for the immediate previous quarter and that the access/exerciser fee for CBOT Exercisers would be zero for the duration of the joint venture. The JV Agreement terminated on December 29, 1998. As a result, CBOE dues will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous quarter, and all CBOT Exercisers will be charged CBOE dues to the same extent that other CBOE members are charged CBOE dues. Accordingly, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a calendar quarter will be charged the applicable CBOE dues for that quarter.[4]

Similarly, the CBOE technology fee will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous month. As a result, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a month will be charged the technology fee for that month.[5] CBOE began assessing dues and the technology fee to CBOT Exercisers on January 4, 1999.

Due to the termination of the JV Agreement, the CBOE membership application fees will also no longer be waived for CBOT Exercisers. Accordingly, commencing on December 29, 1998, each CBOT Exerciser membership applicant will be charged CBOE membership application fees to the same extent that other CBOE membership applicants are charged CBOE membership application fees. These membership application fees include, but are not limited to, the $2,000 fee for new membership applicants and the $100 renewal/change of status fee. These amendments to CBOE's membership application fees will be incorporated into CBOE's Membership Fee Circular.

Prior to the JV Agreement, CBOT Exerciser applicants were charged a $500 CBOT Exerciser application fee. Because CBOT Exerciser applicants will now be charged the same membership application fees as other CBOE membership applicants, the $500 CBOT Exerciser application fee will be eliminated.

The Exchange believes that it is appropriate to charge CBOT Exerciser applicants the same membership application fees as other CBOE membership applicants because CBOT Exerciser applications require the same staff resources and effort to process as applications submitted by other CBOE membership applicants. Finally, it should be noted that this rule filing is not intended to affect the fee waiver provisions that are set forth in the 1992 Agreement and Rule 3.16(c).[6]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(4)[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.[9]

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

The Exchange 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

The Exchange has neither solicited not received written comments on the proposed rule change.

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

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (e)(2) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the 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, including whether the proposed rule change is consistent with the Act. 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 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–55 and should be submitted by February 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2297 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40971; File No. SR–CBOE–98–11)

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Adjustments in Market Maker Equity

January 25, 1999.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange

[4] Amendment No. 1 states that CBOE dues are currently $625.00 per quarter, subject to a 25% discount if CBOE average daily volume on a fiscal year-to-date basis (''ADV'') is between 800,001–850,000 contracts, a 50% discount if CBOE ADV is between 850,001–875,000 contracts, a 75% discount if CBOE ADV is between 875,001–900,000 contracts, and a 100% discount if CBOE ADV exceeds 900,000 contracts. *See* note 3, *supra.*

[5] According to Amendment No. 1, the technology fee is $200.00 a month. *See* note 3, *supra.*

[6] Amendment No. 1 explains that Rule 3.16(c) and the 1992 Agreement provide for CBOE to waive all membership dues, fees, and other charges and all qualification requirements, other than those imposed by law, in order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in certain CBOE offers, distributions, and redemptions defined by the 1992 Agreement. *See* note 3, *supra.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(e)(2).

[12] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

Commission (''SEC'' or ''Commission'') a proposal to amend CBOE Rule 12.3, ''Margin Requirements'' by adopting Interpretation and Policy .06, which will allow a clearing broker to adjust the equity in the account of a market maker whose net liquidating equity is in deficit and permit the clearing broker to extend credit for opening transactions. Specifically, Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the dissemination of the last sale price of a stock after the options close at 3:02 p.m.[3] has resulted in a discrepancy between the last sale price of the stock and the closing quotes and last sale price of the overlying options series. Under these circumstances, Interpretation and Policy .06 will permit the clearing broker to recalculate the value of the options position in the market maker's account to reflect the movement in the price of the underlying stock.

On May 7, 1998, the CBOE filed Amendment No. 1 to the proposal.[4] On August 18, 1998, the CBOE filed Amendment No. 2 to the proposal.[5] In Amendment No. 2, the CBOE indicated that without the adjustment permitted under the proposal, Exchange Act Rule 15c3–1 would prohibit a clearing firm from extending credit to a market maker whose account is in deficit and would require the clearing firm to take steps to liquidate the positions in the market maker's account.[6] In addition, the CBOE represented that the Exchange would ascertain at the end of the business day following the adjustment whether any market maker whose equity was adjusted pursuant to Interpretation and Policy .06 continued to experience difficulty in maintaining positive equity in its account.[7]

Notice of the proposed rule change and Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on May 28, 1998.[8] The Commission received no comments regarding the proposal. This notice and order solicits comments on Amendment No. 2 to the proposal from interested persons and approves the proposed rule change, as amended.

II. Description of the Proposal

CBOE Rule 12.3(f)(3)(C)(3) prohibits a clearing firm from extending credit to a market maker for opening transactions when the market maker's account fails to maintain positive net liquidating equity.[9] In addition, Exchange Act Rule 15c3–1(c)(2)(x)(D) prohibits a clearing broker from extending credit to a specialist whose market maker account is in deficit and would require the clearing broker to take steps to liquidate existing positions in the market maker account.[10] The Commission has taken a no-action position with regard to the application of Exchange Act Rule 15c3–1(c)(2)(x)(D) under the circumstances described in the proposal.[11]

The CBOE proposes to add Interpretation and Policy .06 to CBOE Rule 12.3 to permit a clearing broker to adjust the equity in the account of a market maker whose net liquidating equity is in deficit and allow the clearing broker to extend credit for opening transactions. Specifically, Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the dissemination of the last sale price of a stock after the options close at 3:02 p.m. has resulted in a discrepancy between the last sale price of the stock and the closing quotes and last sale price of the overlying options series. Under these circumstances, Interpretation and Policy .06 will permit the clearing broker to recalculate the value of the options position in the market maker's account to reflect the movement in the price of the underlying stock.

According to the CBOE, the closing price for a stock may be disseminated after 3:02 p.m. when news announced near the close of trading results in heavy trading in the stock and a late trade tape. Under these circumstances, the last sale price for the stock may incorporate information that is not reflected in the closing price for the overlying options. As a result, the closing price of the underlying stock may be out of line with the closing quotes and last sale price of the overlying options series.[12]

The discrepancy between the closing prices of the underlying stock and the overlying options series may result in deficit equity in the account of an options market maker.[13] As noted above, CBOE Rule 12.3(f)(3)(C)(3) requires a clearing broker to request additional equity on any business day when a market maker does not maintain positive net liquidating equity and prohibits a clearing broker from extending additional credit to a market maker when the market maker's account is in deficit. Interpretation and Policy .06 will permit a clearing broker to adjust the market maker's equity when the late dissemination of the closing price for a stock results in a discrepancy between the closing price of the stock and the closing quotes and last sale price of the overlying options.[14] If the adjustment eliminates the deficit in the market maker's account, the clearing broker may extend credit to the market maker for opening transactions.

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[3] All time references are in Central Time.

[4] *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Yvonne Fraticelli, Division of Market Regulation (''Division''), Commission, dated May 6, 1998 (''Amendment No. 1''). Amendment No. 1 made technical revisions to the proposal, deleted an incorrect reference to Regulation X of the Board of Governors of the Federal Reserve System, and explained the circumstances under which it might be necessary for a clearing broker to adjust a market maker's account equity.

[5] *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Yvonne Fraticelli, Division, Commission, dated August 18, 1998 (''Amendment No. 2'').

[6] Subsequent to the filing of this proposal, the Division has granted the CBOE's request for a no-action position with regard to the application of SEC Rule 15c3–1(c)(2)(x)(D) under the circumstances described in the proposal. *See* Letter from Michael A. Macchiaroli, Associate Director, Division, Commission, to Richard Lewandowski, Vice President, Department of Financial and Sales Practice Compliance, Regulatory Division, CBOE, dated January 19, 1999 (''January 19 Letter''). The CBOE's request for no-action relief and the Division's response are attached as Exhibit A.

[7] *See* Amendment No. 2, *supra* note 5.

[8] *See* Securities Exchange Act Release No. 40015 (May 20, 1998), 63 FR 29274.

[9] Specifically, CBOE Rule 12.3(f)(3)(C)(3) states that on any day when a market maker does not maintain positive net liquidating equity is his or her account(s), the carrying member must request additional equity at least equal to the deficit and may not extend further credit in the account(s) until the account(s) maintains a positive net liquidating equity. If the market maker fails to meet the call for additional equity, the carrying member should promptly take steps to liquidate the positions in the account(s).

[10] Specifically, Exchange Act Rule 15c3–1(c)(2)(x)(D) prohibits a broker or dealer guaranteeing, endorsing, or carrying listed options transactions in a specialist's market maker account from extending any further credit if at any time there is a liquidating deficit in the account. Among other things, the broker or dealer also must take steps to liquidate promptly existing positions in the account.

[11] *See* January 19 Letter, *supra* note 6.

[12] In 1997, the CBOE and the other options exchanges changed the closing time for trading equity options and certain narrow-based index options from 3:10 p.m. to 3:02 p.m. *See e.g.*, Securities Exchange Act Release No. 38543 (May 14, 1997), 62 FR 28082 (May 22, 1997) (order approving File No. SR–CBOE–96–71). According to the CBOE, this pricing discrepancy rarely arose when the options markets closed at 3:10 p.m. because final stock prices generally were disseminated by the time the options markets closed, thereby allowing options market makers to adjust their quotes to reflect the last sale price of the underlying stock.

[13] According to the CBOE, this deficit equity condition may occur even though the market maker is hedged in terms of market risk.

[14] To adjust the market maker's equity, the clearing broker will recalculate the value of the options position to reflect the price movement of the underlying stock. In recalculating the value of the options position, the clearing broker will use the same methodology as that used by the Options Clearing Corporation to reprice the options assuming different prices for the underlying securities. *See* January 19 Letter, *supra* note 6.

Interpretation and Policy .06 requires the clearing broker to document any adjustment to a market maker's equity and file it with the CBOE's Department of Financial and Sales Practice Compliance (''Department''). The clearing broker should file the adjustment with the Department before the next day's opening, but in any case before the clearing broker extends credit to the market maker for opening transactions. The Department must approve any adjustment before the clearing broker may finance opening trades. All information regarding the adjustments must be retained by the clearing broker and by the CBOE. In addition, the CBOE will ascertain at the end of the business day following the adjustment whether any market maker whose equity was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulty in maintaining positive equity in his or her account.[15] If a market maker fails to maintain positive equity in its account at the end of the business day following the adjustment, the requirements of Exchange Act Rule 15c3–1(c)(2)(x)(D) and CBOE Rule 12.3(f)(3)(C)(3) will apply to the account.[16] The CBOE estimates that the pricing discrepancy described in Interpretation and Policy .06 occurs, on average, approximately once each quarter.[17]

III. Discussion

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) of the Act.[18] Specifically, the Commission finds that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[19]

CBOE Rule 12.3(f)(3)(C)(3) requires a clearing broker carrying a market maker's account to call for additional equity on any business day on which the market maker's account fails to maintain positive net liquidating equity. In addition, that rule prohibits a clearing broker from extending additional credit to a market maker whose account does not maintain positive net liquidating equity and requires the clearing broker to take steps to liquidate the market maker's account if the market maker fails to satisfy the clearing broker's call for additional equity. Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the last sale price of a stock is disseminated after the overlying options cease trading at 3:03 p.m., resulting in a discrepancy between the last sale price of a stock and the closing quotations and last sale price of the overlying options. The adjustments will permit the clearing broker to extend credit to the market maker for opening transactions.

The Commission believes that it is appropriate for the CBOE to adopt Interpretation and Policy .06. In this regard, the Commission notes that Interpretation and Policy .06 will allow a clearing broker to adjust the equity of a market maker whose account is in deficit only in the limited circumstances described in Interpretation and Policy .06, *i.e.*, when a market maker's account liquidates to a deficit because the last sale price of a stock is disseminated after the overlying options cease trading and the late dissemination of the closing stock price results in a discrepancy between the closing stock price and the closing quotations and last sale price of the overlying options. In such narrow instances, the adjusted equity should provide a more accurate picture of the market maker's financial condition than would be provided by using last sale numbers for the options in the market maker's account (at last with respect to those options). By allowing the clearing broker to extend credit for opening transactions under these limited circumstances, Interpretation and Policy .06 will permit the market maker to continue to operate with CBOE 12.3(f)(3)(C)(3) otherwise would require the clearing broker to take steps to liquidate the positions in the market maker's account unless the market maker provided additional equity.

The Commission notes that the proposal contains several safeguards that should help to ensure appropriate use of the extension of credit permitted under Interpretation and Policy .06. Specifically, Interpretation and Policy .06 requires a clearing broker to document and file with the CBOE any adjustment to a market maker's equity prior to the next day's opening, or at least before the firm may extend credit for opening transactions. Accordingly, the CBOE must approve the adjustment before a clearing broker may finance opening transactions. The clearing broker and the CBOE must retain all information regarding the adjustments. In additions, at the end of the business day following the adjustment, the CBOE will determine whether any market maker whose account was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulty in maintaining positive equity in its account.[20] If the market maker fails to maintain positive equity in its account at the end of the business day following the adjustment, the requirements of Exchange Act Rule 15c3–1(c)(2)(x)(D) and CBOE Rule 12.3(f)(3)(C)(3), which would prohibit the clearing broker from extending additional credit to the market maker and require the liquidation of positions in the market maker's account, will apply to the account.[21] These procedures should help to ensure that CBOE market makers experiencing financial difficulties are monitored closely and are not permitted to continue to obtain credit from clearing firms if their financial difficulties appear to be chronic.

Finally, the Commission notes that the adjustment permitted under Interpretation and Policy .06 should occur infrequently. In this regard, the CBOE has estimated that the pricing discrepancy described in Interpretation and Policy .06 occurs, on average, approximately once each quarter.[22] The Commission expects that should this issue arise more frequently than the average in two consecutive quarters that the CBOE will advise the Commission staff and consider whether the adjustment should be discontinued or limited.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. As discussed above, Amendment No. 2 clarifies the CBOE's reasons for adopting Interpretation and Policy .06 and indicates that the CBOE will determine at the end of the business day following an adjustment whether a market maker whose account equity was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulties in maintaining positive

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[15] *See* Amendment No. 2, *supra* note 5.

[16] Telephone conversation among Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, Richard Lewandowski, Vice President, Department of Financial and Sales Practice Compliance, Regulatory Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 20, 1999 (''January 20 Conversation'').

[17] *See* January 20 Conversation, *supra note 16.*

[18] 15 U.S.C. 78f(b).

[19] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* Amendment No., *supra* note 5.

[21] *See* January 20 Conversation, *supra* note 16.

[22] *See* January 20 Conservation, *supra* note 16.

equity in its account. The Amendment does not raise new regulatory issues. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. 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 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. SR–CBOE–98–11 and should be submitted by February 20, 1999.

V. Conclusion

It is Therefore *Ordered*, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–CBOE–98–11), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

January 19, 1999.

Mr. Richard Lewandowski,
Vice President,
Department of Financial and Sales Practice Compliance,
Regulatory Division,
The Chicago Board Options Exchange,
400 South LaSalle Street,
Chicago, Illinois 60605.

Re: Computation of Equity by Broker-Dealers Carrying Market-Maker Accounts of Listed Options Specialists

Dear Mr. Lewandowski: This is in response to your letter dated January 11, 1999, in which you request that broker-dealers, in computing equity in specialist market-maker accounts for purposes of Rule 15c3–1 of the Securities Exchange Act of 1934 (''Exchange Act'') (17 CFR 240.15c3–1), be permitted to adjust the value of options positions to reflect substantial price movements of the underlying common stock when closing price information for the common stock is reported after closing quotations for the options series are established.

Based on your letter and subsequent discussions with the staff of the Division of Market Regulation (''Division''), I understand the following facts to be pertinent to your request. A specialist in listed options on The Chicago Board Options Exchange (''CBOE'' or ''Exchange'') maintains in a market-maker account, carried by a broker-dealer, positions in listed equity options and common stock underlying those options. In certain situations, last sale information for the common stock is reported after closing quotations and last sale information for the options series overlying the common stock are established.[1] In these situations, the closing price of the common stock may not be reflected in the closing quotation information for the options series. Because of the discrepancy between the last sale price of the underlying common stock and the closing quotations of the options series, the net liquidating equity in the specialist's market-maker account may be valued at a liquidating deficit.

Pursuant to Rule 15c3–1(c)(2)(x)(D), a broker-dealer guaranteeing, endorsing, or carrying listed options transactions in a specialist market-maker account is prohibited from extending any further credit if at any time there is a liquidating deficit in the account. The broker-dealer is also required to take steps to liquidate promptly existing positions in the account and to transmit telegraphic facsimile notice of the deficit and its amount by the close of business of the following business day to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own. The broker-dealer, upon approval by the broker-dealer's Designated Examining Authority, is permitted to enter into hedging positions in the specialist's market-maker account

Rule 15c3–1(c)(2)(x)(B)(2) provides the formula for computing equity in market-maker accounts for listed option specialists. Broker-dealers carrying accounts of listed options specialists must (i) mark all securities positions long or short in the account to their respective current market values; (ii) add (deduct in the case of a debit balance) the credit balance carried in such specialist's market-maker account; and (iii) add (deduct in the case of short positions) the market value of positions long in such account.

Recalculation of the closing price would be done by the carrying broker-dealer using in the same methodology as that used by the Options Clearing Corporation to reprice options assuming different prices for the underlying securities. You believe that it is unduly harsh to use a closing price for the option which does not reflect the strong market movement of the underlying stop when there was a reporting delay in that price.

Based upon the facts set forth above, the Division will not recommend enforcement action to the Securities and Exchange Commission (''Commission'') if, for the purpose of determining whether a net liquidating deficit exists in a specialist market-maker account under Rule 15c3–(c)(2)(x)(D) a broker-dealer carrying market-maker accounts for listed options specialists adjusts the value of options positions in the specialist market-maker account, long or short, to reflect substantial price movement of the underlying common stock when the closing price of the common stock is reported after closing prices for the options series are established and a liquidating deficit results. Any broker-dealer adjusting equity in a specialist market-maker account must provide documentation to the Exchange for such adjustments before the opening of trading the next business day (or before the broker-dealer may extend credit for opening transactions). In situations where the deficit is eliminated by the adjustment and the adjustment is approved by the Exchange's Department of Financial and Sales Practice Compliance, the specialist will be permitted to continue trading.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the purposes of the securities laws.

Sincerely,

Michael A. Macchiaroli,

Associate Director.

January 11, 1999.

Mr. Michael Macchiaroli,
Associate Director, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Re: Adjustment of Closing Option Prices for Purposes of Calculating Equity in Accounts of Options Market-Makers

Dear Mr. Macchiaroli: Often, a situation arises wherein, due to heavy volume just prior to the close of trading, last sale information for transactions in a common stock will continue to be reported past the time that trading in listed options on the common stock has ceased. When this occurs, the closing price established for the options is not adjusted to reflect the actual last sale price for the stock. The closing option prices are used to calculate equity in the accounts

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] CBOE Rule 6.1 Interpretation .01 permits transactions in options on individual stocks to be effect on the Exchange until two minutes after the normal time set for the close of trading of the underlying stock on its primary exchange. See File No. SR–CBOE–96–71 approved in Securities Exchange Act Release No. 34–38543 (May 14, 1997), 62 FR 28082 (May 22, 1997). CBOE has discovered that when news of a stock underlying a CBOE option is disseminated near the close, heavy trading often results in dissemination of last sale information for the common stock well after the overlying options stop trading.

of options market-makers. If the equity in a market-maker's account calculates to a deficit in this situation, adjusting the closing option prices to reflect the underlying stock's true last sale price and recalculating the equity can alleviate a deficit situation in many instances. This can allow the market-maker to continue trading whereas in the deficit situation, further market-making activity is prohibited.

Market-makers on the Chicago Board Options Exchange are generally not self-clearing. They maintain market-maker accounts with other broker-dealer firms that specialize in clearing and carrying such accounts. If the equity in the account of an options market-maker calculates to a deficit, Rule 15c3–1(c)(2)(x)(D) of the Securities and Exchange Act of 1934 prohibits the clearing broker-dealer from extending any further credit to the market-maker account. The clearing broker-dealer must promptly liquidate existing positions in the account. Although, the clearing broker-dealer may, upon approval of its Designated Examining Authority, itself effect or allow the market-maker to effect, opening hedging transactions in the options market-maker's account. The clearing broker-dealer is also required to send telegraphic or facsimile notice of a deficit and its amount to its Designated Examining Authority and the market-maker's Designated Examining Authority, if different, by the close of business of the following business day.

Equity in an options market-maker's account is calculated pursuant to a formula found in Rule 15c3–1(c)(2)(x)(B)(2) of the Securities and Exchange Act of 1934. In calculating equity in an options market-maker's account, all securities positions are marked to their current market value. Equity is equal to the market value of all long positions, less the market value of all short positions, plus the credit (or minus the debit) balance in the account.

The Exchange requests that the Division of Market Regulation not recommend enforcement action to the Securities and Exchange Commission if broker-dealers clearing and carrying the accounts of options market-makers adjust the equity value of the market-maker's option positions to reflect a substantial move in the price of the underlying stock when the closing price of the stock is reported after closing quotations for the options are established and a liquidating deficit results. Any broker-dealer adjusting equity in a market-maker's account under these circumstances would be required to provide documentation to the Exchange's Department of Financial and Sales Practice Compliance for such adjustments before the opening of trading the next business day or before extending further credit to the market-maker for opening transactions. If the Exchange approves the adjustments and the adjustments eliminate the deficit, the market-maker will be permitted to continue trading.

The Exchange greatly appreciates the attention you and your staff have given to this matter. Please feel free to contact me should you have any questions or require further information.

Sincerely,

Richard Lewandowski.

cc:

Mary Bender—CBOE
Douglas Beck—CBOE
Timothy Thompson—CBOE

[FR Doc. 99–2298 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40975; File No. SR–NSCC–98–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

January 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 28, 1998, National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. 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 proposed rule change modifies NSCC's fee schedule with regard to its Annuities Processing Service (''APS'').

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC 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

On December 16, 1998, the Commission approved a proposed rule change that allowed NSCC to implement phase two of APS.[3] Phase two enables multiple insurance product distribution channels such as insurance agencies, broker-dealers, and other trading partners (collectively, ''distributors'') to transmit to insurance carriers information with respect to an initial annuity application and premium transfers on the sale of an annuity and subsequent annuity activity, as well as the related money settlement between the distributors and insurance carriers. In addition, insurance carriers can transmit to distributors a financial activity report (''FAR'') that provides information relating to events and transactions occurring with respect to existing annuity contracts that have been issued by the insurance carriers.

Currently, no fees are being charged to users of these new APS services. With respect to use of these services on or after January 1, 1999, NSCC will charge its members as follows. NSCC will charge members that submit or receive information relating to the initial application or premium transfer a fee of $7.50 for each submission or receipt. NSCC will charge members that submit or receive information on subsequent annuity activity a fee of $0.50 for each such transaction. NSCC will charge members that submit or receive a FAR a fee of $0.50 for each FAR transmitted or received.[4]

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 40799 (December 16, 1998), 63 FR 71175 [File No. SR–NSCC–98–07]. *See also* Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [File No. SR–NSCC–96–21] (order approving the establishment of APS and the implementation of phase one of APS). For a more detailed description of APS, refer to the foregoing releases.

[4] The text of the proposed amendments to NSCC's fee schedule is attached as an exhibit to NSCC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through NSCC.