

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-33060 Filed 12-27-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38069; File No. SR-NASD-96-44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Extending the Pilot Injunctive Relief for an Additional Year

December 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 9, 1996, NASD Regulation, Inc., ("NASD Regulation") 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 NASD Regulation. On December 17, 1996, NASD Regulation submitted an amendment ("Amendment No. 1") to the proposed rule change.² On December 18, 1996, NASD Regulation submitted a second amendment ("Amendment No. 2") to the proposed rule change.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

NASD Regulation is herewith filing a proposed rule change to extend for one year the pilot injunctive relief rule, Rule 10335 (formerly Section 47) of the Code of Arbitration Procedure ("Code").

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

In its filing with the Commission, NASD Regulation 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 III below. NASD Regulation 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

NASD Regulation's injunctive relief rule, Rule 10335 of the Code, provides a procedure for obtaining injunctive relief in arbitration and for expediting proceedings for injunctive relief in intra-industry disputes. Rule 10335 took effect on January 3, 1996, for a one-year pilot period. In its filing with the Commission, the NASD stated that at the end of the one-year pilot program it would evaluate the efficacy of the Rule to determine if the Rule should be made permanent, the pilot should be extended, or the Rule should be permitted to terminate by its terms.

Between January 3 and December 5, 1996, 237 cases were filed with the NASD seeking injunctive relief under Rule 10335. All of the cases under Rule 10335 involved disputes between member firms and their former registered representative employees (often referred to as "raiding" cases). Of those, 147 settled, 21 were withdrawn, and 56 are pending. The remaining cases were either not eligible for resolution in the NASD's forum (2), closed after a hearing (6), inactive (4), or could not be processed because of deficiencies in the claim that were not corrected (1). The details concerning cases filed up to September 19, 1996, and the comments solicited by NASD Regulation from some users of the procedures, are set forth in a report from NASD Regulation to the Commission submitted on October 11, 1996.

Additional comments were received after October 11, 1996. The report and additional comments may be examined at the places specified in Item III below.

On the basis of NASD Regulation's experience and the comments of the participants, NASD Regulation believes that the procedures set forth in Rule 10335 represent a significant improvement to the procedures for resolving intra-industry disputes; however, NASD Regulation also believes that additional experience with the Rule is necessary to evaluate adequately how the Rule could be improved to meet the needs of the participants more effectively.

Accordingly, NASD Regulation is proposing to extend the injunctive relief Rule as a pilot program for another year. During the next year NASD Regulation will review the comments solicited, will

solicit additional comments in a Notice to Members, and will develop modifications or interpretations of the Rule in response thereto.

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴ in that extending the effectiveness of the injunctive relief procedures will serve the public interest by enhancing the satisfaction with the arbitration process afforded by expeditious resolution of certain disputes.

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

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

NASD Regulation did not solicit comments with respect to extending the pilot program. Instead, comments have been solicited in order to aid NASD Regulation in developing changes to the Rule in anticipation of seeking permanent adoption. Those comments are contained in Exhibits 2 and 3 to the filing. Accordingly, NASD Regulation will address these comments, and any additional comments that may be received, in connection with any rule filing seeking to make the Rule a permanent addition to the Code.

III. 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, 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 in the Commission's Public Reference Room. Copies of such filing will also be

¹ 15 U.S.C. § 78s(b)(1).

² Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 13, 1996 (indicating final action on the proposed rule change by the NASD Board of Governors).

³ Letter from Alden S. Adkins, Vice President and General Counsel, NASD Regulation, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated December 17, 1996 (amending filing to: (1) set forth the language of Rule 10335; (2) amend paragraph (i) of the Rule to show the effective date of the Rule; (3) request accelerated approval of the proposed rule change).

⁴ 15 U.S.C. § 78o-3.

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-N-NASD-96-44, and should be submitted by January 21, 1997.

IV. The Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the proposed rule change of NASD Regulation, and concludes that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities association, and particularly with Section 15A(b)(6) of the Act.

Rule 10335 is intended to provide a pilot system within the NASD arbitration forum to process requests for temporary injunctive relief. The Rule is intended principally to facilitate the disposition of employment disputes and related disputes concerning whether registered representatives who move to other firms may transfer their accounts to their new firms. The Commission finds that it is appropriate to extend the pilot for one year. During that time, the Commission and NASD Regulation will be able to evaluate the success of the Rule, to solicit additional comments, to develop modifications or interpretations of the Rule in response to these comments, and to determine whether to extend the pilot further or to make the Rule permanent.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. The Commission believes that it is appropriate to approve the proposed rule change on an accelerated basis so that members can continue to have the benefit of injunctive relief in arbitration without interruption. The Rule was previously available through the pilot, and the Commission is extending the pilot only for one year. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 15A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR-NASD-93-44, as amended, be, and hereby is, approved on a one-year pilot basis, effective January 3, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-33058 Filed 12-27-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-38070; File No. SR-OCC-96-19]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the Expiration Time and Assignment Processing Procedures for Certain Flexibly Structured Foreign Currency Options

December 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 17, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-OCC-96-19) as described in Items I, II, and III below, which items have been prepared primarily by OCC. 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 purpose of the proposed rule change is to change the expiration time and assignment processing procedures for certain flexibly structured foreign currency options.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The proposed rule change will change the expiration time and assignment processing procedures for certain

flexibly structured foreign currency options, including certain flexibly structured cross-rate foreign currency options. Specifically, flexibly structured foreign currency options and flexibly structured cross-rate foreign currency option (collectively referred to as "flexibly structured FCOs") listed for trading after January 14, 1997, and expiring on or after April 1, 1997, will expire at 10:15 a.m. Eastern Time ("ET") instead of 11:59 p.m. ET. Furthermore, OCC propose that all flexibly structured FCOs will be subject to pro rata assignment.

The Philadelphia Stock Exchange ("PHLX") presently trades two types of flexibly structured FCO contracts. They are (1) flexibly structured FCOs for which market participants do not specify an expiration date ("standard flex FCOs") which expire on standard mid-month and end-of-month expiration dates at 11:59 p.m. ET (expiration time is consistent with standard foreign currency option); and (2) custom dated flexibly structured FCOs ("custom dated flex FCOs") for which market participants specify the expiration date and which expire at 10:15 a.m. ET on that expiration date. Exercise notices regarding standard flex FCOs are subject to random assignment processing while pro rata assignment processing is applied to exercise notices regarding custom dated flex FCOs.

PHLX has requested that OCC modify its rules to provide that the expiration time for both types of flexibly structured FCOs be 10:15 a.m. ET on their expiration date, and that exercises in respect thereof be assigned pursuant to OCC's pro-rata procedures.³ PHLX also has requested that this change be effective for any standard flex FCOs listed for trading after January 14, 1997, with an expiration on or after April 1, 1997. Accordingly, any standard flex FCO contract established on or before January 14, 1997, will expire at 11:59 p.m. ET and be subject to a random assignment process. Currently, there is open interest in standard flex FCO contracts expiring mid-month and end-of-month for the months of March, April, July, September, and October 1997.⁴ Since existing standard flex

³ The Commission has already approved a proposed rule change by PHLX regarding the expiration time and assignment procedures for flexibly structured FCOs. Securities Exchange Act Release No. 37718 (September 24, 1996), 61 FR 51479 [File No. SR-PHLX-96-13] (order approving a proposed rule change concerning the trading hours and expiration times for customized foreign currency options).

⁴ Notwithstanding the above, PHLX has indicated that it may ask holders of existing series to direct OCC to adjust the expiration time so that such

Continued

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries submitted by OCC.