

time of its initial purchase of shares of the Fund.

### Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 98-13815 Filed 5-22-98; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-39996; File No. SR-AMEX-97-30)

### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to Professional Hearing Officers, Executive Committee Review of Appeals From Disciplinary Panel Decisions and Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

May 18, 1998.

#### I. Introduction

On August 11, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change which amends the Exchange's Constitution and Rules of Procedure applicable to its disciplinary proceedings. A notice of the proposed rule change appeared in the **Federal Register** on March 24, 1998.<sup>3</sup> The Commission received no comment letters concerning this rule change. This order approves the proposed rule change.

The Exchange's Constitution and Rules of Procedure applicable to disciplinary proceedings currently require, among other things, the Exchange to draw members of disciplinary panels exclusively from the ranks of practicing securities industry professionals. These rules also generally

require the Chairmen of Disciplinary Panels to be Exchange Officials. The Exchange believes the current system for selecting Disciplinary Panels has worked well for many years, and Panel members have performed an invaluable service to the Exchange on a voluntary basis. Recently, the Exchange has noticed that the complexity of the legal issues confronting its disciplinary panels has increased, thus requiring Article V, Section 1(b) of the Exchange's Constitution and its Rules of Procedure to be modified.

#### II. Description of the Proposal

##### i. Professional Hearing Officers

Frequently, Disciplinary Panels face complicated legal questions that must be resolved promptly to ensure the timely resolution of enforcement matters. While the Exchange provides the Panels with an assistant, this staff person has a non-substantive role in enforcement proceedings and, therefore, is unable to fully participate in evaluating important legal, evidentiary and procedural questions. Accordingly, the Exchange has amended its Constitution and Rules to provide for professional hearing officers to serve as chairmen and voting members of Exchange Disciplinary Panels.<sup>4</sup> The remaining members of Disciplinary Panels would continue to be drawn from the ranks of practicing securities industry professionals as currently provided for in the Exchange's Constitution and Rules.<sup>5</sup>

##### ii. Indemnification of Persons Serving on Disciplinary Panels and Exchange Officials

The indemnification provision of the Exchange's Constitution had not specifically mentioned persons serving on Disciplinary Panels nor Exchange Officials. Although the Exchange believes there are sound arguments for concluding that persons serving on

Disciplinary Panels and Exchange Officials already are covered by the Exchange's indemnity provision, the Exchange has, nevertheless, amended the Constitution to make this coverage explicit to help ensure that the Exchange can continue to attract and retain qualified persons to serve in these capacities.<sup>6</sup>

##### iii. Board Review of Disciplinary Panel Decisions

Prior to this proposal, in all instances, disciplinary appeals were heard by the Executive Committee of the Board pursuant to delegated authority from the Board of Governors as authorized by Article V, Section 1(b) of the Constitution except where a member or member organization is expelled or suspended for a period of one year or more. In such instance, a review by the full Board would have been required. However, the Exchange has amended its Constitution to vest in the Executive Committee the delegated authority to hear *all* appeals (including matters the Board calls for review) regardless of the nature of the respondent or the penalty.<sup>7</sup> This should make the appeal process less cumbersome, while at the same time eliminating a special review privilege (*i.e.*, full Board review) that existed for members and member organizations, but not for their employees. The full Board would retain authority to review disciplinary decisions when such review is deemed appropriate.

#### III. Discussion

The Commission believes that the proposed rule change is consistent with the Act<sup>8</sup> and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is

<sup>6</sup> Cf. CBOE Const. art. IX, NYSE Const. art. XII, and PCX Const. art. XVI. According to these provisions, indemnification is granted to members of any committees authorized by their respective Constitutions or Boards.

<sup>7</sup> Cf. CBOE Rule 17.10 (review shall be conducted by the Board or a committee of the Board); NYSE Rule 476(f) (review of Hearing Panel's decision conducted by the Board); and PCX Rule 10.8(a) (review may either be conducted by the Board or by a committee appointed by Board).

<sup>8</sup> Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. In updating its rules to improve its disciplinary process, the Exchange has enhanced efficiency by streamlining a process that should enable the Exchange to expeditiously resolve disciplinary actions. Competition should also improve as members and customers become confident that wrongdoing will be quickly and effectively addressed. If competition increases then capital formation should improve as an increase in business should result in increased profits. 15 U.S.C. 78c(f).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4 (1995).

<sup>3</sup> Securities Exchange Act Release No. 39767 (March 17, 1998), 63 FR 1414 (March 24, 1998).

<sup>4</sup> The Amex expects that the "professional hearing officer will be an individual who is a lawyer who has had litigation experience in the securities area. It is possible that such individual, or his firm, may provide advice or services to the Exchange on matters that do not relate to the investigation or preparation of disciplinary matters." See letter from Janice M. Stroughter, Director of Hearings and Special Counsel, Legal & Regulatory Policy, American Stock Exchange, Inc., to Katherine England, Esq., Assistant Director, Market Supervision, SEC, dated February 25, 1998 ("Amendment No. 2").

<sup>5</sup> CR. CBOE Rule 2.1 (establishing committees, procedures and duties and powers thereof); NYSE rule 476(b) (outlining the composition of a Hearing Board, the selection pool from which panelists are chosen and length of service); and PCX Rule 11 (procedures for establishing committees in general, membership selection, and delegation of jurisdiction to specific committees).

consistent with Section 6(b)(7)<sup>9</sup> of the Act. The proposed rule change provides fair procedures for disciplining its members and associated persons by changing the composition of Disciplinary Panels to allow professional hearing officers to serve as chairmen and voting members on these panels. Providing more responsibility and authority to these professional hearing officers lends credibility to the disciplinary process because all parties involved in the dispute will benefit from their expertise and knowledge of the law as it applies to the securities industry. This expertise and knowledge should result in speedier Panel decisions without sacrificing due process.

The Commission notes, however, that the Exchange's rules do not specifically address the possibility of conflicts of interest between the panelist and parties in the dispute.<sup>10</sup> In response, the Exchange states that its Hearings Department screens panel members for conflicts of interest.<sup>11</sup> Initially, prospective panel members are chosen who do not present apparent conflicts. These prospective panelists are then given the names of the parties, names of lawyers or agents representing the parties, names of any potential witnesses disclosed by the parties, and the nature of the case. Prospective panelists are then asked whether they have any past or present relationships with any of the persons mentioned and whether they are aware of any other conflict presented by any of the persons mentioned or by the nature of the case. The Exchange also forwards the names of prospective panelists to the parties so that the parties can conduct their own conflicts check. In the Commission's view, this procedure should go on a long way in removing any interested persons from the list of prospective panelists before the panel is selected, thereby minimizing the possibility of conflicts.

The Commission agrees that extending the right of indemnification to persons serving on Disciplinary Panels and to Exchange Officials should

allow the Exchange to attract and retain qualified persons to serve in these capacities. By eliminating the possibility of litigation and potential judgment as factors in deciding whether to participate on a Panel, the pool of qualified candidates should increase and their decisions will be based on impartial analysis of the evidence and circumstances, not fear of reprisal. Finally, the Commission supports the Exchange vesting in the Executive Committee the authority to hear all appeals. Streamlining the appeals process should result in expedited enforcement action where necessary, which will, in turn, benefit the public.

#### IV. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(7).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-AMEX-97-30) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

[FR Doc. 98-13817 Filed 5-22-98; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39998; File No. SR-CHX-98-06]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Registration Requirements

May 18, 1998.

#### I. Introduction

On February 18, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to amend its rules to clarify the persons required to register with the CHX. On March 18, 1998, the CHX filed Amendment No. 1

to the proposal.<sup>3</sup> The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on April 1, 1998.<sup>4</sup> On May 7, 1998, the CHX filed Amendment No. 2 to the proposal.<sup>5</sup> On May 15, 1998, the CHX filed Amendment No. 3 to the proposal.<sup>6</sup> No comments were received regarding the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

CHX Article VI, "Restriction and Requirements," Rule 2, "Registration and Approval of Member and Member Organization Personnel," governs the registration and approval of member and member organization personnel and other associated persons. The CHX proposes to replace the current text to CHX Article VI, Rule 2 with new text in order to clarify those persons who are required to register with the Exchange. Specifically, new CHX Article VI, Rule 2(a), "Registration," will require all registered persons, as defined in CHX Article VI, Rule 2(b), to register with the CHX.<sup>7</sup> The CHX may waive the registration requirement or permit a short-form registration or notification for an individual who is properly registered with another self-regulatory organization ("SRO").

New CHX Article VI, Rule 2(b), "Definition of Registered Persons," defines "registered persons" as all members and persons associated with a member or member organization who are engaged or will be engaged in the securities business of a member or

<sup>3</sup> See Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Katherine A. England, Division of Market Regulation ("Division"), Commission, dated March 17, 1998 ("Amendment No. 1"). Amendment No. 1 revises CHX Article VI, Rule 2(a) to state that registered persons, as defined in CHX Article VI, Rule 2(b), must register with the CHX.

<sup>4</sup> See Securities Exchange Act Release No. 39804 (March 25, 1998), 63 FR 15906.

<sup>5</sup> See Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Yvonne Fraticelli, Attorney, Division, Commission, dated May 6, 1998 ("Amendment No. 2"). Amendment No. 2 revises CHX Article VI, Rule 2(b) to include members in the CHX's definition of registered persons.

<sup>6</sup> See Letter from Patricia L. Levy, Senior Vice President and General Counsel, CHX, to Yvonne Fraticelli, Division, Commission, dated May 15, 1998 ("Amendment No. 3"). Amendment No. 3 revises Interpretation and Policy .01 to CHX Article VI, Rule 2, to indicate that amendments to Form U-4 and Form BD regarding any registered person must be filed within 30 days after the registered person learns the facts or circumstances requiring the forms to be revised or, if the revision involves a statutory disqualification, as defined in the Act, within 10 days after the statutory disqualification occurs. The CHX's original proposal did not include the 10-day limit for the filing of amendments involving a statutory disqualification.

<sup>7</sup> See Amendment No. 1, *supra* note 3.

<sup>9</sup> Section 6(b)(7) requires the Commission to determine that a registered national securities exchange's rules are designed to provide a fair procedure for the disciplining of members and persons associated with members.

<sup>10</sup> Cf. CBOE Rule 2.1(c) (no member shall participate in adjudication of a matter in which he is personally interested) and PCX Rule 10.8(b) (review board member required to disclose any circumstances that might preclude him from rendering an objective and impartial determination) and Rule 11.3 (no committee member shall participate in an adjudication of a matter in which he is personally interested).

<sup>11</sup> See *supra* note 4, Amendment No. 2 at p.2.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.