

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-24, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section § 230.135b is revised to read as follows:

§ 230.135b Materials not deemed an offer to sell or offer to buy nor a prospectus.

Materials meeting the requirements of § 240.9b-1 of this chapter shall not be deemed an offer to sell or offer to buy a security for purposes solely of Section 5²⁷ of the Act, nor shall such materials be deemed a prospectus for purposes of Sections 2(a)(10)²⁸ and 12(a)(2)²⁹ of the Act.

By the Commission.

Dated: June 25, 1998.

BILLING CODE 8010-01-P

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[Note: This Appendix A to the preamble will not appear in the Code of Federal Regulations]

Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendment to Rule 135b under the Securities Act, as set forth in Securities Act Release No. 33-7550, would not, if adopted, impose additional disclosure or delivery requirements or otherwise alter current requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

The amendment proposed in Securities Act Release No. 33-7550 is intended to codify a long standing interpretive position by clarifying that an Options Disclosure Document complying with the requirements of Exchange Act Rule 9b-1 is not subject to liability under Section 12(a)(2) of the Securities Act. No new disclosure or delivery obligations are proposed, nor are old methods of disclosure or delivery being terminated. Because the proposed amendment is consistent with the current interpretive position, no new liability would be imposed and the current liability system would not be altered. Since no changes to substantive disclosure or delivery requirements are being proposed, the proposal will not have a significant economic impact on businesses, large or small.

Economic benefits resulting from the proposed amendment are anticipated. In particular, the proposed amendment would

eliminate uncertainty over the applicability of Section 12(a)(2) liability to an Options Disclosure Document.

Dated: June 24, 1998.

Arthur Levitt,

Chairman.

[FR Doc. 98-17438 Filed 6-30-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-40129, File No. S7-18-98]

RIN 3235-AH30

Amendment to Rule 9b-1 Under the Securities Exchange Act Relating to the Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing an amendment to Rule 9b-1 ("Rule") that would refine certain language of the Rule so that it more clearly reflects the regulatory standards it was designed to establish. The amendment is intended to strengthen Rule 9b-1 while continuing to ensure a regulatory scheme that fosters investors' understanding of the characteristics and risks of standardized options.

DATES: Comments should be submitted by July 31, 1998.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, Mail Stop 6-9, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following E-Mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-18-98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying at the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted at the Commission's Internet web site (<http://www.sec.gov>).

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposal, contact: Michael Walinskas, Deputy Associate Director, at (202) 942-0090 or Kevin Ehrlich, Attorney, at (202) 942-0778.

SUPPLEMENTARY INFORMATION:

I. Introduction

In general, Rule 9b-1:¹ (i) dictates when a self-regulatory organization is required to file an options disclosure document ("ODD") with the Commission; (ii) itemizes the information required to be contained in the ODD; (iii) specifies the Commission's process of reviewing a preliminary ODD; and (iv) establishes the obligations of broker-dealers to furnish the ODD prior to approving a customer's account for trading in options. In light of the evolving nature of the standardized options² markets, the Commission is soliciting comments on a proposal to amend Rule 9b-1 to ensure that the requirements of the Rule continue to reflect the underlying objective of adequate disclosure regarding standardized options.

II. Background

Rule 9b-1 provides that an options disclosure document containing the information specified in paragraph (c) of the Rule must be filed with the Commission by an options market³ at least 60 days prior to the date definitive copies of the document are furnished to customers. Paragraph (c) of the Rule currently specifies that, with respect to the options classes covered by the document, the document must contain, among other things, a discussion of the mechanics of buying, writing, and exercising the options; the risks of trading the options; the market for the option; and a brief reference to the transaction costs, margin requirements, and tax consequences of options trading. Paragraph (d) of the Rule further provides that no broker or dealer shall accept an options order from a customer, or approve the customer's account for the trading of options, "unless the broker or dealer furnishes or has furnished to the customer the options disclosure document."

The Commission adopted the Rule on September 16, 1982, in an effort to foster better investor understanding of standardized options trading and to reduce the costs of issuer compliance

¹ 17 CFR 240.9b-1.

² Paragraph (a)(4) of the Rule defines standardized options to mean "options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate."

³ Paragraph (a)(1) of the Rule defines an options market to mean "a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded."

²⁷ 15 U.S.C. 77e.

²⁸ 15 U.S.C. 77b(10).

²⁹ 15 U.S.C. 77l(a)(2).

with the registration requirements of the Securities Act of 1933 ("Securities Act").⁴ Prior to the adoption of the Rule, it was necessary for an options issuer to file a registration statement containing detailed information about the issuer of the options and the mechanics of options trading, in order to meet the registration requirements of the Securities Act. These registration requirements, however, made the prospectus "lengthy and complicated" and did not meet the needs of financially unsophisticated options investors.⁵ Accordingly, the Commission proposed that a disclosure document be developed which would contain information concerning the risks and uses of options trading and present the information in a manner easily understandable by investors lacking a technical, financial background. With the adoption of Rule 9b-1, the Commission established a new disclosure procedure specifically geared to meeting the information needs of investors in standardized options.⁶

In 1982, following the adoption of Rule 9b-1, an options disclosure document was prepared jointly by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Options Clearing Corporation ("OCC"). The initial disclosure document consisted of a single booklet generally describing the risks and uses of exchange-listed options on individual equity securities. Since that time, several revised disclosure booklets have been published describing, among other things, the risks and uses of listed options on stock indexes, debt instruments, and foreign currencies. Currently, the ODD utilized by the U.S. options exchanges is entitled "Characteristics and Risks of Standardized Options."⁷

III. Discussion

The Commission is proposing several changes to Rule 9b-1 to better reflect the desired disclosure requirements regarding standardized options. The changes are minor or technical and do not alter the basic purpose of the Rule, to ensure the dissemination of essential options information to unsophisticated investors in a manner they can easily understand. Moreover, the changes should help to ensure that the Rule addresses the evolving nature of the standardized options markets. Accordingly, the Commission believes that the proposed amendments are necessary or appropriate in the public interest. The following is a discussion of the proposed changes.

In paragraph (a)(3) of the Rule, the definition of an "options disclosure document" will be amended in order to explicitly state that amendments and supplements to the ODD are included as part of the ODD. New financial products have been introduced into the standardized options marketplace recently, such as FLEX Equity options⁸ and LEAPS.⁹ In order to reduce printing costs, descriptions of these and similar products are often initially incorporated into the ODD through an ODD supplement and delivered to the customer along with the bound ODD. (This practice conforms to the Commission's interpretation of ODD supplement delivery obligations under the current rule.) The proposed amendment removes a potential ambiguity regarding whether such supplements are required to be delivered to customers and should be deemed part of the ODD.

In addition, a definition of "definitive options disclosure document" is being proposed in paragraph (a)(3) of the Rule so that Rules 134a and 135b under the Securities Act accurately reference Rule 9b-1.¹⁰ This definition will be

referenced in paragraphs (d)(1) and (d)(2) of the Rule. In this manner, the Commission believes that investor confusion will be lessened.

The amendment will also make several technical clarifying changes to the Rule. For example, in paragraph (b)(2)(i), the word "options" will be inserted before the phrase "disclosure document." Similarly, in paragraph (b)(2)(ii), the phrase "options disclosure document" will replace the phrase "such material," and the phrase "options classes covered by the document" will replace the more general language "the subject standardized options contracts." In each of these instances, the Commission believes that the new language eliminates potential ambiguity.

The proposed amendments to paragraphs (c)(2) and (c)(3) of the Rule, which currently require that the ODD contain information regarding, respectively, the "mechanics of buying, writing and exercising options, including settlement procedures" and "the risks of trading options" will be changed to better reflect the type of information that appropriately is and should be included in the ODD. Specifically, paragraph (c)(2) will require a discussion of the "mechanics of exercising" options, and paragraph (c)(3) will require a discussion of the risks of "being a holder or writer" of options. The Rule's existing language might be interpreted incorrectly to mean that options exchanges covered by Rule 9b-1 must provide information to investors via the ODD about how to "trade" options, including exchange operating procedures and effective investment strategies.

Similarly, the proposed amendments to paragraphs (c)(4) and (c)(7) of the Rule will be amended to ensure that the scope of information included within the ODD is consistent with its intended purpose and character. Accordingly, rather than including a discussion of the "market for the options," paragraph (c)(4) will simply require "the identification of the market or markets in which the options are traded." In addition, paragraph (c)(7) will require a "general" identification of the "type" of instrument or instruments underlying the options class or classes covered by the document.

The changes to paragraphs (c)(2), (c)(3), (c)(4), and (c)(7) of the Rule should help to clarify that the purpose of the ODD is to inform investors generally about the characteristics and risks of options as well as the risks to investors of maintaining positions in options. The Commission does not intend for the proposed changes to the

⁴ See Securities Exchange Act Release Nos. 18836 (June 24, 1982), 47 FR 28688 (July 1, 1982) ("Proposing Release") and 19055 (September 16, 1982), 47 FR 41950 (September 23, 1982) ("Adopting Release").

⁵ Proposing Release, *id.* at 47 FR 28688.

⁶ Concurrent with the adoption of Rule 9b-1, the Commission adopted a new Form S-20 for the registration of standardized options under the Securities Act. Adopting Release, *supra* note 3, 47 FR at 41951-2. This Form requires the filing of information related to the issuer of standardized options and such options. The Form must be filed with the Commission by the issuer before an options disclosure document may be distributed. 17 CFR 240.9b-1(b)(1)(1985).

⁷ In addition to the ODD utilized by the U.S. options exchanges, two foreign exchanges, the London Securities and Derivatives Exchange ("OMLX") and Canada Clearing Corporation, have each filed an ODD with the Commission. Both of these ODDs are modeled after the U.S. options market ODD.

⁸ See, e.g., Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (order approving the listing of Flexible Exchange options on specified equity securities) (CBOE-95-43).

⁹ LEAPS are equity and index options that have a longer term expiration (up to five years) as compared to regular options. See, e.g., Securities Exchange Act Release No. 35617 (April 17, 1995), 60 FR 20132 (April 24, 1995) (CBOE-95-02).

¹⁰ Rule 134a states that written materials related to standardized options will not be deemed to be a prospectus for the purposes of Section 2(10) of the Securities Act provided that, among other conditions, such materials are limited to explanatory information describing the general nature of the standardized options markets. In addition, Rule 135b states that for purposes of Section 5 of the Securities Act, materials meeting the requirements of Rule 9b-1 of the Exchange Act will not be deemed to constitute either an offer to sell or an offer to buy any security.

Rule to require any changes to the current disclosures in an ODD.¹¹

IV. Request for Comments

The Commission seeks comments on the proposed amendments to Rule 9b-1. Comments should address whether the amendment clarifies the disclosure requirements of Rule 9b-1 while continuing to ensure a regulatory scheme that fosters investors' understanding of standardized options. The Commission's view is that the proposed changes will not require any substantive changes to existing ODDs now distributed by the U.S. options exchanges, Canada Clearing Corporation, and OMLX. The Commission requests comment on this point.

V. Costs and Benefits of the Proposed Rule Change and its Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed exemption, commentators are requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal herein. The proposed amendments to Rule 9b-1 under the Act will not change any substantive disclosure obligations or compliance costs. Rather, the proposal would clarify the disclosure requirements and goals regarding standardized option products. The proposal should remove ambiguity that currently may exist within the rules regarding standardized options disclosures. The Commission requests commentators to address whether the proposed amendment would generate the anticipated benefits, or impose any costs on U.S. investors, broker-dealers, or others.

In addition, Section 23(a)(2) of the Act requires that the Commission, when promulgating rules under the Exchange Act, to consider, among other matters, the impact any such regulations would have on competition.¹² The Commission has preliminarily considered the proposed rule in light of the standards cited in Section 23(a)(2) of the Act and believes preliminarily that it would not impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. As noted above, the Commission does not believe that the proposed amendments will require any

changes to the current disclosures in an ODD.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the Commission has certified that the proposed amendment would not have a significant economic impact on a substantial number of small entities.¹³ The Commission requests comments on the certification (see Appendix A). Commenters are asked to provide empirical data to support the extent of any identified impact.

VI. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein would not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release as Appendix A. We encourage written comments on the Certification. Commenters are asked to describe the nature of any impact on small business entities and provide empirical data to support the extent of the impact.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposals on the economy on an annual basis. The Commission does not currently believe that the amendments, if adopted, would result or be likely to result in (i) an annual effect on the economy of \$100 million or more; (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effects on competition, investment, or innovation. Nevertheless, the Commission solicits comment on this preliminary view. Commentators should provide empirical data to support their views.

VII. Paperwork Reduction Act

Certain provisions of Rule 9b-1 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. § 3501 et seq.). The Commission previously submitted the

¹³ Under the Exchange Act, as small broker or dealer entity is defined as "a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a-5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter)." 17 CFR 240.010(c).

rule to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d), and OMB has assigned the rule OMB control number 3235-0480. Because the proposed rule changes should not materially affect the substance of the required disclosures or the filing and delivery obligations under the rule, there is no requirement that the Commission resubmit the rule with the proposed amendment to OMB for review under the PRA.

VIII. Statutory Basis

The amendment to Rule 9b-1 is being proposed pursuant to 15 U.S.C. §§ 78a et seq., particularly Sections 9 and 23.

Text of the Proposed Amendment

List of Subjects in post

17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. Section 240.9b-1 is amended by revising paragraphs (a)(3), (b)(2)(i) and (ii), (c)(2), (c)(3), (c)(4), (c)(6), (c)(7), (d)(1) and (d)(2) as follows:

§ 240.9b-1 Options disclosure document.

(a) * * *

(3) "Options disclosure document" means a document, *including all amendments and supplements thereto*, prepared by one or more options markets which *has been filed with the Commission or distributed in accordance with paragraph (b) of this section* [contains the information required by this rule with respect to the options classes covered by the document]. "*Definitive options disclosure document*" or "*document*" means an options disclosure document furnished to customers in accordance with paragraph (b) of this section.

* * * * *

(b)(1) * * *

(2)(i) If the information contained in the options disclosure document

¹¹ The Commission notes that under the Rule it retains authority to review and approve ODDs and to revise "such other information as the Commission may specify."

¹² See 15 U.S.C. 78w(a)(2).

becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the *options* disclosure document not misleading, the options market shall amend or supplement its options disclosure document by filing five copies of an amendment or supplement to such options disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document, as amended or supplemented, shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers.

(2)(ii) Notwithstanding paragraph (b)(2)(i) of this section, an options market may distribute an amendment or supplement to an options disclosure document [such materials] prior to such 30 day period if it determines, in good faith, that such delivery is necessary to ensure timely and accurate disclosure with respect to one or more of the options classes covered by the document [the subject standardized options contracts]. Five copies of any amendment or supplement distributed pursuant to this paragraph shall be filed with the Commission at the time of distribution. In that instance, if the Commission determines, having given due regard to the adequacy of the information disclosed and the public interest and the protection of investors,

it may require refiling of the amendment pursuant to paragraph (b)(2)(i) of this section.

(c) * * *

(2) A discussion of the mechanics of [buying, writing and] exercising the options [including settlement procedures];

(3) A discussion of the risks of being a holder or writer of the options [trading the options];

(4) The identification of the market [for] or markets in which the options are traded;

* * * * *

(6) The identification of the issuer of the options;

(7) A general identification of the type of instrument or instruments underlying the options class or classes covered by the document;

* * * * *

(d) Broker-dealer obligations. (1) No broker or dealer shall accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a[n] definitive options disclosure document, or approve the customer's account for the trading of such option, unless the broker or dealer furnishes or has furnished to the customer [the] a copy of the definitive options disclosure document.

(2) If a[n] definitive options disclosure document relating to an options class is amended or supplemented, each broker and dealer shall promptly send a copy of the definitive amendment or supplement or a copy of the definitive options disclosure document as amended [the information contained in the definitive amendment] to each customer whose account is approved for trading the options class or classes to

which the amendment or supplement [options disclosure document] relates.

Dated: June 25, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A—Regulatory Flexibility Act Certification

[Note: This Appendix A to the preamble will not appear in the Code of Federal Regulations.]

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission ("Commission"), hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendment to Rule 9b-1 ("Rule") under the Securities Exchange Act of 1934, ("Exchange Act")¹ set forth in Securities Exchange Act Release No. 34-40129, would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendment will clarify existing disclosure obligations for standardized option products pursuant to Section 9 of the Act and Rule 9b-1 thereunder² and should not materially affect the substance of the required disclosures or the filing and delivery obligations under the Rule. Consequently, no new preparation, printing, or distribution costs will be necessary. Finally, the proposed rule imposes no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the proposed amendment would not have a significant economic impact on a substantial number of small entities.

Dated: June 24, 1998

Arthur Levitt, Jr.,

Chairman.

[FR Doc. 98-17437 Filed 6-30-98; 8:45 am]

BILLING CODE 8010-01-P

¹ 15 U.S.C. 78a et seq.

² 17 CFR 240.9b-1.