

The proposal was published for comment in the **Federal Register** in Securities Exchange Act Release No. 34987 (November 18, 1994), 59 FR 60858 (November 28, 1994). No comments were received on the proposed rule change.

CBOE Rule 17.3 establishes an expedited process under which the subject of an Exchange investigation may seek to resolve a disciplinary matter through a letter of consent with the Exchange prior to the issuance of a statement of charges against the subject.⁴ Under CBOE Rule 17.3, a letter of consent must contain a description of the facts, violation, and sanction, and must be agreed upon by the Exchange staff, the subject of the investigation, and the BCC. If the Exchange staff and the subject are unable to agree upon a letter of consent or if they agree upon a letter of consent and the letter is rejected by the BCC, the matter proceeds as if no letter of consent had been submitted to the BCC (i.e., the BCC may decide to authorize the issuance of a statement of charges against the subject; the subject is then entitled to submit settlement offers to the BCC pursuant to CBOE Rule 17.8 during the 120-day settlement period).

The CBOE proposes to amend CBOE Rule 17.3 to (1) require that any subject who desires to resolve a disciplinary matter through the expedited proceedings using a letter of consent to submit a written notice of this fact to the Exchange staff within 15 days from the date of service of a notification letter; and (2) permit either the Exchange staff or the subject of an investigation to declare an end to the negotiations regarding a letter of consent at any point in the negotiations by providing written

BCC concerning why no disciplinary action should be taken. Under CBOE Rule 17.3, the subject of a report written pursuant to CBOE Rule 17.2 may seek to dispose of the matter through a letter of consent prior to the issue of a statement of charges.

⁴ Under CBOE Rule 17.4(b), "Initiation of Charges," when it appears to the BCC from the report of the exchange staff that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the BCC directs the Exchange staff to prepare a statement of charges against the person or organization alleged to have committed a violation (the "respondent") specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Act, as amended, and the rules and regulations promulgated thereunder, constitutional provisions, by-laws, rules, interpretations or resolutions of which such acts are in violation. Under CBOE Rule 17.8, at any time during the 120-day period following the date of service of a statement of charges, a respondent may submit a written offer of settlement to the BCC. The offer of settlement must contain a proposed stipulation of facts and consent to a specified sanction.

notice to the other party.⁵ Thereafter, the subject will have 15 days to submit a notification response pursuant to CBOE Rule 17.2(d) and the Exchange staff will then be permitted to bring the matter to the BCC. The CBOE states that these new procedures will establish a start and end date for expedited proceedings so that the number of days a subject spends in the expedited process can be calculated and deducted accordingly from the 120-day settlement period, as proposed under CBOE Rule 17.8.

The proposed amendments to CBOE Rule 17.8, Interpretation and Policy .01 would reduce the time period during which settlement offers may be submitted to the BCC by a subject who seeks to resolve a disciplinary matter through expedited proceedings, is unable to reach an agreement with Exchange staff, and consumes over 30 days in the expedited proceedings. Specifically, under the proposal, the number of days in excess of 30 days that a subject spends in the expedited proceeding will be deducted from the 120-day settlement period applicable to the subject under CBOE Rule 17.8. Regardless of the amount of time spent in unsuccessful negotiations, the respondent will have no less than 14 days to submit a settlement offer to the BCC pursuant to CBOE Rule 17.8(a).

The mechanism for limiting settlement periods will apply only to a subject who attempts to resolve a disciplinary matter through expedited proceedings and is unable to reach an agreement with CBOE staff upon a letter of consent; it will not apply to a subject who attempts to resolve a disciplinary matter through expedited proceedings and who reaches an agreement with CBOE staff upon a letter of consent but finds that the agreed-upon letter of consent is not accepted by the BCC. In addition, under the proposal, the number of days between the time that the expedited process is deemed to end and the time that a subject is served with a statement of charges will not be deducted from the 120-day settlement period applicable to the subject.

Finally, the CBOE proposes to make certain editorial changes to clarify CBOE Rules 17.3 and 17.8 without affecting their substance.

The CBOE believes that the proposal will enhance the efficiency and

⁵ The CBOE states that it will terminate the negotiations for a letter of consent if, among other things, it appears to the Exchange that the subject is not negotiating in good faith. Telephone conversation between Arthur Reinstein, Attorney, CBOE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division of Market Regulation, Commission, on February 8, 1995.

effectiveness of the Exchange's disciplinary process. Specifically, the Exchange believes that the proposed changes will minimize opportunities for delay and thereby help to preserve evidence and the memories of witnesses.

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, the requirements of Section 6(b)(5)⁶ that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. In addition, the Commission finds that the Exchange's proposal is consistent with the requirement of Section 6(b)(1) of the Act that an exchange have the capacity to enforce compliance by its members with the Act and the rules and regulations thereunder and the rules of the exchange. The Commission also believes that the proposal is consistent with Section 6(b)(7) of the Act because it provides a fair procedure for disciplining members.

The Commission believes that the proposal strikes a reasonable balance between the Exchange's need to provide prompt, effective and meaningful discipline for violations of Exchange rules and the federal securities laws and the need to ensure fair procedures for the subjects of Exchange investigations to contest CBOE disciplinary proceedings. By streamlining the expedited proceedings established in CBOE Rule 17.3 and limiting the time allowed for the submission of settlement offers under CBOE Rule 17.8, the Commission believes that the proposal should minimize opportunities for delay, thereby helping to preserve evidence and the availability of witnesses. This, in turn, should enhance the quality, consistency, and fairness of the Exchange's disciplinary proceedings and enable the CBOE to better enforce compliance by its members with the Exchange's rules and the federal securities laws.

The CBOE states that the Exchange's current rules allow the subject of an Exchange investigation who unsuccessfully attempts to resolve a disciplinary matter through expedited proceedings to take advantage of the entire 120-day settlement period provided under CBOE Rule 17.8, so that a respondent may utilize the expedited process to circumvent the 120-day settlement period and delay the resolution of a case. Accordingly, the

⁶ 15 U.S.C. 78f(b)(5) (1988).