

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95-1780 Filed 1-24-95; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-35239; File No. SR-CHX-95-2]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Extension of the Waiver of Certain Exchange Transaction Fees for Transactions in Certain Tape B Eligible Issues

January 19, 1995.

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 January 9, 1995, the Chicago Stock Exchange, Incorporated ("CHX" 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 self-regulatory organization. On January 18, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change, which is also described below.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 Exchange proposes to extend the waiver of certain transaction fees, as set out in Section (c) (Transaction Fee Schedule) of its Membership Dues and Fees, for transactions in Tape B eligible issues,² executed through the Midwest Automated Execution System ("MAX"). The Exchange had waived these fees

¹ See letter from David T. Rusoff, Counsel, Chicago Stock Exchange, to Glen Barrentine, Senior Counsel, Division of Market Regulations, SEC, dated January 18, 1995. See infra note 4 for a description of Amendment No. 1.

² The Consolidated Tape, operated by the Consolidated Tape Association ("CTA"), compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Chicago, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in American Stock Exchange listed stocks and qualifying regional listed stocks are reported on CTA Tape B.

through December 31, 1994³ and now proposes to extend the waiver on MAX executed trades through December 31, 1995. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

(c) Transaction Fee Schedule

Round Lots/Mixed Lots

45 cents per 100 shares.
\$100.00 maximum per trade.

Odd Lots

35 cents per trade.
\$400.00 maximum monthly fees.

The above fees include all applicable trade recording fees, as set out in the Midwest Clearing Corporation (MCC) "Services and Schedule of Charges" bulletin, relating to floor executed trades.

The above fees shall not apply to transactions in Tape B eligible issues which are executed through the Midwest Automated Execution System ("MAC") through December 31, 1994[5]; however, all applicable trade recording fees relating to Tape B trades will be assessed as set out in the MCC "Services and Schedule of Charges" bulletin.⁴

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 self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

³ See Securities Exchange Act Release No. 33637 (Feb. 17, 1994), 59 FR 9261 (approving File No. SR-CHX-94-4). The Exchange has waived these fees for several consecutive years. See Securities Exchange Act Release No. 31636 (Dec. 22, 1992), 57 FR 62406 (approving File No. SR-MSE-92-15); Securities Exchange Act Release No. 30154 (Jan. 6, 1992), 57 FR 1291 (approving File No. SR-MSE-91-17); Securities Exchange Act Release No. 28916 (Feb. 25, 1991), 56 FR 9028 (approving File No. SR-MSE-91-7).

⁴ Amendment No. 1 deleted a reference in the Transaction Fee Schedule that limited the applicability of such fees on round lots/mixed lots and odd lots to transactions in New York Stock Exchange listed issues. This reference was included inadvertently in the Exchange's filings requesting the waiver of these fees for calendar years 1992, 1993, and 1994.

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

1. Purpose

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities to enhance the Exchange's competitive position in these issues. Limiting the waiver of fees to MAX trades recognizes the economies of scale and cost savings achieved through electronic order routing versus manually processed trades.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and persons using its facilities.

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

The fee change will impose no 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 fee change.

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

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR-CHX-95-2 and should be submitted by February 15, 1995.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-1784 Filed 1-24-95; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35235; File No. SR-NASD-94-78]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Exercise Cut-Off Procedures for Expiring Equity Options Contracts

January 18, 1995.

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 December 23, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD proposes to amend Section 63 of the NASD's Uniform Practice Code ("Practice Code") relating to the exercise of expiring standardized equity options contracts. The text of the proposed rule change is available at the Office of the Secretary, NASD, 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 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 the Statutory Basis for, the Proposed Rule Change

Currently, with regard to expiring standardized equity options, Section 63 of the Practice Code provides that NASD members and their customers are required to indicate their exercise decisions to clearing members no later than 5:30 p.m., E.S.T., on the business day immediately prior to the expiration date of the options ("Exercise Cut-Off Time").¹ this is the latest time by which an exercise instruction² may be: (1) Prepared by a clearing member for positions in its proprietary trading account; (2) accepted by a clearing member from a non-clearing member; or (3) accepted by a member from any customer.³

The only exemptions to the Exercise Cut-Off Times contained in Section 63 of the Practice Code are: (1) To remedy mistakes or errors made in good faith; (2) to take appropriate action as the result of a failure to reconcile an unmatched option transaction; (3) where exceptional circumstances relating to a customer's or member's

¹ Generally, the rules of the options exchanges provide that equity options may be traded up until the close of business on the last business day before expiration, which is generally the third Friday of the expiration month ("Expiration Friday"). See, e.g., CBOE Rule 11.1 and Phlx Rule 1042.

² For customers, an exercise instruction is a notice delivered to a member to exercise an option. for a clearing member of The Options Clearing Corporation ("OCC") or a market maker or floor broker on a national options exchange, an exercise instruction is a notice to OCC to exercise an option that would not be automatically exercised pursuant to OCC's exercise-by-exception procedure ("OCC Rule 805"), or not to exercise an option that would otherwise be automatically exercised pursuant to OCC Rule 805. See infra note 6. The OCC has separate rules regarding cut-off time by which exercise notices must be delivered to OCC by OCC clearing members. The proposed rule change does not in any way affect OCC rules.

³ In most cases, exercise instructions are electronically transmitted to OCC clearing members through the Clearing Management and Control System ("C/MACS").

ability to communicate exercise instructions to a member (or a member's ability to receive such exercise instructions) prior to the Exercise Cut-Off Time warrant such action; and (4) with respect to options contracts in an account maintained for another member in which only positions of customers of such other member are carried. Members are required to prepare a memorandum of every exercise instruction received from a customer stating the time when such instruction was received. In addition, in the event a member receives and acts on an exercise instruction pursuant to one of the exceptions noted above, the member must prepare a memorandum setting forth the circumstances giving rise to the exception. If the member is relying on either the first or the third exception described above, the member must promptly file a copy of the memorandum with the NASD.

Thus, it is presently a violation of Section 63 of the Practice Code for clearing members to accept exercise instructions after the Exercise Cut-Off Time, except in reliance on one of the exceptions noted above. Because exercise instructions are submitted to the clearing members, without having the audit trail pass directly through the NASD or the particular options exchange(s) trading the expiring option, it is difficult for the NASD to surveil for violations of Section 63. In fact, there have been some situations where members have either delayed making exercise decisions until after the Exercise Cut-Off Time in anticipation of the release of significant news concerning a particular underlying company or, having made exercise decisions prior to the Exercise Cut-Off Time, changed these decisions based upon such news. In one notable situation, the NASD notes that certain firms that anticipated the release of material news regarding a particular company allegedly delayed making their exercise decisions until after the Exercise Cut-Off Time, causing firms who claimed to have been disadvantaged by such conduct to commence a series of highly publicized arbitration proceedings and lawsuits.⁴

Accordingly, in order to enable the options exchanges and the NASD to determine whether options holders have made their final exercise decisions no later than the prescribed Exercise Cut-Off Time and not on the basis of market developments occurring after the Exercise Cut-Off Time, the NASD proposes to amend Section 63 of the

⁴ See, e.g., *In re Farmers Group Stock Options Litigation*, Master File No. 88-4994 (E.D.Pa.).