

6(b)(5)<sup>14</sup> of the Act, in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any 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**

Written comments on the proposed rule change were neither solicited nor received.

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

Within 35 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 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 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, including whether the proposed rule change is consistent with the Act. 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 Room, located at the above address. Copies of such filing will also be available for inspection and copying at

the principal office of the self-regulatory organization. All submissions should refer to File No. SR-CBOE-98-25 and should be submitted by July 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40144; File No. SR-CHX-98-17]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Stock Exchange, Inc., to Extend the Exchange's Clearing the Post Policy for Cabinet Securities**

June 30, 1998.

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> notice is hereby given that on June 18, 1998, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") 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 by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

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

The Exchange proposes to extend the current pilot program that amends interpretation and policy .02 of CHX Rule 10 of Article XX and amends CHX Rule 11 of Article XX relating to clearing the post for cabinet securities on an interim basis until December 6, 1998, or until the Commission approves SR-CHX-98-13,<sup>3</sup> whichever occurs first. The initial six-month pilot program was approved by the Commission on January 6, 1998, and

<sup>15</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.

<sup>3</sup> Proposed rule change SR-CHX-98-13, which was filed with the Commission on June 10, 1998, (i) requests permanent approval of the policy that permits market makers to clear the cabinet post by phone, and (ii) proposes to expand this policy to include all securities traded on the trading floor.

expires on July 6, 1998.<sup>4</sup> The text of the proposed rule change is as follows:

Additions are italicized; deletions are bracketed.

**ARTICLE XX**

Rule 10. Manner of Bidding and Offering.

No change in text.

. . . Interpretations and Policies

.02 Clearing the Post.

Policy. All orders received by floor brokers or originated by market makers on the floor of the Exchange must effectively clear the post before the orders may be routed to another market, either via the ITS System or through the use of alternative means.

Floor brokers who receive an order on the floor have a fiduciary responsibility to seek a best price execution for such order. This responsibility includes clearing of the Exchange's post prior to routing an order to another market so that other buying and selling interest at the post can be checked for a potential execution that may be as good as or better than the execution available in another market.

Market makers are required to provide depth and liquidity to the Exchange market, among other things. Exchange Rules require that all market maker transactions constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. In so doing, market makers must adhere to traditional agency/auction market principles on the floor. Transactions by Exchange market makers on other exchanges which fail to clear the Exchange post do not constitute such a course of dealings.

Notwithstanding the above, it is understood that on occasion a customer will insist on special handling for a particular order that would preclude it from clearing the post on the Exchange floor. For example, a customer might request that a specific order be given a primary market execution. These situations must be documented and reported to the Exchange. Customer directives for special handling of all orders in a particular stock or all stocks, however, will not be considered as exceptions to the clearing the post policy.

All executions resulting from bids and offers reflected on Instinet terminals resident on the Exchange floor constitute "orders" which are "communicated" to the Exchange floor. Therefore, all orders resulting from interest reflected on Instinet terminals

<sup>4</sup> Securities Exchange Act Release No. 39519 (January 6, 1998), 63 FR 1985 (January 13, 1998).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

on the Exchange floor must be handled as any other order communicated to the floor. All such orders must be presented to the post during normal trading hours. All trades between Instinet and Exchange floor members are Exchange trades and must be executed on the Exchange.

**Method of Clearing the Post.** *Subject to Article XX, Rule 11 relating to cabinet securities.* [T]he Exchange's clearing the post policy requires the floor broker or market maker to be physically present at the post. A market maker, after requesting the specialist's market quote, must bid or offer the price and size of his intended interest at the post. A floor broker must clear the post by requesting a market quote from the specialist. If the specialist or any other member who has the post indicates an interest to trade at the price that was bid or offered by the market maker or the price of the floor broker's order (even though that order has not yet been bid or offered), then the trade may be consummated with the specialist (or whomever has the post) in accordance with existing Exchange priority, parity and precedence rules. If the specialist (or any other member who has the post) indicates interest to trade at that price but the member communicating the intended interest, including Instinet interest, determines not to consummate the trade with the specialist or such member, then, to preserve the Exchange's existing priority, parity and precedence rules, the trade may not be done with any other Exchange floor member. (See Article XXX, Rule 2). If the trade is consummated with the specialist or other member who has the post, the specialist (or any customer represented by the specialist) is not required to pay any fees to the broker or market maker in connection with the execution of the order, unless such fee is expressly authorized by an Exchange Rule. If the specialist does not indicate an interest to trade, then the trade may be consummated with another Exchange floor member on the Exchange floor with a resultant Exchange print.

Failure to clear the post may result in a "trade-through" or "trading ahead" of other floor interest. In addition, failure to properly clear the post may result in a violation of the Exchange's Just and Equitable Trade Principles Rule (Article VIII, Rule 7) and a market maker rule that requires all market maker transactions to constitute a course of dealing reasonably calculated to contribute to the maintenance of a fair and orderly market (Article XXXIV, Rule 1). Failure to properly clear the post may also subject the violator to a

minor rule violation under the Exchange's Minor Rule Violation Plan.

#### Rule 11. Cabinet Securities

Stocks having no designated specialist unit of trading shall be assigned for dealings by use of cabinets and shall be dealt in at a location designated for that purpose.

The Exchange may also designate bonds which are to be dealt in by use of cabinets.

Bids and offers in securities dealt in by use of cabinets shall be written on cards, which shall be filed in the cabinets in the following sequence:

1. According to price, and
2. According to the time received at the cabinet.

Orders in such securities shall be filed according to the bids and offers filed in the cabinets, in the sequence indicated above, except that oral bids and offers in such securities may be made if not in conflict with bids and offers in the cabinets. *Oral bids and offers may be made by clearing the cabinet post by phone provided that such bids and offers are audibly announced at the cabinet post through a speaker system maintained by the Exchange.*

Every card placed in the cabinets shall bear a definite price and number of shares and no mark or identification shall be placed thereon to indicate it is other than a limited order at the price.

### 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 CHX 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 III below. The CHX 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 purpose of the proposed rule change is to extend the Exchange's existing pilot program that permits market makers and floor brokers to clear the cabinet post by phone until the earlier of the two following occurrences: (i) December 6, 1998, or (ii) the Commission's approval of SR-CHX-98-13, whichever occurs first. The initial six-month pilot program was approved by the Commission on January 6, 1998

and is scheduled to expire on July 6, 1998.<sup>5</sup> In approving the original pilot program, the Commission requested that the Exchange file a report describing its experience with the program. On June 5, 1998, the Exchange filed such a report with the Commission. The purpose of this proposed rule change is to permit the current pilot to continue without interruption while the Commission considers the Exchange's proposal to expand the policy on a permanent basis to all securities traded on the Exchange.

In general, the clearing the post policy requires a floor broker or market maker to clear the post by his or her physical presence at the post. The purpose of this proposed rule change is to permit a floor broker or market maker to clear the post in cabinet securities by phone. The bids and offers made to clear the post by phone will be audibly announced at the cabinet post through a speaker system maintained by the Exchange.

##### 2. Statutory Basis

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

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

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 were either solicited or received.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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 submissions, 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

<sup>5</sup> *Id.*

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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 Room. 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-CHX-98-17 and should be submitted by July 30, 1998.

#### IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the proposal is consistent with Section 6(b)(5) of the Act<sup>7</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that allowing floor brokers or market makers to clear the post for cabinet securities while remaining at their respective posts will ensure that these floor brokers or market makers will be at their posts when they need to respond to orders in more liquid securities at a much faster pace.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register** because the extension will permit the current pilot to continue without interruption while the Commission considers the Exchange's proposal to expand the policy on a permanent basis to all securities traded on the Exchange. The extension is only for five months (or until the Commission approves SR-CHX-98-13, if it decides to do so, whichever occurs first), and will merely preserve the *status quo*. Moreover, the original pilot was noticed for the full 21-day comment period and the Commission received no comments on the proposal.<sup>8</sup> The Commission's approval of the proposal to extend the pilot for five months has no bearing on, and should not be interpreted to suggest that the Commission ultimately will approve SR-CHX-98-13.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-

CHX-98-17) be, and hereby is, approved on an accelerated basis through December 6, 1998, or until the Commission approves SR-CHX-98-13, whichever occurs first.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40152; File No. SR-CHX-98-14]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Exempt Credit by Market Makers

July 1, 1998.

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> notice is hereby given that on June 10, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 Exchange proposes to clarify an interpretation to Article XXXIV, Rule 16 of CHX's Rules relating to registered market makers' utilization of exempt credit.

#### 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 CHX 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 Exchange 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 purpose of the proposed rule change is to clarify an interpretation to the Exchange's rules regarding market makers and exempt credit. The Exchange recently modified Interpretation .01 to Article XXXIV, Rule 16, to eliminate a reference to "creating or increasing a position," thereby including all transactions consummated on the Exchange or sent from the Exchange floor via ITS in determining a market makers' ability to use exempt credit.<sup>3</sup>

In making such a change to the interpretation, the Exchange did not intend to eliminate the requirement that volume be measured on an issue by issue basis. To eliminate any possibility that the change may be misinterpreted in that manner, the Exchange is clarifying the language of the interpretation to make it clear that volume is measured for a particular issue to determine a market makers' ability to use exempt credit for that issue. The text of the proposed rule change is as follows:

Additions are italicized.

#### ARTICLE XXXIV

#### Registered Market Makers—Equity Floor

##### Regulatory Status

RULE 16. No text change.

\* \* \* Interpretations and Policies:

.01 Utilization of Exempt Credit. Exchange Members registered as equity market makers are members registered as specialists for purposes of the Securities Exchange Act of 1934 and as such are entitled to obtain exempt credit for financing their market maker transactions. Members and/or prospective members who are anticipating becoming registered as equity market makers as well as those clearing firms who are or will be carrying the accounts of market makers should be aware of the following interpretation relative to the use of such credit:

1. Only those transactions initiated on the Exchange Floor qualify as market maker transactions. This restriction prohibits the use of exempt credit where market maker orders are routed to the Floor from locations off the Floor.

<sup>7</sup> *Id.*

<sup>8</sup> See Securities Exchange Act Release No. 39519, n.4 above.

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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.

<sup>3</sup> Securities Exchange Act Release No. 40016 (May 20, 1998), 63 FR 29276 (May 28, 1998).