

room located at the Richland Public Library, 955 Northgate Street, Richland, Washington 99352.

Dated at Rockville, Maryland, this 18th day of September 1996.

For the Nuclear Regulatory Commission.
Timothy G. Colburn,
Senior Project Manager, Project Directorate IV-2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.
[FR Doc. 96-24411 Filed 9-23-96; 8:45 am]
BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37689; File No. S7-24-89]

Joint Industry Plan; Solicitation of Comments and Order Approving Request To Extend Temporary Effectiveness of Plan for Nasdaq/National Market Securities Traded on an Exchange on an Unlisted or Listed Basis, Submitted by the National Association of Securities Dealers, Inc., and the Boston, Chicago and Philadelphia Stock Exchanges

September 16, 1996.

The National Association of Securities Dealers, Inc., on behalf of itself and the Boston, Chicago, and Philadelphia Stock Exchanges (collectively, "Participants")¹ has submitted to the Commission a request² to extend through September 30, 1996, operation of a joint transaction reporting plan ("Plan") and certain related exemptive relief for trading of Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis.³ This

notice and order solicits comment on certain related substantive matters identified below, and extends the effectiveness of the Plan through September 30, 1996.

I. Background

The Commission originally approved the Plan on June 26, 1990.⁴ The Plan governs the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/National Market securities listed on an exchange or traded on an exchange pursuant UTP. Commission approval of operation of the Plan was scheduled to expire September 15, 1996. Recently, the Commission received a revised version of the proposed revenue sharing agreement,⁵ the original version of which was discussed and published for comment in the March 18, 1996 Extension Order. In order to provide the Commission with an opportunity to review the revised version of the revenue sharing agreement, the Participants have requested that pilot approval of the Plan be extended through September 30, 1996.

II. Exemptive Relief

In conjunction with the Plan, on a temporary basis scheduled to expire on September 15, 1996, the Commission granted an exemption from Rule 11Ac1-2 under the Act regarding the calculated best bid and offer ("BBO"), and granted the BSE an exemption from the provision of Rule 11Aa3-1 under the Act that requires transaction reporting plans to include market identifiers for transaction reports and last sale data.

⁴ See Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 ("1990 Approval Order"). For a detailed discussion of the history of UTP in OTC securities, and the events that led to the present plan and pilot program, see also Securities Exchange Act Release No. 34371 (July 13, 1994), 59 FR 37103 ("1994 Extension Order"). See also Securities Exchange Act Release No. 35221, (January 11, 1995), 60 FR 3886 ("January 1995 Extension Order"), Securities Exchange Act Release No. 36102 (August 14, 1995), 60 FR 43626 ("August 1995 Extension Order"), Securities Exchange Act Release No. 36226 (September 13, 1995), 60 FR 49029 ("September 1995 Extension Order"), Securities Exchange Act Release No. 36368 (October 13, 1995), 60 FR 54091 ("October 1995 Extension Order"), Securities Exchange Act Release No. 36481 (November 13, 1995), 60 FR 58119 ("November 1995 Extension Order"), Securities Exchange Act Release No. 36589 (December 13, 1995), 60 FR 65696 ("December 13, 1995 Extension Order"), Securities Exchange Act Release No. 36650 (December 28, 1995), 60 FR 358 ("December 28, 1995 Extension Order"), Securities Exchange Act Release No. 36934 (March 6, 1996), 61 FR 10408 ("March 6, 1996 Extension Order"), and Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 ("March 18, 1996 Extension Order").

⁵ See letter from Robert E. Aber, Vice President, General Counsel, and Secretary, Nasdaq, to Jonathan G. Katz, Secretary, Commission, dated September 13, 1996.

III. Comments on the Operation of the Plan

In the January 1995, August 1995, September 1995, October 1995, November 1995, December 13, 1995, December 28, 1995, March 6, 1996, and March 18, 1996 Extension Orders, the Commission solicited, among other things, comment on: (1) Whether the BBO calculation for the relevant securities should be based on price and time only (as currently is the case) or if the calculation should include size of the quoted bid or offer; and (2) whether there is a need for an intermarket linkage for order routing and execution and an accompanying trade-through rule. The Commission continues to solicit comment on these matters.

IV. Solicitation of Comment

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. All submission should refer to File No. S7-24-89 and should be submitted by October 15, 1996.

V. Conclusion

The Commission finds that an extension of temporary approval of the operation of the Plan through September 30, 1996, is appropriate and in furtherance of Section 11A of the Act. In order to provide the Commission with an opportunity to review the revised revenue sharing agreement, while ensuring continued operation of the Plan, the Commission believes that it is appropriate to extend pilot approval of the Plan through September 30, 1996. The Commission finds further that extension of the exemptive relief through September 30, 1996, as described above, also is consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

¹ The signatories to the Plan, i.e., the National Association of Securities Dealers, Inc. ("NASD"), and the Chicago Stock Exchange, Inc. ("Chx") (previously, the Midwest Stock Exchange, Inc.), Philadelphia Stock Exchange, Inc. ("Phlx"), and the Boston Stock Exchange, Inc. ("BSE"), are the "Participants." The BSE, however, joined the Plan as a "Limited Participant," and reports quotation information and transaction reports only in Nasdaq/National Market (previously referred to as "Nasdaq/NMS") securities listed on the BSE. Originally, the American Stock Exchange, Inc., was a Participant to the Plan, but did not trade securities pursuant to the Plan, and withdrew from participation in the Plan in August 1994.

² See letter from Robert E. Aber, Vice President, General Counsel and Secretary, Nasdaq, to Mr. Jonathan G. Katz, Secretary, Commission, dated September 16, 1996.

³ Section 12 of the Act generally requires an exchange to trade only those securities that the exchange lists, except that Section 12(f) of the Act permits unlisted trading privileges ("UTP") under certain circumstances. For example, Section 12(f), among other things, permits exchanges to trade certain securities that are traded over-the-counter ("OTC/UTP"), but only pursuant to a Commission order or rule. The present order fulfills this Section 12(f) requirement. For a more complete discussion of this Section 12(f) requirement, see November 1995 Extension Order, *infra* note 4, at n. 2.

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act and (c)(2) of Rule aaAa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis and certain exemptive relief through September 30, 1996, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-24425 Filed 9-23-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37697; File No. SR-CBOE-96-45]

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

September 17, 1996.

I. Introduction

On July 10, 1996,¹ the Chicago Board Options Exchange, Incorporated ("CBOE" 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 CBOE Rule 17.6 to adopt certain procedures for hearings in disciplinary cases, and amends CBOE Rule 17.9 to codify CBOE's practice regarding the publication of disciplinary decisions.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a release (Securities Exchange Act Release No. 37500, July 30, 1996) and by publication in the Federal Register (61 FR 41194, August 7, 1996). No comments were received. This order approves the proposed rule change.

II. Description of the Proposal

The rule change approved today amends Rule 17.9 to codify CBOE's

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

A. Publication of Decisions

The rule change approved today codifies the Exchange's practice of publishing summaries of Business Conduct Committee hearing decisions in the Exchange's Bulletin after those decisions are final. A decision is considered final after the CBOE Board of Directors ("Board") concludes its review of the decision, or after the time for such review has expired. Only the parties to the case are permitted access to the decision prior to the time the decision is considered final.⁴

B. Decisions Regarding Pre-hearing Issues

Pursuant to existing CBOE Rule 17.6(b), the parties to a disciplinary hearing are to meet in a pre-hearing conference if the time and the nature of the proceedings permit such a meeting. The purpose of this pre-hearing conference is to clarify and simplify issues, and otherwise expedite the proceedings. The parties should attempt to reach agreement respecting the authenticity of documents, facts not in dispute, and other items which will service to expedite the hearing.

CBOE rules do not presently address how to resolve those pre-hearing issues on which the parties fail to agree. In practice, when such pre-hearing conferences are held, the hearing Panel or the Chairperson of the hearing Panel decides contested issues and any other appropriate pre-hearing issues. The rule change approved today amends Rule 17.6(b) to codify the current practice.

⁴ In accordance with CBOE Rule 17.14, decisions are also reported to the Central Registration Depository prior to the time the decision is considered final.

C. Interlocutory Review

Currently, Exchange rules do not address whether, prior to the conclusion of a hearing, a Respondent may request Board review of a decision made by the hearing Panel. The rule change approved today provides that interlocutory Board review of any decision made by the Panel prior to completion of the hearing is generally prohibited. Interlocutory review shall be permitted only if the Panel agrees to such review after determining that the issue is a controlling issue of rule or policy, and that immediate Board review would materially advance the ultimate resolution of the case.

D. Hearing Location

The rule change approved today codifies the process for determining the hearing location. Rule 17.6(b) currently provides that the parties will be given 15 days notice of the time and place of the hearing. Most hearings are held in Chicago at the Exchange's offices; however under some circumstances, a location outside of Chicago is more appropriate. The rule change amends Rule 17.6(b) to provide that the hearing Panel may decide to hold a hearing outside Chicago to accommodate the parties, witnesses, Exchange staff or the Panel members.

E. Hearing Witnesses and Documents

This rule change approved today provides a mechanism for a Respondent to compel testimony or documentary evidence. Rule 17.6(c) presently provides that the hearing Panel may request the production of documentary evidence and witnesses. This rule also provides that no member or person associated with a member shall refuse to furnish relevant testimony documentary materials or other information requested by the Panel.⁵ Pursuant to Rule 17.2(b), Exchange staff may require a member or associated person to testify at a hearing, or to produce documents; however, there is currently no procedure permitting a Respondent to compel a member or associated person to testify at a hearing or to produce documents. Additionally, pursuant to Rule 17.4(c), a Respondent has access to non-privileged documents in the Exchange's investigative file. A Respondent does not have the right to compel Exchange

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

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁵ The proposed rule change would move the language regarding the Panel's power to request the production of documentary evidence and witnesses from Rule 17.6 subsection (c) to the proposed subsection (d) so that the topics of documents and witnesses are addressed in one subsection of Rule 17.6. This language has been slightly revised to clarify that the Panel does not have to wait until during the hearing to make its request.