 24.12 into Rule 6.7; (ii) make non-substantive amendments to Rules 7.11, 23.14, and 30.75; (iii) delete Rule 24.12; and (iv) update Interpretation and Policy .03 to Rule 6.7, will clarify the application of the principal rules governing Exchange liability.

*B. Legal Proceedings Against Exchange Directors, Officers, Employees, or Agents*

The Commission believes that the rule change prohibiting members from instituting certain types of legal proceedings against Exchange officials should be approved. Specifically, the rule change prohibits members and associated persons from instituting lawsuits or any other legal proceeding against any director, officer, employee, agent, or other official of the Exchange or any subsidiary of the Exchange, for actions taken or omitted to be taken by these parties in connection with official business of the Exchange or any subsidiary. New Rule 6.7A, however, does not impair a members' ability to initiate legal action based upon violations of the federal securities laws for which a private right of action exists, appeals of disciplinary actions, or other actions by the CBOE as provided for in the Exchange's rules. The Commission believes that new Rule 6.7A is consistent with the Act because it will help to ensure that the covered persons will be able to carry out their duties under the Act, and to enforce compliance with the Act and the rules thereunder, as well as the rules of the Exchange, without the threat of personal liability.

*C. Exchange's Cost of Defending Legal Proceedings*

The Commission believes that the rule change requiring members or associated persons who fail to prevail in a lawsuit or other legal proceeding instituted by that person against the Exchange or other specified persons, and related to the business of the Exchange, to pay all reasonable expenses, including attorneys' fees, incurred by the CBOE in its defense during such proceedings if

[5] 15 U.S.C. § 78f(b)(5) (1988).

such expenses exceed $50,000, is consistent with Section 6(b)(4) of the Act.[6] Section 6(b)(4) requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

The Commission believes that because the funds to pay the legal expenses incurred by the Exchange in defending legal suits are generated, in part, by membership fees, the rule change reflects a reasonable business decision by the membership to shift the financial burden of litigation to the responsible member under certain circumstances. Moreover, as the Exchange's legal expenses must be reasonable and must accrue to at least $50,000 before a member would be obligated to compensate the Exchange, the Commission believes that the rule change should not provide an undue disincentive to litigation, in so far as it will permit the discovery needed to assess the merits of the members' cases.

The Commission also notes that new Rule 2.24 specifically excludes disciplinary actions brought by the Exchange, other administrative appeals of Exchange actions, as well as any other specific instance where the Board grants a waiver of this rule. The Commission believes that this provision will ensure that members will be able to freely pursue their right to appeal any action brought by the Exchange for violations of its rules.[7]

IV. Conclusion

For the foregoing reasons, the Commission finds that the CBOE's proposal to limit the liability of the Exchange and its directors, officers, employees, and agents, to preclude certain types of legal actions by members against such persons individually, and to require members to pay the Exchange's costs of litigation under specified circumstances 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,[8] that the proposed rule change (SR–CBOE–96–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

[6] 15 U.S.C. § 78f(b)(4) (1988).

[7] The Commission notes that if the minimum amount in the fee provision were substantially lower it might have a more difficult time concluding that the provision was consistent with Section 6(b)(4). This is because such a lower threshold amount could be found to represent an inequitable allocation of fees to the disadvantage of certain members.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
*Deputy Secretary.*
[FR Doc. 96–18172 Filed 7–17–96; 8:45 am]
**BILLING CODE 8010–01–M**

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**[Release No. 34–37424; File No. SR–NASD–96–20]**

## Self-Regulatory Organizations; Order Granting Temporary Accelerated Approval to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes in the Structure of the NASD Board of Governors

July 11, 1996.

On May 28, 1996,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The rule change amends the NASD By-Laws to conform them to the ''Plan of Allocation and Delegation of Functions by NASD to Subsidiaries'' (''Delegation Plan'').[4]

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 37282, June 6, 1996) and by publication in the Federal Register (61 FR 29777, June 12, 1996). One comment letter was received. This order grants accelerated approval to the proposed rule change for a period of 120 days.

I. Background

In 1995, the NASD Board of Governors (''Board'') appointed the Select Committee on Structure and Governance (''Select Committee'') to examine the corporate structure, governance, and functions of the NASD and to recommend changes and improvements to enable the NASD to meet its regulatory and business obligations. In September 1995, the Select Committee recommended, among other things, that the NASD establish two distinct subsidiaries; one to perform the regulatory functions of the NASD and the other to run The Nasdaq Stock Market (''Nasdaq''). The Select Committee recommended that each subsidiary have an independent Board of Directors with at least 50% public representation and that the NASD remain as parent corporation overseeing the operations of both subsidiaries. The Select Committee recommended that the NASD Board of Governors be composed of a majority of public directors.

In January 1996, the NASD created a new subsidiary, NASD Regulation, Inc. (''NASD Regulation'') to provide regulation and member and constituent services, with the NASD retaining responsibility for general oversight over the effectiveness of the self-regulatory and business operations of the NASD and its major subsidiaries, Nasdaq and NASD Regulation, and final policymaking authority for the association as a whole. The NASD also adopted Select Committee proposals to restructure and reduce the size of the NASD Board and to implement policies to ensure a balance of non-industry and industry representation on the Nasdaq and NASD Regulation Boards.

On April 11, 1996, the Commission granted temporary approval for a period of 90 days to: (i) Amendments to Article VII of the NASD By-Laws to create a national nominating committee to nominate persons to serve on the Board of Governors and reconstitute the Board as a majority non-industry Board;[5] (ii) NASD Rule 130 providing for the delegation of the authority to act on behalf of the NASD to NASD Regulation and Nasdaq pursuant to the Delegation Plan; and (iii) the Delegation Plan.[6] The Delegation Plan sets forth the purposes,

[1] On June 5, 1996, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 amends Article VI, Section 5 to clarify that, in a contested election, the term of office of a candidate certified by the National Nominating Committee for inclusion on the ballot for the election of Governors pursuant to Article VI, Section 7(c) would be identical to the term of office of a candidate nominated by the National Nominating Committee pursuant to Article VI, Section 7(c). Amendment No. 1 also amends Article VI, Section 7(a) to clarify that any person elected to the Board of Governors must be nominated or certified by the National Nominating Committee. *See* Letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated June 4, 1996).

On July 2, 1996, the NASD filed Amendment No. 2 to the proposed rule change. Amendment No. 2 provides the final report of the NASD membership with respect to the proposed rule change. 2,227 valid ballots were received from NASD members. 2,101 voted to approve the proposed rule change, 117 voted to disapprove the proposed rule change and 9 did not vote.

On July 10, 1996, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 3 requests temporary approval of the proposed rule change for a period of 120 days. *See* Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (dated July 10, 1996).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (''Release 34–37107'').

[5] Securities Exchange Act Release No. 37106 (April 11, 1996), 61 FR 16944 (April 18, 1996) (''Release 34–37106'').

[6] Release 34–37107.