§ 140.72 [Amended]

2. Paragraph (a) of § 140.72 is amended by removing ''and each of the Directors of the Market Surveillance Branches'' and adding, ''each of the Directors of the Market Surveillance Branches, the Director of the Office of International Affairs and the Deputy Director of the Office of International Affairs'' in its place.

§ 140.73 [Amended]

3. Paragraph (a) of § 140.73 is amended by adding, ''and the Director of the Office of International Affairs or, in his or her absence, the Deputy Director of the Office of International Affairs'' after ''each Deputy Director of the Division of Trading and Markets.''

Issued in Washington, DC on October 19, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–27481 Filed 10–25–00; 8:45 am]

BILLING CODE 6351–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–43461, File No. S7–18–98]

RIN 3235–AH30

Amendments to Rule 9b–1 Under the Securities Exchange Act of 1934 Relating to the Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting amendments to Rule 9b–1 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act''). Rule 9b–1 governs the filing and dissemination of, and the information to be included in, an options disclosure document. The amendments are intended to provide greater clarity to the Rule's provisions, while continuing a regulatory scheme that fosters investors' understanding of the characteristics and risks of standardized options.

EFFECTIVE DATE: This final rule is effective November 27, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, Assistant Director, at (202) 942–0796, or Steven Johnston, Special Counsel, at (202) 942–0795, Office of Market Supervision, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 9b–1 [1] under the Securities Exchange Act of 1934 [2] to make technical and clarifying changes to the Rule to better reflect the disclosure requirements regarding standardized options.

I. Introduction

In June 1998, the Commission published for comment amendments to Rule 9b–1 under the Exchange Act to revise certain language in the Rule to better reflect the disclosure requirements regarding standardized options.[3] The changes are minor or technical in nature and do not alter the basic purpose of the Rule, namely, to ensure the dissemination of essential options information to less sophisticated investors in a manner that they can easily understand. The changes should also help to ensure that the Rule addresses the evolving nature of the markets for standardized options.[4] The Commission received two comments supporting the proposal and is adopting the revisions as proposed.

II. Background

In general, Rule 9b–1: (i) Specifies 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) describes 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.

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 market [5] at least 60 days prior to the date definitive copies of the document are furnished to customers. Rule 9b–1(c) specifies that, with respect to the options classes covered by the ODD, 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. Further, Rule 9b–1(d) 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.''

Adopted in 1982, the Rule is intended to foster better investor understanding of standardized options trading and to reduce the costs of issuer compliance with the registration requirements of the Securities Act of 1933 (''Securities Act'').[6] Prior to the Rule's adoption, 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, 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 less sophisticated options investors.[7] Accordingly, the Commission developed a disclosure document that contains information concerning the risks and uses of options trading and presents the information in a manner easily understandable by investors lacking a financial background. With the adoption of Rule 9b–1, the Commission established a new disclosure procedure specifically geared to satisfying the information needs of investors in standardized options.[8]

Following the adoption of Rule 9b–1, an options disclosure document was prepared jointly by The American Stock Exchange LLC, the Chicago Board Options Exchange, Inc. (''CBOE''), the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and The Options Clearing Corporation (''OCC''). The

[1] 17 CFR 240.9b–1.

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 40129 (June 25, 1998), 63 FR 36138 (July 1, 1998) (''Proposing Release'').

[4] The term ''standardized options'' is defined as ''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 date and exercise prices, or such other securities as the Commission may, by order, designate.'' 17 CFR 240.9b–1(a)(4).

[5] The term ''options market'' is defined as ''a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded.'' 17 CFR 240.9b–1(a)(1).

[6] *See* Securities Exchange Act Release Nos. 18836 (June 24, 1982), 47 FR 28688 (July 1, 1982) (''1982 Proposing Release'') and 19055 (Sept. 16, 1982), 47 FR 41950 (Sept. 23, 1982) (''1982 Adopting Release'').

[7] 1982 Proposing Release, *id.* at 47 FR 28688.

[8] Concurrent with the adoption of Rule 9b–1, the Commission adopted a Form S–20 for the registration of standardized options under the Securities Act. 1982 Adopting Release, *supra* note 6, 47 FR at 41951–2. This Form requires the filing of information relating to standardized options and their issuer. The Form must be filed with the Commission by the issuer and become effective before an options disclosure document may be distributed. 17 CFR 240.9b–1(b)(1).

initial disclosure document consisted of a single booklet that generally described the risks and uses of exchange-listed options on individual equity securities. Since that time, several revised disclosure booklets have been published that describe, 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.[9]

The Commission determined that Rule 9b–1 would be clearer if certain technical amendments were made. While the substantive goals of the Rule did not require revision, the Rule required specific changes to make the language more precise. The changes are technical in nature and only codify current practice as it has evolved over time. The specific changes are discussed more fully below.

III. Discussion

The Commission received two comments on the proposed changes to Rule 9b–1.[10] The OCC commented that the proposal would eliminate uncertainty and urged the Commission to promptly adopt the proposed changes to Rule 9b–1.[11] The Philadelphia Stock Exchange, Inc. (''Phlx'') commented that the proposed changes to Rule 9b–1 would better reflect the Rule's underlying intent and provide more precise and clear language.[12] The Commission agrees with these comments and is adopting Rule 9b–1 as proposed.

Paragraph (a)(3) of the Rule, the definition of an ''options disclosure document,'' is being amended to explicitly state that the amendments and supplements to the ODD are included as part of the ODD. New financial products have been introduced into the standardized options marketplace such as Flexible Exchange Options on specified equity securities (''FLEX Equity options'')[13] and Long-Term Index Option series (''LEAPS'').[14] Descriptions of these and other similar products are often initially incorporated into the ODD through a supplement and delivered to the customer along with the bound ODD. These amendments remove the potential ambiguity regarding whether such supplements are part of the ODD and should be delivered to customers. In addition, paragraph (a)(3) of the Rule is being amended to conform the definition of ''definitive options disclosure document'' to Rules 134a and 135b under the Securities Act.[15]

Several technical clarifying changes are also being made to the Rule. In paragraph (b)(2)(i), the word ''options'' is inserted before the phrase ''disclosure document.'' Similarly, in paragraph (b)(2)(ii), the phrase ''options disclosure document'' replaces the phrase ''such material,'' and the phrase ''options classes covered by the document'' replaces the more general language of ''the subject standardized options contracts.'' In paragraphs (b)(2) (i) and (ii), the Rule is also being amended to clarify that both amendments and supplements to the ODD are permissible and clarifies the issuer's obligation to supply supplements to investors and the Commission. Additionally, paragraph (c)(6) is amended to add the phrase ''the identification of'' before the phrase ''the issuer of the options.'' The Commission believes that the new language clarifies the Rule language and eliminates potential ambiguity.

The Rule's current provisions requiring that the ODD contain information regarding the ''mechanics of buying, writing and exercising options, including settlement procedures'' and ''the risks of trading options'' are amended to better reflect the information that should be included in the ODD. Specifically, paragraph (c)(2) now requires a discussion of the ''mechanics of exercising'' options and paragraph (c)(3) now requires a discussion of the risks of ''being a holder or writer'' of options. These amendments are intended to make clear that the exchanges are not required to provide information via the ODD to customers on how to ''trade'' options, such as information regarding investment strategies. To clarify the intended scope of information included within the ODD, paragraph (c)(4) of the Rule is amended to require ''the identification of the market or markets in which the options are traded,'' rather than a discussion of the ''market for the options.'' Also, paragraph (c)(7) is amended to require a ''general'' discussion of the ''type'' of instruments underlying the options classes. The Commission believes that these changes help clarify the purpose of the ODD and do not require any changes to the current disclosures in the ODD.

Paragraphs (d)(1) and (2) are also being amended to reflect the revised definition of ''definitive options disclosure document'' contained in paragraph (a)(3). Again, this change does not affect the substantive nature of the Rule, but merely conforms the terminology to accurately reflect references in Rules 134a and 135b under the Securities Act.[16] Paragraph (d)(2) is also being amended to reflect the inclusion of supplements noted in revised paragraphs (b)(2) (i) and (ii).

IV. Cost-Benefit Analysis

The Commission believes that the amendments are likely to benefit investors and do not have any costs associated with them. To assist the Commission in its evaluation of the costs and benefits that may result from the amendments, commenters were requested to provide analysis and data, if possible, relating to costs and benefits associated with the proposal. While the two comments received supported the amendments, no comments were received concerning the costs to investors, broker-dealers or others. The Commission anticipates that the proposed amendments will not change any substantive disclosure obligations or currently existing compliance costs, but will rather clarify the disclosure requirements and goals regarding standardized options products, and thereby benefit investors.

V. Consideration of Burden on Competition

Section 23(a)(2) of the Exchange Act requires that the Commission, when promulgating rules under the Exchange Act, consider, among other matters, the impact any such rules would have on

[9] In addition to the ODD utilized by the U.S. options exchanges, several foreign markets have filed ODDs with the Commission which enables them to effect options transactions with U.S. market participants under certain conditions. These ODDs are modeled after the U.S. options market ODD.

[10] *See* Letter from James Yong, First Vice President and General Counsel, The Options Clearing Corporation, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 26, 1998 (''OCC Letter''); Letter from Edith Hallahan, Vice President and Associate General Counsel, Philadelphia Stock Exchange (''Phlx''), to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated August 28, 1998 (''Phlx Letter'').

[11] OCC Letter, p. 2.

[12] Phlx Letter, p. 1.

[13] *See* Securities Exchange Act Release No. 36841 (Feb. 14, 1996), 61 FR 6666 (Feb. 21, 1996) (order approving the listing of FLEX Equity Options) (CBOE–95–43).

[14] *See* Securities Exchange Act Release No. 35617 (Apr. 17, 1995), 60 FR 20132 (Apr. 24, 1995) (order approving the listing of LEAPS) (CBOE–95–02).

[15] Rule 134a states that written materials related to standardized options will not be deemed to be a prospectus for 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. 17 CFR 230.134a. 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. 17 CFR 230.134b.

[16] 17 CFR 230.134a; 17 CFR 230.134b.

competition and not adopt any rule that would impose a burden on competition that is not necessary or appropriate in the public interest.[17] In the Proposing Release, the Commission solicited comments on the effect on competition. The Commission received no comments regarding this issue. The Commission has considered the amendments in light of the standards cited in section 23(a)(2) of the Exchange Act and believes that they would not impose any burden on competition.

Because the amendments are intended to clarify the exchanges' obligations to make certain disclosures to customers via the ODD, the changes should not materially affect the substance of the existing required disclosures or the filing or delivery obligations under the Rule. The Commission does not expect that the amendments will impose any additional costs on the exchanges and will help to remove potential ambiguities in the Rule. Thus, the Commission believes that the amendments should impose no burdens on competition.

VI. Promotion of Efficiency, Competition, and Capital Formation

Section 3(f)[18] of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. No comments were received on this point. The Commission believes that the amendments will reduce potential investor confusion and help to clarify the Rule's goals and objectives. In addition, the Commission believes that making such clarifying changes to the Rule will help to enhance the operation of the options markets. The Commission further believes that the changes to the Rule will help issuers understand their obligations and enhance opportunities for capital formation in the options markets. Accordingly, the Commission believes that the amendments being adopted today promote efficiency, competition, and capital formation.

VII. Regulatory Flexibility Act Consideration

Pursuant to section 605(b) of the Regulatory Flexibility Act,[19] the Chairman of the Commission has certified that Rule 9b–1 would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to the Proposing Release as Appendix A. The Commission solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

VIII. 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'').[20] The Commission previously submitted the 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 amendments 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 amendments to OMB for review under the PRA. The Commission received no comments regarding the analysis under the Paperwork Reduction Act.

IX. Statutory Basis

The amendments to Rule 9b–1 are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 9 and 23 of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Rule Amendments

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is 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, 78j-1, 78k, 78k-1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*(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), (b)(2)(ii), (c), and (d) to read 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. ''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 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.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, an options market may distribute an amendment or supplement to an options disclosure document 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. 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) *Information required in an options disclosure document.* An options disclosure document shall contain the following information, unless otherwise provided by the Commission, with respect to the options classes covered by the document:

[17] 15 U.S.C. 78w(a)(2).

[18] 15 U.S.C. 78c(f).

[19] 5 U.S.C. 605(b).

[20] 44 U.S.C. 3501 et seq.

(1) A glossary of terms;

(2) A discussion of the mechanics of exercising the options;

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

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

(5) A brief reference to the transaction costs, margin requirements and tax consequences of options trading;

(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;

(8) The registration of the options on Form S–20 (17 CFR 239.20) and the availability of the prospectus and the information in Part II of the registration statement; and

(9) Such other information as the Commission may specify.

(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 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 a copy of the definitive options disclosure document.

(2) If a 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 to each customer whose account is approved for trading the options class or classes to which the amendment or supplement relates.

Dated: October 19, 2000.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–27479 Filed 10–25–00; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 00–75]

RIN 1515–AC70

Import Restrictions Imposed On Archaeological Material From the Prehispanic Cultures of the Republic of Nicaragua

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the imposition of import restrictions on certain archaeological material ranging in date from approximately 8000 B.C. through approximately 1500 A.D. and representing prehispanic cultures of the Republic of Nicaragua. These restrictions are being imposed pursuant to an agreement between the United States and Nicaragua that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the Customs Regulations by adding Nicaragua to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the Designated List of Archaeological Material that describes the types of articles to which the restrictions apply.

EFFECTIVE DATE: October 26, 2000.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joanne Stump, Intellectual Property Rights Branch (202) 927–2330; (Operational Aspects) Al Morawski, Trade Operations (202) 927–0402.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub.L. 97–446, 19 U.S.C. 2601 *et seq.*) (''the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and in achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection web site (http://exchanges.state.gov/education/culprop).

Import restrictions are now being imposed on certain archaeological material of Nicaragua representing the prehispanic period of its cultural heritage as the result of a bilateral agreement entered into between the United States and Nicaragua pursuant to 19 U.S.C. 2602. This agreement was signed on June 16, 1999, and, following completion by the Government of Nicaragua of all internal legal requirements, entered into force on October 20, 2000, with the exchange of diplomatic notes. Accordingly, § 12.104g(a) of the Customs Regulations is being amended to indicate that restrictions have been imposed pursuant to the agreement between the United States and Nicaragua. This document amends the regulations by imposing import restrictions on certain archaeological material from Nicaragua as described below.

Material Encompassed in Import Restrictions

In reaching the decision to recommend protection for Nicaragua's cultural patrimony, the Deputy Director of the former U.S. Information Agency (USIA) has determined that, pursuant to the requirements of the Act, the cultural patrimony of Nicaragua is in jeopardy from the pillage of archaeological materials which represent its