

Secretary of the Commonwealth of Massachusetts to terminate its existence.

For the Sec, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-37473; File No. SR-CBOE-96-49]

**Self-Regulatory Organizations;
Proposed Rule Change by Chicago
Board Options Exchange, Incorporated
Relating to Permitting Additional
Submissions Following Respondent's
Petition for Review**

July 23, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 23, 1996, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.¹ 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 Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") proposes to amend Exchange Rule 17.10 which governs the review of Business Conduct Committee ("BCC") decisions by the Exchange's Board of Directors ("Board"). The proposed amendment would formalize in Rule 17.10 the current practice whereby the Board has permitted one additional submission by both Exchange staff and Respondent following Respondent's petition for review and clarifies with which office of the Exchange the petition for review should be filed.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C, below, of the most significant parts of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The purpose of the proposed change to Exchange Rule 17.10 is to formalize in the Rule the current practice whereby the Board has permitted one additional submission by both Exchange staff and Respondent following Respondent's petition for review. Presently, the Rule does not provide for any subsequent submissions following a Respondent's appeal of a BCC decision to the Board. The proposed amendment would provide that, after a Respondent appeals a BCC decision to the Board, Exchange staff may submit a written response to which the Respondent may submit a reply. The proposal also clarifies with which office of the Exchange the Respondent's petition should be filed.

By eliminating the need for the staff to request approval prior to the submission of every response, the proposal will reduce the amount of time the Board spends on administrative matters. In addition, the Exchange believes the proposal will ensure a more thorough and fair process because each party will have an opportunity to clarify its position to the Board on the specific issues of contention addressed in the petition for review. Additionally, the proposal will, as is the case under the current rules, ensure that the Respondent ordinarily will have the opportunity to make the final submission to the Board.

The proposal requires the Exchange staff's response be filed within 15 days of the date the Respondent's request for review is filed with the Secretary of the Exchange, and the Respondent's reply to be filed within 15 days of service of staff's response.

By clarifying with which office of the Exchange the petition for review should be filed and by formalizing the current appeal practice to ensure that both parties have the opportunity to make an additional submission to the Board, the

proposed rule change will make the review process more fair and efficient. Therefore, the rule change is consistent with Section 6 of the Securities Exchange Act of 1934, in general, and Section 6(b)(7) in particular in that it provides a fair procedure for the disciplining of members and persons associated with members.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The CBOE does not believe that the proposed rule change will impose any burden on competition.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received From
Members, Participants, or Others**

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Committee will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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 NW, 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No.

¹ The proposal was originally filed with the Commission on July 11, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. This document provides notice of the filing as amended. Letter from Michael L. Meyer, Schiff, Hardin & Waite, to Katherine England, Assistant Director, Division of Market Regulation, SEC, dated July 19, 1996.

SR-CBOE-96-49 and should be submitted by August 20, 1996.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-37475; File No. SR-NASD-96-28]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. ("NASD" or "Association") Relating to Telemarketing Rules

July 24, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 28, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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. On July 18, 1996, the NASD filed Amendment No. 1 to its proposal.² On July 24, 1996, the NASD filed Amendment No. 2 to its proposal.³ 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

Below is the text of the proposed rule change. Proposed new language is

italicized; proposed deletions are in brackets.

Conduct Rules

2000. Business Conduct

* * * * *

2200. Communications With Customers and the public

2211. Telemarketing

No member or person associated with a member shall:

(a) Make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or

(b) Make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(1) The identity of the caller and the member firm;

(2) The telephone number or address at which the caller may be contacted; and

(3) That the purpose of the call is to solicit the purchase of securities or related services.

(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a member, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the member under the control of or assigned to such associated person:

(1) To an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the control of or assigned to, such associated person;

(2) To an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or divided income during the preceding twelve months; or

(3) To a broker or dealer. For the purposes of paragraph (c), the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of

such broker or dealer, carries an account.

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3000. Responsibilities Relating to Associated Persons, Employees, and Others' Employees

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3100. Book and Records, and Financial Condition

3110. Books and Records

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(g) [Cold Call] Telemarketing Requirements

(1) Each member shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated person.

(2) No member or person associated with a member shall obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(3) Each member shall maintain the authorization required by subparagraph (2) for a period of three years.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction and Background. Pursuant to the Telephone Consumer Protection Act ("TCPA"),⁴ the NASD adopted in June 1995, a "cold call" rule to implement certain rules of the Federal Communications Commission ("FCC Rule")⁵ that require persons who

⁴ 47 U.S.C. § 227.

⁵ Pursuant to the TCPA, the FCC adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (location time at the called party's location) and (2) require

¹ 15 U.S.C. 78s(b)(1).

² In Amendment No. 1, the NASD withdrew its request for approving the proposed rule change prior to the 30th day after publication in the Federal Register; added the word "do" after the word "who" in subparagraph (g)(1) to Rule 3110; and added the phrase "or person associated with a member" after the word "member" in subparagraph (g)(2) to Rule 3110. See Letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. ("NASDR"), to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated July 18, 1996.

³ In Amendment No. 2, the NASD replaced the phrase "or a person acting at the direction of a person associated with a member," with "or another associated person acting at the direction of such person" in subparagraph (c) to Rule 2211 to clarify that the exceptions to the requirements of paragraphs (a) and (b) of Rule 2211, as proposed, apply only to a person associated with a member or another associated person acting at the direction of such associated person. See Letter from John Ramsay, Deputy General Counsel, NASDR, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated July 24, 1996.