It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the Proposal be, and it hereby is, approved.

By the Commission.

SHIRLEY E. HOLLIS,
Assistant Secretary.

[FR Doc. 78-28223 Filed 10-5-78; 8:45 am]

[8010-01]

[(SR-NYSE-78-20) Rel. No. 15202]

NEW YORK STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

SEPTEMBER 29, 1978.

On April 23, 1978, the New York Stock Exchange, Inc. ("NYSE") 11 Wall Street, New York, N.Y. 10005, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and rule 19b-4 thereunder, copies of a proposed rule change (the "Proposal") to amend NYSE rule 345.15 to (a) allow registered representatives whose activities are limited solely to the solicitation of the sale or purchase of investment company securities and variable contracts, real estate securities, and direct participation programs to meet the NYSE's qualification standards by fulfilling specialized training and examination requirements either of the NYSE, or other self-regulatory organizations whose requirements are acceptable to the NYSE, and (b) to enable the NYSE to create specialized training and examination requirements for registered representative candidates engaged in limited activities other than those enumerated above. Notice of the Proposal together with its terms of substance was given by publication of a Commission release (Securities Exchange Act Release No. 14689, April 20, 1978) and by publication in the FEDERAL REGISTER (43 FR 19089, May 3, 1978).

On July 24, 1978, the NYSE submitted an amendment (the "Amendment") to the Proposal. The Amendment deleted paragraph 345.15(3) of the Proposal. That paragraph was the portion of the Proposal which would have enabled the NYSE to create specialized training and examination requirements for registered representative candidates engaged in limited activities other than the solicitation of the sale or purchase of investment company securities and variable contracts, real estate securities, and direct participation programs.

Notice of the Proposal, as amended (the "Amended Proposal") together with its terms of substance was given by publication of a Commission release (Securities Exchange Act Release No. 15072, August 16, 1978) and by publication in the FEDERAL REGISTER (43 FR 37506, August 23, 1978). All written statements with respect to the Proposal or the Amended Proposal which were filed with the Commission and all written communications relating to the Proposal or the Amended Proposal between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the Amended Proposal 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 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

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

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-28224 Filed 10-5-78; 8:45 am]

[8010-01]

[Rel. No. 34-15194]

FAIR TREATMENT OF CUSTOMER ACCOUNTS

Notice to Broker Dealers

The Securities and Exchange Commission today expressed concern about certain practices engaged in by broker-dealers. During recent months the Commission has received investor complaints regarding:

(a) Issuance to customers of checks drawn on distant banks, a practice referred to as "remote checking";

(b) Retention of interest and dividend payments rather than disbursing such payments to customers promptly upon receipt, without affording customers adequate prior notice and a reasonable opportunity to elect either immediate or deferred payment;

(c) Imposition of increased commission rates without adequate prior notice;

(d) Imposition of custodial fees on "inactive" customer accounts without adequate prior notice; and

(e) Failure to transfer customer accounts promptly to another broker-dealer in response to customer requests.

REMOTE CHECKING

Many investors have complained that they are being deprived of the prompt use of their funds by a device currently being used by some broker-dealers. That practice, commonly referred to as "remote checking," involves the issuance of checks drawn on banks located far away from customers in order to delay clearance of those checks and thereby to prolong a broker-dealer's use of its customers' funds. For example, some brokerage firms have implemented a policy of paying customers located east of the Mississippi River with checks drawn on west coast banks and paying customers located west of the Mississippi with checks drawn on east coast banks. In fact, certain broker-dealers have acknowledged that they have engaged in this practice specifically to prolong the firms' use of customers' funds.

The selection of a distant bank for the purpose of prolonging a broker-dealer's use of customer funds unfairly deprives customers of their immediate use of funds, is inconsistent with a broker-dealer's obligation to deal fairly with its customers [1] and is inconsistent with just and equitable principles of trade.[2] Such a purpose may be inferred from the circumstances surrounding the selection of a distant bank and is particularly evident in cases where a broker-dealer arranges its use of two or more disbursing banks with a view to paying customers in a particular region from a bank in a distant location.[3]

RETENTION OF INTEREST AND DIVIDEND PAYMENTS

It has been reported to the Commission that customers of several broker-dealers have experienced prolonged delays in receiving dividend and interest payments on securities held for them by broker-dealers. In particular, it appears that some broker-dealers have recently instituted the practice

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[1] See, e.g., *Opper* v. *Hancock Securities Corporation*, 250 F. Supp. 668 (S.D.N.Y.), *aff'd* 367 F. 2d 157 (2d Cir. 1966); *Arleen W. Hughes*, 27 S.E.C. 629 (1948), *aff'd sub nom. Hughes* v. *Securities and Exchange Comm'n*, 174 F 2d 969 (D.C. Cir. 1949); *Charles Hughes & Co., Inc.*, 13 S.E.C. 676, *aff'd sub nom. Charles Hughes & Co., Inc.* v. *Securities and Exchange Comm'n*, 139 F. 2d 434 (2d Cir. 1943), *cert. denied*, 321 U.S. 786 (1944); *Duker & Duker*, 6 S.E.C. 386 (1939).

[2] See, e.g., art. III, sec. 1 of the National Association of Securities Dealers, Inc. bylaws, NASD Manual (CCH) par. 2151; art. XIV, sec. 6 of the New York Stock Exchange constitution, 2 New York Stock Exchange, Inc. Guide (CCH) par. 1656.

[3] The Commission recognizes, however, that it may be a desirable business practice for broker-dealers to limit the number of banks used for disbursing funds to customers, or indeed to use only a single bank for that purpose, so long as customers are not deprived of reasonably prompt access to their funds. As a result, some brokerage firm customers will be paid with checks drawn on out-of-State banks.

of disbursing dividend and interest payments monthly rather than promptly upon receipt of the funds, and have done so without notifying their customers in advance or offering them the alternative of immediate payment. While the Commission recognizes that some customers, if adequately informed, may decide to receive payments on a monthly basis, it believes that dividend and interest payments should not be deferred unless the customer has been so informed sufficiently in advance and has been given a reasonable opportunity to elect either immediate or deferred payment. Indeed, the imposition of a system of deferred payments without informed and timely notice is inconsistent with a broker-dealer's obligation to deal fairly with its customers and is inconsistent with just and equitable principles of trade.

IMPOSITION OF INCREASED COMMISSION RATES WITHOUT PRIOR NOTICE

One of the most common investor complaints since the abolition of fixed commission rates has been that broker-dealers raise their commission rates without adequate prior notice. In some egregious cases, investors have been charged commissions exceeding those quoted at the time they placed their orders. That practice is inconsistent with a broker-dealer's obligation to deal fairly with its customers and is inconsistent with its responsibilities under the Federal securities laws. In other cases, customers have placed orders with broker-dealers with which they have recently done business and have not been notified of commission rate increases until the transactions were confirmed. In those situations, the customer's reasonable expectations with respect to the commission rates to be charged based on his prior dealings with the broker-dealer have not been fulfilled. The imposition of an increased rate in that fashion is inappropriate and, the Commission believes, is inconsistent with a broker-dealer's duty to deal fairly with its customers and inconsistent with just and equitable principles of trade.

IMPOSITION OF CUSTODIAL FEES ON CUSTOMER ACCOUNTS WITHOUT PRIOR NOTICE

It has also been reported to the Commission that a number of broker-dealers have recently imposed charges for custodial services on inactive accounts without giving adequate advance notice to enable customers to consider closing or transferring their accounts. The Commission believes that this practice is also inconsistent with a broker-dealer's obligation to deal fairly with its customers and inconsistent with just and equitable principles of trade.

DELAY IN TRANSFERRING ACCOUNTS

Finally, a number of investors have complained that, when they attempt to transfer their accounts from one broker-dealer to another, the broker-dealer who has the account does not transfer it promptly. Those investors have encountered unusual delays, frequently accompanied by attempts to persuade them to allow their accounts to remain with the first broker-dealer. During such delays, customers may experience difficulty in liquidating securities positions held in those accounts unless the transactions are effected through the broker-dealers retaining the accounts.

The Commission recognizes that unusual circumstances may necessitate some delay in transferring a customer's account. Where such circumstances do exist, they should, of course, always be explained to the customer. Where unusual circumstances are not present, however, such delays are improper and are inconsistent with a broker-dealer's obligation to deal fairly with its customers and inconsistent with just and equitable principles of trade.

* * * * *

The Commission is particularly disturbed to discover that many of the practices described above appear not to be isolated occurrences, but instead to reflect established policies and practices of several of the Nation's leading broker-dealers. The Commission believes that action to correct these abuses is overdue and should be undertaken promptly by broker-dealers and self-regulatory organizations. In addition to violating standards of fair dealing, and the rules of various self-regulatory organizations requiring members to refrain from conduct that is inconsistent with just and equitable principles of trade, some instances of the practices described above appear to violate the antifraud provisions of the Federal securities laws. Customers of broker-dealers who believe they have been victims of these practices should write to the Office of Consumers Affairs, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Brokers and dealers should be fully aware that the Commission will take prompt enforcement action against individual firms and persons if such action is warranted.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

SEPTEMBER 28, 1978.

[FR Doc. 78-28225 Filed 10-5-78; 8:45 am]

[8010-01]

[Release No. 34-15200; File No. SR-CBOE-78-27]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on September 11, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

PROCEDURE FOR ARBITRATION PROCEEDINGS

Rule 18.2(a)-(f) (no change).

INTERPRETATIONS AND POLICIES

.01 (No change.)

.02 The Submission Agreements, Statement of Claim, Answer and related counter claim or third party claim shall be forwarded by the Secretary to the Arbitration Committee which shall determine to accept or reject such filings for arbitration. If jurisdiction is not so declined, the Arbitration Committee shall assign the matter to a panel of arbitrators selected in accordance with rule 18.3.

PURPOSE OF PROPOSED RULE CHANGE

The proposed interpretation to rule 18.2 would allow for the Arbitration Committee to continue its policy of reserving discretion to deny jurisdiction over a proceeding submitted to them in the event any such submission would not be a proper matter to come before the committee. As a result of making recent amendments to this chapter, this policy of the Arbitration Committee was inadvertently omitted.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

The basis under the Act for the proposed interpretation is section 6(b)(5) in that the exchange believes the proposed interpretation will enhance its ability to protect investors and the public interest and provide a fair procedure for the hearing of arbitration matters between members and the public.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

No comments were solicited or received on the proposed rule change.