

MSE

MIDWEST STOCK EXCHANGE, INCORPORATED
120 South LaSalle Street Chicago, Illinois 60603
Telephone: (312) 368-2222

August 11, 1977

Mr. Andrew M. Klein
Director
Division of Market Regulation
Securities and Exchange Commission
500 North Capitol Street, N.W.
Washington, D.C. 20549

Dear Mr. Klein:

As you know from conversations with our staff, there is a matter of considerable concern to the Midwest Stock Exchange which is currently on or about to be placed on the Commission's calendar. Our concern relates not only to the substantive importance of the proposal, but also to the procedure followed and the time that has gone by from original submission of the proposal.

On February 22, 1977, we mailed a letter and a 19b-4 submission to establish new strike price intervals (copies enclosed). Prior to that time, the Pacific Stock Exchange had established a 2 1/2 point strike price interval where the underlying security was trading at less than \$20.00. They took the position, and we agreed, that the Options Clearing Corporation prospectus and Exchange Rules were sufficiently broad to permit establishment of 2 1/2 point intervals. Moreover, as we subsequently explained in the letter accompanying our 19b-4 submission, establishment of the 2 1/2 point intervals would create a more liquid trading environment.

Despite the fact that Pacific was already trading with 2 1/2 point intervals and our position that no submission to the Commission was necessary, we adhered to an interpretation by the staff and submitted a specific proposal in the form of a 19b-4 submission. As we explained in the submission, time was of the essence since not establishing new strike price intervals was severely hurting our competitive position. Moreover, I and others followed up the letter with phone calls to the staff emphasizing the importance to us of the submission and requesting that the matter be taken care of as expeditiously as possible. I might add that since they originally established 2 1/2 point intervals for Lucky Stores, Inc., Pacific has continued to add additional series at the same 2 1/2 point intervals as other series expired. This would, of course, be with the knowledge of the Staff.

Our proposal was not published in the Federal Register until March 24, 1977 – not an unusual period of time between mailing of a 19b-4 submission and publication in the Federal Register, but particularly troublesome in light of the urgency of our request (see attached memorandum on MSE 19b-4 submissions for 1977).

As you probably know, a number of commentators have taken the position that the Commission need not publish a 19b-4 submission in the Federal Register to start the statutory period running as provided in Section 19 (b) (1) and Section 19 (b) (2) of the Act. Whether or not these commentators are correct, and we happen to agree with their position, it is clear that the draftors of the legislation did not perceive when they provided in Section 19 (b) (1) that “the Commission shall upon the filing of any proposed rule change, publish notice thereof. . .” that the phrase “upon the filing” could mean in excess of one month from the date of mailing.

Moreover, although we continued to emphasize the urgency and importance of this proposal, as of the date of this letter, the Commission had neither approved the rule change nor instituted proper proceedings within 90 days of the publication date of the proposal in the Federal Register as required by Section 19 (b) (2) of the Act. Frankly, this has left us in an impossible situation since the draftors of the 1975 Act Amendments could not have reasonably anticipated that not only could as much as a month go by without notice of a 19b-4 submission, but that the Commission would violate the specific time requirements of Section 19 (b) (2).

On several occasions in late June and early July, we were advised that placement of the proposal on the Commission calendar was imminent. After some additional time had passed, we were told that due to new requirements resulting from the Sunshine Act, the proposal would be delayed further, but only a matter of two weeks. Finally, we learned that it had been scheduled for Commission action on August 10. The morning of August 8, the staff called to advise us that the proposal had been removed from the calendar. We were told that the Commission now wanted to know whether or not action on this proposal was consistent with the July 18, 1977 letter from the Commission to the options exchanges whereby the Commission stated that it would not expect to approve any pending proposed rule changes of self-regulatory organizations designed to initiate new programs for the trading of options or to expand existing ones.

We find it difficult to answer that question, because we do not know what the Commission had in mind when they issued that letter. We had assumed that the Commission was only asking for a moratorium on new classes of options and that the pending rules proposals referred to expansion proposals which all exchanges have submitted to enable them to increase the number of authorized classes. We are most perplexed that a question was even raised about our strike price proposal. (We are presently preparing comments on the July 18 letter as it relates to the inability to add classes.) We do know, however, that our options program is not profitable at present and that the events we describe in this letter have prevented us from attempting to rectify this situation. These actions (or inactions) have seriously impeded our ability to establish a viable competitive options program. This situation has also seriously damaged the credibility of our staff and the SEC staff with our membership.

We also know that the procedures being followed generally by the Commission with respect to Section 19(b) of the Act and the procedures followed with respect to this particular

Page 3
Mr. Andrew M. Klein
August 11, 1977

MSE

submission have impeded and continue to impede the objectives of the 1975 Act Amendments as well as directly violating their provisions. As understanding as we may be about the workload of the Commission, we are bringing this matter to your attention to spur action on our proposal and with the hope that some procedures can be set up or some additional resources can be obtained so that this does not reoccur.

Sincerely,

Michael E. Tobin
President

MET:gg

Enclosures.

cc: Chairman Harold M. Williams
Commissioner John R. Evans
Commissioner Philip A. Loomis, Jr.
Commissioner Irving M. Pollack