

consistent with Section 6 of the Act,⁴ in general, and with section 6(b)(5),⁵ in particular, because 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 CBOE does not believe that the proposed rule change will impose any 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 solicited or received with respect to the proposed rule change.

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, as amended, 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 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. Copies of such filing will also be available for inspection and copying at

the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-98-20 and should be submitted by August 6, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-18905 Filed 7-15-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40187; File No. SR-CHX-98-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Amending the Exchange's Clearing the Post Policy for Cabinet Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² 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") 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.

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

The Exchange proposes to amend interpretation and policy .02 of CHX Rule 10 of Article XX and amend CHX Rule 11 of Article XX relating to clearing the post and to make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers to clear the cabinet post by phone. 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 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 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] The Exchange's clearing the post policy requires the floor broker or market maker to be physically present *on the Exchange floor and to be present at the post. So long as the floor broker or market maker is physically present on the Exchange floor, a floor broker's or market maker's bids and*

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1994).

² 17 CFR 240.19b-4 (1997).

offers may be made by clearing the post by phone provided that such bids and offers are audibly announced at the post through a speaker system maintained by the Exchange. 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 filled 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 in the places specified in Item IV 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 make permanent the policy contained in Article XX, Rule 11 regarding the ability of oral bids and offers to clear the cabinet post by phone.³ The proposed rule change will also amend Article XX, Rule 10 to

³ See Securities Exchange Act Release No. 39519 (January 6, 1998), 63 FR 1985 (January 13, 1998) (Order approving proposed rule change SR-CHX-97-28 relating to a six month pilot program for Exchange's clearing the post policy for cabinet securities); and Securities Exchange Act Release No. 40144 (June 30, 1998), 63 FR 37157 (July 9, 1998) (Order approving proposed rule change SR-CHX-98-17 relating to a five month extension of the pilot program for the Exchange's clearing the post policy for cabinet securities).

expand this policy to bids and offers in all securities traded on the trading floor.

Under the proposed rule change, as long as the floor broker or market maker is physically present on the Exchange floor, a floor broker's or market maker's bids and offers in any security traded on the trading floor may be made by clearing the post by phone, provided they are audibly announced at the post through a speaker system maintained by the Exchange. The Exchange has not experienced any adverse effects from the implementation of this policy for cabinet issues, and believes that the differences obtained with the use of a speaker system in cabinet issues should be extended floor wide.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act⁴ 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 of 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. 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

⁴ 15 U.S.C. 78f(b)(5).

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 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-98-13 and should be submitted by August 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40191; File No. SR-DTC-98-5]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Shared Control Accounts

July 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 7, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The purpose of the proposed rule change is to allow DTC to make shared control accounts available to its participants.

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

New York State recently enacted revised Article 8 of the Uniform Commercial Code ("UCC"). Revised Article 8 gives priority in certain situations to a pledgee that has control over pledged securities (or other financial assets). According to DTC, a pledgee has control over securities when it has the ability to have the securities sold or transferred without further consent by the pledgor. The control of the pledgee need not be exclusive. The pledgor can retain the right to redeliver or make substitutions for the pledged securities.

Currently, when a participant pledges securities to the pledgee account of a pledgee at DTC, the securities are under the sole control of the pledgee. Therefore, only the pledgee can redeliver or release the securities.

The purpose of the proposed rule change is to make shared control accounts available at DTC as an alternative to the use of pledgee accounts.³ As a result of the rule change, a DTC participant will be able to establish a shared control account and to designate any DTC pledgee as the pledgee for the shared control account. A pledgee will have control over securities delivered by a participant to the participant's shared control account at DTC because the pledgee will have the ability to redeliver the securities without further consent by the participant. However, the participant also will have the ability to redeliver or to make substitutions for the securities without obtaining the pledgee's release of the securities. DTC states that, except as modified by the procedures for DTC

shared control accounts,⁴ the operation of a shared control account will be identical to the operation of a DTC pledgee account and all DTC procedures applicable to pledgee accounts are applicable to shared control accounts.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it is consistent with DTC's obligation to safeguard securities and funds in its custody or control or for which it is responsible.⁵

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

DTC does not believe that the proposed rule change will impact 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

The proposed rule change was developed through discussions with several participants. No written comments have been solicited or received.

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

Section 17A(b)(3) of the Act requires that the rules of a clearing agency be consistent with its obligation to safeguard securities and funds in its custody or control or for which it is responsible.⁶ The Commission believes that the rule change is consistent with this obligation because the proposal should help facilitate the processing of secured transactions through DTC's facilities. In addition, the operation of shared control accounts will be essentially identical to the operation of pledgee accounts which are currently available at DTC. Therefore, DTC's experience in the operation of pledgee accounts will help enable DTC to operate shared control accounts in a safe and efficient manner.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of this filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice because

⁴ The procedures for DTC shared control accounts are attached as Exhibit 2 to DTC's proposed rule change (File No. SR-DTC-98-5) which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

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

³ Pledgee accounts will continue to be available at DTC.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).