

account transfers from one brokerage firm to another.

B. Self-Regulatory Organization's Statement on Burden on Competition.

NSCC does not perceive that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-96-01 and should be submitted by March 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36904; File No. SR-NYSE-96-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendment of Exchange Rule 460.10

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on January 5, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and on February 26, 1996, filed Amendment No. 1 to the proposed rule change,² as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Exchange Rule 460.10 to modify certain prohibitions on the ownership by specialists of securities in which they are registered ("specialty securities") and to modify the prohibition on business transactions specialists may have with the issuers of specialty securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 460.10 to modify certain prohibitions on the ownership of specialty securities and business transactions specialists may have with the issuers of specialty securities.

a. Ownership Restrictions

NYSE Rule 460.10 prohibits a specialist³ from acquiring more than 10% of the outstanding shares of any equity security in which the specialist is registered. If a specialist acquires 5% or more of an equity issue in which he or she is registered, notice is required to be given to Market Surveillance, and the specialist may be directed to reduce the position below that level.

The restrictions on beneficial ownership codified in the rule are intended to ensure that specialists do not enter into a control relationship with an issuer in whose securities the specialist is registered, such that the specialist's status as a significant shareholder may create conflicts of interest with respect to the specialist's affirmative and negative obligations to maintain a fair and orderly market in the security.

The language of the rule refers specifically to "any equity security" in which the specialist is registered, although a specialist may be registered in a particular security where a position in excess of the 5% and 10% parameters would not give rise to the control relationship/potential conflict of interest issue noted above. For example, a specialist registered in both a warrant and the underlying common stock could convert a 10% position in the warrant into the common stock, but the resulting position in the common stock would not approach the 10% control relationship threshold. Other examples could be found in convertible securities, or American Depositary Receipts or Global Depositary Receipts, where conversion of the security would result in a small position in relation to the overall number of shares outstanding in the common stock. The proposed amendment would delete the 10% threshold for such convertible

⁸ 17 CFR 200.30-3(a)(12) (1995).

¹ 15 U.S.C. § 78s(b)(1).

² See Letter from Donald Siemer, Director, Market Surveillance, NYSE to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated February 23, 1996.

³ By its terms, Rule 460.10 apply to the specialist, his or her member organization or any other member, allied member or approved person in such member organization or officer or employee thereof, individually or in the aggregate.

securities, provided that, upon conversion, the position in the underlying common stock does not exceed 10% of the issue.⁴

Another example of a security in which 10% ownership would not present a control issue is presented by certain investment company units (the "units"). In File No. SR-NYSE-95-23,⁵ the Exchange described certain entities organized as open-end management investment companies, which would hold securities comprising, or otherwise based on or representing an investment in, an index or portfolio of securities that represent the equity markets of a country. Each unit represents ownership of a portion of a portfolio of securities corresponding to an underlying "country index," as determined by a consortium of investment concerns and the Institute of Actuaries. Specialists may be required to enter into transactions in these securities to effect creation or redemption of the units, and these transactions may result in an ownership of greater than 10% of an issue of units. Pursuant to changes to Rule 460.10 that have been proposed in File No. SR-NYSE-95-23,⁶ the specialists' activities in these transactions, however, would be subject to facilitation of their market-making responsibilities. In addition and as described more fully below,⁷ Rule 460.10, as proposed to be amended hereby, would allow the specialist to engage in such transactions only according to the same terms and conditions as every other investor. The Exchange believes that given the open-ended nature of these entities in that securities will be issued on a continuous basis, the issue of control by a specialist would not be relevant. The proposed amendment would delete the 10% threshold for certain investment company units, provided that, the redemption of such units would not result in a position, directly or indirectly, in any equity security in

which the specialist is registered exceeding the 10% threshold.⁸

The proposed amendment would also exempt from the 10% threshold, with Exchange permission, a specialist registered in a security where the corporate control relationship issue is absent, such as a foreign currency warrant, which trades in relationship to the value of that underlying currency, or an index warrant, which trades in relationship to the value of that underlying index. With respect to these securities, however, the specialist would not be permitted to acquire a position of more than 25% of the issue.

In these situations, the Exchange believes that the specialist should be permitted, to the extent consistent with the specialist's market making responsibilities, to exceed the 10% parameter in Rule 460.10 without being required to liquidate its position in the security.

b. Business Transactions

Rule 460.10 also prohibits a specialist, his or her member organization or any other member, allied member, approved person in such member organization or officer or employee from engaging in any business transaction with any company in whose stock the specialist is registered.⁹ This prohibition is designed to prevent a potential conflict of interest with the specialist's market making obligations and any status he or she might attain through business dealings with the issuer. This prohibition, however, may be read to cover any type of business dealing between a specialist and an issuer, including one where the service or good is routinely available to the public and confers no special status to the recipient beyond that of a consumer. The Exchange proposes to amend the rule to permit the receipt of such routine business services by a specialist or other party listed in the rule. For example, a specialist organization may wish to contract for commercial insurance services from one of its specialty stock companies. The amended rule would

permit such a transaction, as long as the type of service is generally available to other business entities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.¹⁰

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(8) that an Exchange have rules that do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.¹¹ The Exchange does not believe that market makers in derivative securities in other market centers are subject to restrictions such as those contained in Rule 460.10. Thus, the proposed rule change is consistent with these objectives in removing a barrier to competition without compromising investor protection or the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The New York Stock Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing.

⁴ The proposed rule does not change the requirement that if a specialist acquires 5% or more of an equity issue in which he or she is registered, he or she must give notice to market surveillance.

⁵ See Securities Exchange Act Release No. 36032 (July 28, 1995), 60 FR 40403 (Aug. 8, 1995) (File No. SR-NYSE-95-23).

⁶ In Release No. 34-36032, *supra*, note 5, the Exchange proposed, among other matters, to amend Rule 460.10 to provide that, notwithstanding the prohibition of Rule 460.10 on specialist engaging in any business transaction with any company in whose stock the specialists is registered, specialists registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

⁷ See part II. A. 1. b. below.

⁸ For purposes of Rule 460.10, on investment company unit refers to a security that represents an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company, or a similar entity, all as more completely described in proposed Section 703.16 of the Exchange's Listed Company Manual, which is proposed to be amended in Release No. 34-36032, *supra*, note 5.

⁹ Under certain circumstances, NYSE Rule 98 affords exemptive relief to approved persons of a specialist organization from restrictions found in various NYSE rules, including certain provisions of NYSE Rule 460. See Securities Exchange Act Release No. 36043 (Aug. 1, 1995), 60 FR 40218 (August 7, 1995) (Order approving File No. NYSE-95-21).

¹⁰ 15 U.S.C. § 78f(b)(5).

¹¹ 15 U.S.C. § 78f(b)(8).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-01 and should be submitted by March 27, 1996.

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

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36899; File No. SR-PHILADEP-95-10]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the Customer Name Mailing Transfer Return Procedures

February 28, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 11, 1995, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PHILADEP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PHILADEP proposes to modify its Customer Name Mailing ("CNM")

transfer return procedures to allow a participant to have securities certificates that are registered in a customer's name deposited directly into the participant's PHILADEP account.

II. Self-Regulatory Organization's Statements of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PHILADEP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PHILADEP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify the CNM transfer return procedures. Transfer return is the method by which PHILADEP returns to participants securities that the participant requested to be registered in customer name but for which the customer is no longer the beneficial owner. A typical transfer return situation arises when a customer requests that securities certificates be registered in its name. The participant notifies PHILADEP's CNM department of its request, and the CNM department notifies the appropriate transfer agent. The transfer agent issues the securities certificates in the customer's name and sends them back to PHILADEP. PHILADEP then mails the securities certificates to the customer.³ If the participant notifies PHILADEP before PHILADEP has mailed the securities to the participant's customer that the customer has sold the securities, PHILADEP employs the transfer return procedures and returns the certificates directly to the participant. At this point, if the participant wants to deposit the certificates in its PHILADEP account, it must return the certificates to PHILADEP with the appropriate deposit information. PHILADEP will send the

² The Commission has modified the text of the summaries prepared by PHILADEP.

³ Once PHILADEP receives these securities from the transfer agent, a participant may request that PHILADEP delay mailing these securities for a couple of days in order to verify that the customer in whose name the securities are registered still is the beneficial owner ("Hold Mail Request"). Many participants prefer to check the beneficial ownership of securities before PHILADEP mails them.

certificates to the transfer agent to have the certificates reregistered in PHILADEP's nominee name (*i.e.*, PHILADEP & Co.). The transfer agent will send the securities back to PHILADEP, and PHILADEP will deposit them in the participant's PHILADEP account.

The new transfer return procedures eliminate the need for PHILADEP to return to the participant securities certificates that the participant wants deposited in its PHILADEP account. Under the proposed modifications to the transfer return procedures, a participant now will be able to have the securities directly deposited into its PHILADEP account without first having the securities returned to it. For those securities registered in customer name that a participant chooses to directly deposit, the participant will send to PHILADEP a deposit ticket along with a Medallion Guaranteed letter of indemnity or a signed stock or bond power. PHILADEP will send the securities, which are registered in the participant's customer's name, to the transfer agent to be reregistered in the name of PHILADEP & Co. The transfer agent will send the securities back to PHILADEP, and PHILADEP will deposit them into the participant's PHILADEP account.

PHILADEP participants can choose this alternative transfer return procedure by including a letter "D" in the transmission with the Hold Mail Request. The letter "D" indicates to PHILADEP that the participant would like the item directly deposited into their deposit account at PHILADEP.

PHILADEP believes the proposed rule change is consistent with the requirements of the Act and specifically with Sections 17A(b)(3)(A) and (F)⁴ because it fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and further assures the safeguarding of securities which are in the custody or control of PHILADEP.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the proposed rule change will have an impact on or impose a burden on competition.

¹ 15 U.S.C. § 78s(b)(1) (1988).

⁴ 15 U.S.C. §§ 78q-1(b)(3)(A) and (F) (1988).