Act, that good cause exists, to approve Amendment No. 1 to Amex's proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the CBOE's and PSE's proposed rule changes and CBOE Amendment No. 1 and Amex Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the Exchanges. All submissions should refer to File Nos. SR–Amex–96–29, SR–CBOE–96–56, or SR– PSE–96–31 and should be submitted by October 23, 1996.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the Amex's proposed rule change (File No. SR–Amex–96–29), as amended, is approved, and the CBOE's and PSE's proposed rule changes (File Nos. SR–CBOE–96–56 (as amended) and SR–PSE–96–31) are approved on an accelerated basis.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 96–25153 Filed 10–1–96; 8:45 am]

BILLING CODE 8010–0–M

[13] 15 U.S.C. 78s(b)(2).

[14] *See supra* note 12.

[15] 17 CFR 200.30–3(a)(12).

[Release No. 34–37728; File No. SR–AMEX–96–10]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change Relating to the Implementation of a Wireless Data Communications Infrastructure

September 26, 1996.

I. Introduction

On March 27, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 Exchange Rules 60 and 220 and to adopt a policy regarding the use of wireless data communications devices at the Exchange (''Wireless Communications Policy'').[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 37161 (May 2, 1996), 61 FR 20871 (May 8, 1996). Two comment letters, from the same commenter, were received on the proposal.[4] The Amex submitted one letter supporting its proposal and responding to Comment Letter No. 1.[5] For the reasons discussed below, the Commission has decided to approve the Amex proposal.

II. Description of the Proposal

The Exchange has undertaken the development of an infrastructure (''Infrastructure'') to accommodate the use of hand-held wireless data communications devices on the Trading Floor. In connection with the implementation of the Infrastructure, the Exchange seeks to amend Rule 220 to explicitly provide that the Exchange may regulate communications between points on the Floor. The Exchange also seeks to adopt a Wireless Communications Policy regarding the use of wireless data communications devices at the Exchange. The Wireless Communications Policy will address the following issues:

1. The ability of the Exchange to administer wireless data communications on a real time basis (*e.g.*, the implementation of a protocol for prioritizing and/or managing message traffic during periods of extraordinary use);
2. Surveillance of wireless data communications;
3. Member, member firm and Exchange preservation of records of orders and trades;
4. Security with respect to confidential wireless transmissions and access to the Infrastructure;
5. Review and approval of member and member firm applications to use wireless data communications devices;
6. The fair allocation of a finite resource (*i.e.*, radio frequency bandwidth);
7. Exchange fees and allocation of expenses associated with the implementation, operation of, and enhancements to, the Infrastructure;
8. Sanctions for violations of the Exchange's Wireless Communications Policy;
9. Inspection and oversight of wireless data communications technology; and
10. The design and implementation of the Infrastructure.

In addition, the Exchange proposes to adopt new Commentary .03 to Rule 60 which will provide that, in connection with member or member organization use of any electronic system, service, or facility provided by the Exchange to members for the conduct of their business on the Exchange: (i) The Exchange may expressly provide in the contract with any vendor providing all or part of such electronic system, service, or facility to the Exchange, that such vendor and its subcontractors shall not be liable to members or member organizations for any damages sustained by a member or member organization growing out of the use or enjoyment of such electronic system, service, or facility by the member or member organization; and (ii) members and member organizations shall indemnify the Exchange and any vendor and subcontractor covered by subsection (i) above with regard to any third party claims relating to the member or member organization's use of such electronic system, service, or facility.

III. Summary of Comments

The Commission received two comment letters regarding the Wireless Communications Policy.[6] The commenter discussed the following aspects of the Wireless Communications Policy: (1) The requirement that all wireless communications that leave, enter or travel between points on the Floor must first pass through a Gateway Subsystem, (2) the fair allocation of

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

[2] 17 CFR 240.19b–4.

[3] The Exchange also submitted a letter discussing the impact of the Infrastructure on the Exchange's surveillance program. See Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Amex, to Jon E. Kroeper, SEC, dated April 4, 1996.

[4] See Letter from Bradford L. Jacobowitz, General Counsel, Interactive Brokers LLC, to Jonathan G. Katz, Secretary, SEC, dated May 29, 1996 (''Comment Letter No. 1''), and Letter from Bradford L. Jacobowitz, General Counsel, Interactive Brokers LLC, to Elisa Metzger, SEC, dated August 12, 1996 (''Comment Letter No. 2'').

[5] See Letter from Bill Floyd-Jones, Jr., Assistant General Counsel, Amex, to Elisa Metzger, SEC, dated July 11, 1996 (''Amex Letter'').

[6] See supra note 4.

radio frequencies, (3) the availability of wireless communications for Exchange members who have not acquired or developed their own system, and (4) the fee imposed for the use of this system.

The commenter raised several concerns regarding the required use of the Gateway Subsystem. The commenter believes that the Gateway Subsystem will slow the transmission of orders to the floor broker, and that this delay will ''retard price efficiencies, and make competitive efforts to enhance the speed of order routing useless * * *.'' [7] In addition, the commenter believes that the delay in transmitting orders caused by the Gateway Subsystem is not necessary for surveillance and recordkeeping purposes.

The commenter further stated that it is anti-competitive for the Exchange to require that all users of hand held terminals use the Gateway Subsystem. Specifically, the commenter believes that those members who spend the money to develop their own technology will be subject to the same disadvantages of the Gateway Subsystem as those members who do not develop their own system. Further, those members who develop their own system will not be able to fully benefit from their technological developments.

The Exchange responded to these comments stating that it anticipates a delay of only two seconds as a result of routing messages through the Gateway Subsystem. Further, any such delay will be imposed equally on all users of wireless technology. The Exchange also addressed the issue of audit trail information and stated that orders transmitted by wireless communication devices would be subject to the same audit trail requirements as all other orders.

The commenter also raised concerns regarding the exclusive use of the 2.4 GHz radio frequency. The commenter stated that the exclusive use of this frequency would limit the number of persons that could use the wireless system. As an alternative, the commenter suggested that the Exchange also permit the use of the 902 Mhz frequency and the use of infrared technology.

The Exchange explained that it rejected the use of the 902 Mhz frequency because the 902 Mhz frequency could only carry ten percent of the message traffic that the 2.4 Ghz frequency could transmit. In addition, the Exchange believes that it did not make economic sense to build two separate Wireless Infrastructures to accommodate two different frequencies, one of which is a more antiquated frequency. The Exchange also explained that infrared technology was not an option because infrared technology requires unobstructed sight lines, which is not easily accommodated on the Exchange's two trading floors.

The commenter raised issues regarding the anti-competitive implications of the Exchange providing wireless communications devices for Exchange members who have not acquired or developed their own systems. The commenter is concerned that those members who develop their own systems will be subject to the same time delays as those members who have not made such an investment. In addition, the commenter asserts that the fee that the Exchange plans to charge for the use of the Gateway Subsystem is ''tantamount to a double 'technology tax' and is a disincentive to the development of proprietary systems.'' [8] The commenter believes that this fee will require developers of technology to pay for their own system and the Gateway Subsystem.

The Exchange responded to these comments stating that there will be a separate fee for those members who use the Exchange's communications devices. In addition, members will be free to develop their own communications device that may be better and more efficient than the Exchange's communications devices. Further, the Exchange states that its wireless initiative will benefit the public by providing for appropriate management and surveillance of this new technology.[9]

IV. Discussion

After careful consideration of the comments and the Amex response thereto, the Commission has determined to approve the proposed rule change. For the reasons discussed below, 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).[10] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the Wireless Communication Policy should remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members receive and execute orders on the floor of the Exchange. While the commenter raised concerns regarding the time delay caused by the requirement that all communications go through the Gateway Subsystem, it is anticipated that the time delay will consist of two seconds. Further, the requirement that all orders pass through the Gateway Subsystem and the proposed amendment to Rule 220 will permit the Exchange to continue regulating and monitoring communications between points on the Floor.

In addition, all users of wireless communications devices will be required to capture electronically, all information regarding their transactions on the Floor that is required by the Commission's rules and the Exchange's rules.[11] Accordingly, audit trail information should be more accurate than current information which is recorded manually on order tickets or trading cards.

The Commission believes that the Wireless Communications Policy, is consistent with the policy in Article IV, Section 1(e) of the Exchange Constitution which currently provides that the Exchange shall not be liable for any damages sustained by a member or member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. This provision, as well as similar provisions at other exchanges, reflect the common understanding that exchanges should not bear the risk of liability associated with member firm use of their systems.

[7] See Comment Letter No. 1 at 2.

[8] See Comment Letter No. 1 at 3.

[9] Prior to submitting the proposed rule changes, the Exchange received three written responses to an Amex letter dated February 29, 1996, addressed to all members and member firms regarding the implementation of the Infrastructure and anticipated user fees for wireless data communications devices on the Floor. The three responses to the Exchange's letter concerned objections to the proposed fee structure. The Exchange decided that the specifics of the per device fee would not be determined until the fall of 1997, giving the Exchange a period of time to observe the Infrastructure in operation. A per device fee will not be imposed prior to that time. In addition, once imposed, the monthly fee will be capped at $250 per device.

[10] 15 U.S.C. 78f(b).

[11] The Commission notes that members, brokers, and dealers are subject to the Commission's recordkeeping and record retention rules, Rules 17a–3 and 17a–4 under the Act (17 CFR 240.17a–3 and 240.17a–4), and may retain required records in any medium acceptable under Rule 17a–4, including optical storage technology.

The Commission believes that the proposed commentary to Rule 60 regarding the disclaimer for vendor liability will provide needed protection for both the Exchange and vendors that may be retained by the Exchange to provide various services for use by member firms. If the Exchange does not have the ability to negotiate such liability protection, it would become increasingly difficult to find vendors willing to provide the Exchange with the essential services that it needs.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–96–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–25225 Filed 10–1–96; 8:45 am]

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[Release No. 34–37732; File No. SR–CBOE–96–29]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Relating to the Exercise of American-style Index Options

September 26, 1996.

I. Introduction

On April 26, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed a proposed rule change with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] to adopt new CBOE Rule 24.18 which prohibits the exercise of an American-style index option series after the holder has entered into an offsetting closing sale (writing) transaction.

Notice of the proposal was published for comment and appeared in the Federal Register on August 15, 1996.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of the Proposal

As noted in CBOE's Regulatory Circular RG 96–11,[4] the rules and procedures of The Options Clearing Corporation (''OCC'') permit a holder of an American-style option[5] to exercise that options at any time up to the exercise cut-off time on any day, other than the final trading day, even if the holder had entered into an offsetting closing sale transaction earlier that day. This result stems from the fact that on such days OCC processes opening purchase transactions and exercises before it processes closing sales transactions, so that option purchasers remain holders of their options on OCC's books for the purpose of exercise without regard to their closing sales that day.

The Exchange is concerned that this result may be confusing to investors—because it may give the appearance that investors are able to exercise the same options which they have previously sold—and lead to a perception that this result is unfair to writers of American-style index options that are in the money by subjecting them to a potentially increased ''timing risk'' of the type described under ''Special Risks of Index Options'' on pages 73–74 of the risk disclosure document entitled ''Characteristics and Risks of Standardized Options'' (February 1994).[6]

Additionally, the Exchange believes that the average retail customer might not understand how investors could exercise options which they believed they no longer owned. The Exchange represents that, during the period from November 1993, through December 1995, almost all of the gross exercises in customers' accounts were effected at one clearing firm on behalf of a single customer that is a foreign professional trading account. Accordingly, the Exchange believes that retail customers might view the gross exercise ability as giving professional traders an unfair advantage over retail customers and that such perception could lead to the diminished popularity of Standard and Poor's 100 (''OEX'') index options for retail customers.[7]

To eliminate this possible perception of unfairness, the proposed rule would prohibit CBOE members from effecting an exercise of an OEX options series (or any other American-style index option series subsequently listed by the Exchange), whether on the member's own behalf or on behalf of a customer, if the member knew or had reason to know that the exercise was for more option contracts than the ''net long position'' of the account for which the exercise is to be made. For this purpose, the ''net long position'' in an account is the net position of the account in options of a given series at the opening of business of the day of exercise, plus the total number of such options purchased on that day in opening purchase transactions up to the time of exercise, less the total number of such options sold on that day in closing sale transactions up to the time of exercise.

In order to prevent persons from circumventing the proposed rule by designating a sale as ''opening'' so as to maintain a net long position capable of being exercised, and then redesignating the sale as ''closing'' by means of an adjustment later in the day if in fact the long position has not been exercised, the rule would prohibit a member from adjusting the designation of an opening transaction to a closing transaction except to remedy mistakes or errors made in good faith.

A market maker's transactions are not required to be marked as opening or closing. Rather, a market maker's purchase and sales transactions are netted by OCC every day after exercises are processed. As a result, it is impossible to tell whether a particular transaction by a market maker is intended as an opening or closing transaction. Under OCC's processing procedures, unmarked market makers' transactions are in effect treated as opening transactions prior to the processing of exercises and as closing transactions thereafter. For the purpose of applying the prohibition of the proposed rule, every market maker transaction would be treated as a closing transaction to the extent the market maker has pre-existing positions (including positions resulting from transactions effected earlier that day) which could be netted against the transaction. For example, if a market maker is long 10 option contracts of a series and sells 15 contracts of that series, the sale will be deemed, under the proposed rule, to be a closing sale transaction for 10 contracts and an

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[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37540 (August 8, 1996), 61 FR 42455.

[4] *See* Securities Exchange Act Release No. 36797 (January 31, 1996), 61 FR 4691 (February 7, 1996) (File No. SR–CBOE–96–03).

[5] An American-style option may be exercised at any time prior to expiration.

[6] This document is generally known as the Options Disclosure Document or ''ODD''.

[7] *See* Letter from Michael L. Meyer, Attorney, Schiff Hardin & Waite, to John Ayanian, Attorney, Office of Market Supervision (''OMS''), Division of Market Regulation (''Market Regulation''), Commission, dated June 17, 1996. OEX index options are the only American-style index options currently traded at the CBOE. All other CBOE index option are European-style, with exercise only permitted upon their expiration.