For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10609 Filed 4–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44208; File No. SR–ISE–01–02]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Anticipatory Hedging Activity

April 20, 2001.

On January 12, 2001, the International Securities Exchange LLC (''ISE'' or ''Exchange'') field with the Securities and Exchange Commission (''Commission''), 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 relating to anticipatory hedging activity.

The proposed rule change would prohibit a member or a person associated with a member who has knowledge of all the terms and conditions concerning the imminent execution of (1) an order and a solicited order, (2) an order being facilitated, or (3) two orders being crossed, to enter, based on that knowledge, an order to buy or sell an option of the same class, shares in the underlying security, or any related instrument, before the same information is disclosed to the trading crowd.

The proposed rule change was published for comment in the **Federal Register** on February 27, 2001.[3] The Commission received no comments on the proposal.

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 [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[6] because it is designed to maintain the integrity of the ISE's market by preventing the misuse of non-public information and affording the trading crowd a fair and full opportunity to make informed trading decisions. It also conforms to similar rules at other options exchanges relating to anticipatory hedging.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–ISE–01–02) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10608 Filed 4–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44214; File No. SR–NASD–2001–21)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Amendments to the Fee Structure of the Code of Arbitration Procedure

April 24, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder, [2] notice is hereby given that on March 23, 2001, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') 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 Dispute Resolution. On April 20, 2001, the NASD filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self–Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Dispute Resolution is proposing to amend the Code of Arbitration of Procedure (''Code'') to clarify or simplify several fee-related provisions of the Code. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10306. Settlements

[All settlements upon any matter shall be at the election of the parties.]

(a) *Parties to an arbitration may agree to settle their dispute at any time.*

(b) *The terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution. However, the parties will remain responsible for payment of fees incurred, including fees for previously scheduled hearing sessions. If the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.*

* * * * *

10319. Adjournments

(a) The arbitrator(s) may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitration.

(b) [Unless waived by the Director of Arbitration upon a showing of financial need,] *If an adjournment requested by a party is granted after arbitrators have been appointed, the* [a] party requesting the adjournment [after arbitrators have been appointed shall deposit with the request for an adjournment,] *shall pay* a fee equal to the initial deposit of hearing session fees for the first adjournment and twice the initial deposit of hearing session fees, not to exceed [$1,000] *1,500* for a second or subsequent adjournment requested by that party. [If the adjournment is granted, the arbitrator(s) may direct the return of the adjournment fee.] *The arbitrators may waive these fees in their discretion. If more than one party requests the adjournment, the arbitrators shall allocate the fees among the requesting parties.*

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrator(s) may dismiss the arbitration without prejudice to the Claimant filing a new arbitration.

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[8] 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. 43983 (February 20, 2001), 66 FR 12576 (February 27, 2001).

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

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See, e.g.,* American Stock Exchange Rule 950(d), Commentary .04., Chicago Board Options Exchange Rule 6.9(e).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Laura Gansler, Counsel, NASD Dispute Resolution, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 19, 2001 (''Amendment No. 1''). In Amendment No. 1, the NASD changed the first sentence of NASD Rule 10306 to indicate that the terms of a settlement agreement do not need to be disclosed to NASD Dispute Resolution, rather than the NASD as originally proposed.

10328. Amendments

(a) After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration with sufficient additional copies of each arbitrator. The party filing a new or different pleading shall serve on all other parties, a copy of the new or different pleading in accordance with the provisions set forth in Rule 10314(b). The other parties may, within ten (10) business days from the receipt of service, file a response with all other parties and the Director of Arbitration in accordance with Rule 10314(b).

(b) *If a new or amended pleading increases the amount in dispute, all filing fees, surcharges, and process fees required under Rules 10332 and 10333 will be recalculated based on the amended amount in dispute.*

(c) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

* * * * *

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 Dispute Resolution 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. NASD Dispute Resolution 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

NASD Dispute Resolution has identified several provisions of the Code relating to the assessment or payment of fees that have generated confusion for the staff and parties, or otherwise require simplification or clarification. The general purpose of the proposed rule change is to clarify or simplify these provisions. The proposed amendment to Rule 10319 would also harmonize the rule with recent changes to other parts of the Code.

a. *Settlement Default for the Allocation of Forum Fees.* Rule 10306 of the Code provides that parties to arbitrations may settle their dispute at any time. The terms of any settlement agreement need not be disclosed to the NASD Dispute Resolution.[4] However, settling parties remain responsible for payment of outstanding fees, including fees for previously held hearing sessions. NASD Dispute Resolution encourages parties to agree on how any outstanding fees shall be divided among the parties as part of the settlement agreement. Unfortunately, this often does not happen.

When the parties fail to allocate fees in settlements, the staff must present this issue to the arbitrator(s) for resolution. This is a time-consuming process that is an unnecessary burden to the arbitrator(s) and can result in surprises to the parties. To eliminate any ambiguity in this area, the proposed rule change would amend Rule 10306 to provide that if settling parties fail to agree on the allocation of outstanding fees, the fees will be divided equally among all parties by default.

b. *Adjournment Fees.* The proposed rule change would modify the timing of the payment of adjournment fees. Rule 10319 of the Code currently requires parties requesting adjournment of an arbitration hearing to deposit a fee at the time the adjournment is requested. If the adjournment is not granted, the deposit is returned; if it is granted, the arbitrators may return the deposit in their direction.

The proposed rule change would minimize the burden this rule places on parties, arbitrators, and staff by providing that payment of the adjournment fee is required only if an adjournment is granted, rather than requiring a deposit of fees when a request for adjournment is made. This would eliminate the need for parties to deposit funds that may be returned to them, as well as the need for the staff to track the deposits and issue refunds if necessary. It would also help to expedite the resolution of adjournment requests.

The proposed rule change would also address a technical imperfection in the current adjournment fee rule. The current rule provides that, for initial adjournment requests, the fee is equal to the amount of the initial hearing session fee; for second or subsequent adjournment requests, the amount is twice the initial hearing session fee, but not more than $1,000. The intent of the portion of the current rule is to discourage repeat adjournments, by having second and subsequent adjournments cost substantially more than the first adjournment. When the NASD's new fee schedule went into effect in March 1999, hearing session fees were generally increased.[5] For several claim categories, the hearing session fee now exceeds $1,000, meaning that the rule as presently written can result in a *lower* fee for second and subsequent adjournments. To address this anomaly, the proposed rule change would increase the current $1,000 cap to $1,500.

c. *Recalculating Fees When Amount in Dispute is Amended.* Finally, the proposed rule change would amend Rule 10328 of the Code, governing amendments to pleadings, to clarify that when a claim is amended to increase the amount in dispute, NASD Dispute Resolution will recalculate filing fees, hearing session deposits, surcharges, and process fees based on the new, increased claim. This will present parties from avoiding higher filing fees and surcharges by initially claiming an artificially low amount in dispute in their statement of claim.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Dispute Resolution believes that the proposed rule change will protect investors and the general public by simplifying and clarifying various fee-related provisions of the Code.

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

NASD Dispute Resolution 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

Written comments were neither solicited nor received.

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)

[4] *See* Amendment No. 1, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 41056 (February 16, 1999), 64 FR 10041 (March 1, 1999) (File No. SR–NASD–97–79).

[6] 15 U.S.C. 78*o*A(b)(6).

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 Commission 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, 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 20549–0609. 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 NASD. All submissions should refer to SR–NASD–2001–21 in the caption above and should be submitted by May 21, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–10641 Filed 4–27–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44212; File No. SR–OCC–2001–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Clearing Security Futures

April 23, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 21, 2001, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on April 16, 2001, amended the proposed rule change 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 parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend OCC's By-Laws to provide that OCC may clear transactions in security futures effected on any national securities exchange or association registered under section 6(a) or 15A(a) of the Act, as amended, or any ''designated contract market'' (as that term is used in the Commodity Exchange Act (''CEA'') that is registered as a national securities exchange under section 6(g) of the Act.

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 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 these statements.[2]

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

The Commodity Futures Modernization Act (''CFMA''), which became law on December 21, 2000, eliminated the preexisting ban on trading in future contracts on individual securities and narrow-based stock indices. Such ''security futures'' will be permitted to be traded on a principal to principal basis between ''eligible contract participants'' on August 21, 2001, and by other classes of customers on December 21, 2001. The purpose of this proposed rule change is to identify the kinds of markets from which OCC will accept transactions in security futures for clearance.

OCC anticipates that some or all of OCC's five participant exchanges will trade security futures, either on the participant exchange itself or on an affiliated futures exchange. OCC expects that it will therefore enter into the business of clearing security futures. However, the types of entities that can provide a marketplace for security futures include markets in addition to the options exchanges that are OCC's participant exchanges. These include other national securities exchanges and national securities associations as well as any ''board of trade'' that has been designated as a ''contract market'' under the CEA. An SEC-regulated market that wishes to trade security futures is required to obtain a limited-purpose registration as a marketplace under the CEA through a notice filing with the Commodity Futures Trading Commission (''CFTC''). A CFTC-regulated market trading security futures is required to obtain a limited-purpose registration with the Commission as a national securities exchange under a similar procedure. Each market will be regulated primarily by the agency (*i.e.,* the Commission or the CFTC) with which it is fully registered.

OCC believes that it is in a uniquely favorable position to clear security futures for any of these types of markets. OCC's role as the common clearinghouse for equity options offers opportunities for margin offsets and other efficiencies that would not be available if positions in security futures were carried with other clearinghouses. OCC's settlement interface with the National Securities Clearing Corporation gives OCC the ready ability to effect delivery of underlying stocks with respect to physically settled security futures. Because of OCC's experience and expertise in adjusting equity option contracts to compensate for various corporate actions, OCC is uniquely prepared to perform the same necessary function for security futures. Finally, OCC is legally able to clear security futures transactions originating on any type of market whereas a futures clearinghouse cannot clear security futures transactions originating on national securities exchanges that are registered with the Commission pursuant to section 6(a) of the Act without registering as a securities clearing agency.

Clearing members have conveyed to OCC their desire to consolidate clearance, settlement, and collateralization of similar or hedgeable products. This need grows in urgency with the sale of the collateral necessary to support the growing security derivatives markets.

[7] 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 prepared by OCC.