

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.

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[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

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.

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.

staff to produce documents not in the investigative file, nor does a Respondent have the right to require Exchange employees to appear as witnesses at a hearing.

The rule change provides that if the Exchange, a member, or a person associated with a member will not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, the Respondent may submit a written request to the Panel asking the Panel to enter an order compelling the production of such non-privileged documents, or compelling the testimony of the member, associated person, or a person within the Exchange's control. In order to obtain such an order, a Respondent must demonstrate that the witnesses or documents requested are relevant and material to the Respondent's case. Exchange staff has the opportunity to argue why no such order should be issued. In making a decision whether to issue the requested order, the hearing Panel would have to weigh the probative value of the evidence against considerations such as undue delay, waste of time, confusion, unfair prejudice, or needless presentation of cumulative evidence. The hearing Panel could require the Respondent who requested the order to pay the witness's travel expenses or other costs of complying with the order.

F. Witness List

Rule 17.6(b) presently provides that no less than five business days in advance of a hearing, each party will furnish the Panel and the other parties copies of all documentary evidence such party intends to present at a hearing. The rule change approved today requires the parties to provide a list of witnesses they intend to present at a hearing.

III. Conclusion

The Commission finds that the rule change is consistent with the provisions of Section 6(b)(7) of the Act. The rule change is designed to improve the speed, fairness, and efficiency of disciplinary hearings, thereby promoting a fair procedure for the disciplining of members and persons associated with members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-CBOE-96-45 be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Director.

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[Release No. 34-37691; File No. SR-Phlx-96-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Listing and Trading of FLEX Index and FLEX Equity Options

September 17, 1996.

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 August 21, 1996, the Philadelphia Stock Exchange, Inc., ("Phlx" 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 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 Phlx, pursuant to Rule 19b-4 of the Act, proposes to adopt Rule 1079, Index and Equity FLEXTM 1 Options, to govern the trading of customized or flexible ("FLEX") index and equity options on the Exchange. Specifically, the Exchange proposes to trade FLEX options on the following two broad-based (market) index options currently traded on the Phlx: Value Line Composite Index ("VLE") and National Over-the-Counter Index ("XOC"). The Phlx also proposes to trade FLEX industry (narrow-based) index options pursuant to the proposed rule on the following four industry index options currently traded on the Phlx: Bank Index ("BKX"), Gold/Silver Index ("XAU"), Semiconductor Index ("SOX") and Utility Index ("UTY"). In addition, the Phlx is proposing to trade equity FLEX options on securities which are options-eligible pursuant to Rule 1009, with the Options Committee designating the specific issues.

Proposed Rule 1079 contains the characteristics, trading procedure and other provisions applicable to trading FLEX options. All FLEX options would trade in the trading crowd of the corresponding non-FLEX option. The Exchange notes that the Automated

Options Market ("AUTOM") system will not be available for Phlx options. Proposed Rule 1079 also states that although FLEX options are generally subject to the rules in the options section, to the extent that the provisions of Rule 1079 are inconsistent with other applicable Exchange rules, Rule 1079 takes precedence with respect to FLEX options.

Because FLEX options would not be continuously quoted, nor are series pre-established, the variable terms of FLEX options shall be established by the following process. In order to initiate a transaction, a Requesting Member submits a Request-for-Quote ("RFQ") to the appropriate trading crowd, announcing the terms of the quote sought. The characteristics, including which terms and to what degree customization will be available, are outlined in Rule 1079(a).² For example, the exercise strike price respecting index FLEX options can be specified at the time the quote is requested in terms of a specific index value number (e.g., 553.5), a method for fixing such number (e.g., 10 basis points over the index value at a certain time, or with the future trading at a certain price), or a percentage of index value calculated as of the open or close of trading on the Exchange on the trade date (e.g., 5% above the close). Similarly, respecting equity FLEX options, the exercise strike price can be specified in terms of a specific dollar amount rounded to the nearest one-eighth of a dollar, or a percentage of the underlying security rounded to the nearest tick.

The exercise style can be either American or European,³ regardless of the exercise style of the listed option.⁴ The expiration date can also be customized, specifying any business day (non-holiday)—any month, day and year within five years for index flex options and three years for equity FLEX options. However, FLEX options may not expire on any day that falls on, or within two business days of (prior or subsequent to) a mid-month expiration day for a non-FLEX option on the same underlying index or security (other than a quarterly expiring index option). In addition, a

² The Exchange notes that Rule 1079 generally parallels the provisions of Rule 1069 governing foreign currency options.

³ An American style option may be exercised at any time up to its expiration, while a European style option can only be exercised on its expiration day. See Phlx Rule 1000(b)(35).

⁴ European style equity FLEX options may be adjusted to require the delivery upon exercise of a fixed amount of cash. See proposed amendments to the Options Clearing Corporation ("OCC") By-Law, Article IV, Section 11, Interpretation and Policy .08 in Securities Exchange Act Release No. 37318 (June 18, 1996) (SR-OCC-96-03).

¹ The term "FLEX" is a trademark of the Chicago Board Options Exchange, Inc. ("CBOE").

⁶ 17 CFR 200.30-3(a)(12).