

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*

The purpose of this rule proposal is to establish procedures and rules regarding the need to make prior arrangements to borrow stock, warrants, or other securities that trade subject to Chapter 30 of the Exchange's rules, or to otherwise ensure availability of the subject securities before engaging in short sales. The change involves the adoption of Interpretation .04 to Rule 30.20, "Long" and "Short" Sales. Interpretation .04 is similar to rules of other securities exchanges<sup>2</sup> and would require that member organizations who effect short sales for their own account or for the accounts of customers to make an affirmative determination that delivery of the subject securities can be made on settlement date. The purpose for this rule proposal is to ensure that borrowings and short sales do not outpace the supply of deliverable stock, thus, leading to potential systematic problems. In the case of the short selling of members' proprietary positions, the proposal is intended to address unnecessary speculation in connection with the short selling of broker-dealers' proprietary positions caused by the members' ability to go short without securities to cover the short position. The proposed amendment, as with the rules of the other securities exchanges, would not apply to bona fide market making transactions by a member in securities in which it is a registered market-maker. This market-maker exemption recognizes that many short selling transactions are engaged in by market-makers to enhance market liquidity, which is beneficial to the market and thus should not be unduly restricted.

Interpretation .04 also describes the type of "affirmative determinations" that must be obtained by the member or person associated with the member to ensure that the securities will be available. The member or person associated with the member is obligated to keep a written record of each "affirmative determination." If a customer assures delivery, the written

affirmative determination must record the present location of the securities in question, whether they are in good deliverable form and the customer's ability to deliver them to the member within three business days.<sup>3</sup> If the member or person associated with a member locates the stock, the affirmative determination must record the identity of the individual and firm contacted who offer assurance that the shares would be delivered or that were available for borrowing by settlement date and the number of shares needed to cover the short sale. The requirement to keep a written record of each affirmative determination serves two purposes: first, the written record allows the Exchange to audit compliance with the Rule, and second, the written record provides the member firm with evidence to pursue its own resolution in the event of a default.

By ensuring that securities are available for borrowing and for delivery, the Exchange believes the rule proposal will help to prevent situations where there is a shortage of deliverable stock as well as failures to deliver. By facilitating short sales and decreasing the likelihood of a fail, the Exchange believes the rule proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) in particular by providing rules that facilitate transactions in securities, remove impediments to a free and open market and protect investors and the public interest.

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

The Exchange does not believe the proposed rule change will impose any inappropriate 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 nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) was provided to the Commission for its review at least five business days prior to the filing date; and (4) does not

become operative for 30 days from October 31, 1995, the rule change proposal has become effective pursuant to Section 19 (b)(3)(A) of the Act and Rule 19b-4(e)(6) thereunder. In particular, the Commission believes the proposal qualifies as a "noncontroversial filing" in that the proposed amendments do not significantly affect the protection of investors or the public interest and do not impose any significant burden on competition. 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. 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 CBOE. All submissions should refer to File No. SR-CBOE-95-59 and should be submitted by December 26, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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<sup>2</sup> See e.g., New York Stock Exchange ("NYSE") Rule 440C (and NYSE Information Memo 91-10, *Deliveries Against Short Sales*, (Oct. 18, 1991)) and Interpretation of the Board of Governors of the National Association of Securities Dealers, Inc. ("NASD"), *Prompt Receipt and Delivery of Securities*, under Article III, Section 1 of the NASD Rules of Fair Practice.

<sup>3</sup> See Amendment No. 1. This reduction from five days to three days complies with the normal settlement schedule for equity securities.

<sup>4</sup> 17 CFR 200.30-3(a)(12) (1994).