

the Commission believes it is appropriate for the Exchange to temporarily discontinue a privilege if the market maker fails to meet the minimum threshold of an affirmative obligation upon which the privilege is based.

The proposed rule change permits the Exchange to suspend a market maker's eligibility to receive market maker exempt credit in the calendar quarter immediately following the calendar quarter in which a violation occurred for all issues in which the 50% requirement was not met. The Exchange's ability to discipline market makers for failure to meet minimum quarterly share volume requirement should help ensure greater market maker compliance with the rule in the future. The Commission believes that greater compliance with the 50% minimum quarterly share volume should enhance the quality of the market for CHX-traded securities, and in turn foster investor confidence and participation in the market as well as protect investors and the public interest.

The Commission finds good cause for approving proposed Amendments Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Amendment No. 1 merely clarifies the quarterly transition from a qualifying to a non-qualifying issue by means of an example.¹⁵ Amendment No. 2 clarifies that a market maker who does not achieve the 50% minimum quarterly share volume, while ineligible for market maker exempt credit, may still be eligible for other forms of exempt credit pursuant to Regulation T and Exchange Rules.¹⁶ Amendment Nos. 1 and 2 have no substantive or procedural effect on the application of the proposed rule change, and serve to obviate potential confusion in the administration of the proposed rule change for Exchange officials, Exchange members and investors alike. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

Interested persons are invited to submit written data, views and arguments concerning Amendments Nos. 1 and 2, 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 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-98-19 and should be submitted by October 5, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-CHX-98-19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40405; File No. SR-CHX-98-18]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Exchange's Withdrawal of Capital Provisions

September 4, 1998.

I. Introduction

On June 26, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article II, Rule 6(b) of the Exchange's rules relating to the Exchange's Withdrawal of Capital provisions. The proposed rule change was published for comment in the **Federal Register** on August 4,

1998.³ The Commission received no comments on the proposal.

II. Description of the Proposal

The Exchange proposes to amend Article II, Rule 6(b) of the Exchange's rules in order to limit the applicability of the Exchange's Withdrawal of Capital provisions to member firms for which the Exchange is the Designated Examining Authority ("DEA"). The Exchange's Withdrawal of Capital provisions limit the ability of a partner in a member firm to withdraw capital from the firm. Currently, this requirement applies to both member firms for which the Exchange is the DEA as well as firms subject to examination by a self-regulatory organization ("SRO") other than the Exchange, if the member firm's DEA does not have a comparable rule. The proposed rule change would eliminate this requirement for all member firms for which the Exchange is not the DEA.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange. The Commission believes that the proposed rule change is consistent with Section 6 of the Act, in general,⁴ and Section 6(b)(5),⁵ in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.⁶ The Commission believes that the proposed rule change will not disturb the financial protections the CHX has in place ensure investor protection, the public interest, or the integrity of the Exchange's markets. CHX member firms, for which the Exchange is the DEA, will still be required to maintain adequate capital reserves. Under the proposed rule change the partnership articles of each member firm for which the Exchange is the DEA will still be required to contain provision requiring written approval

³ Securities Exchange Act Release No. 40271 (July 28, 1998), 63 FR 41609.

⁴ 15 U.S.C. 78f.

⁵ 15 U.S.C. 78f(b)(5).

⁶ In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

market makers are also granted special treatment and exemptions from requirements regarding net capital, position financing, and short sales for transaction effected during the course of bona fide market making.

¹⁵ *Supra*, note 9.

¹⁶ *Supra*, note 6.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1994).

² 17 CFR 240.19b-4 (1998).

from the Exchange for the capital contribution of any partner to be withdrawn on less than six months' written notice of withdrawal if the notice of withdrawal is given prior to six months after the capital contribution was first made. The Commission also notes that the amended CHX withdrawal of capital rule is identical or very similar to those of other SROs.⁷

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-CHX-98-18) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40404; File No. SR-NYSE-98-11]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend NYSE Rule 97, "Limitation on Members' Trading Because of Block Positioning," To Except Transactions To Facilitate Certain Customer Stock Transactions or to Rebalance a Member's Index Portfolio

September 4, 1998.

I. Introduction

On March 30, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² a proposed rule change that would amend Exchange Rule 97 to except transactions made to facilitate certain customer stock transactions or to rebalance a member firm's index portfolio. The proposed rule change was published for comment in the **Federal Register** on May 19, 1998.³ The Commission received one comment on

the proposal.⁴ This order approves the proposed rule change.

II. Description of the Proposal

The proposed rule change would amend Exchange Rule 97, "Limitation on Members' Trading Because of Block Positioning," to except transactions that facilitate certain customer transactions in: (i) specific stocks within a basket of stocks; (ii) blocks of stock; and (iii) index component stocks. The proposal also would except a member firm's proprietary transactions made to rebalance the member firm's index portfolio.

Exchange Rule 97 currently prohibits a member firm that holds any part of a long stock position in its trading account, which position resulted from a block transaction it effected with a customer, from purchasing for an account in which the block positioning member firm has a direct or indirect interest, additional shares of such stock on a "plus" or "zero plus" tick under certain conditions for the remainder of the trading day on which the member firm acquired the long position. In particular, the member holding the long position cannot purchase on a "plus tick" if the purchase: (1) would result in a new daily high; (2) is within one half hour of the close; or (3) is at a price higher than the lowest price at which any block was acquired in a previous transaction on that day. Moreover, Exchange Rule 97 precludes the member holding the long position from acquiring a position if it entails a purchase on a zero plus tick of more than 50% of the stock offered at a price higher than the lowest price at which any block was acquired in a previous transaction on that day. Under Exchange Rule 97, the term "block" is defined as a quantity of stock having a market value of \$500,000 or more that was acquired in a single transaction. Exchange Rule 97 was adopted to address concerns that a member firm might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired.

The restrictions in Exchange Rule 97 presently do not apply to transactions that: (i) involve bona fide arbitrage or the purchase and sale (or sale and purchase) of securities of companies involved in a publicly announced

merger, acquisition, consolidation or tender offer; (ii) offset transactions made in error; (iii) facilitate the conversion of options; (iv) are engaged in by specialists in their specialty stocks; or (v) facilitate the sale of a block of stock by a customer. The current exceptions under Exchange Rule 97 permit certain types of purchases that are effected for a permitted purpose, but do not include transactions solely effected to increase the block positioner's position.

The proposed rule change would provide additional exceptions that would apply to purchases made by a block positioning member firm that increase a position to facilitate: (i) the sale of a basket of stocks by a customer;⁵ or (ii) an existing customer's order⁶ for the purchase of a block of stock, a specific stock within a basket of stocks, or a stock being added to or reweighted in an index, at or after the close of trading on the Exchange. This second proposed provision (Exchange Rule 97(b)(6)) will permit a member organization to position stock to effect a cross with a customer at or after the close. The facilitating transactions effected under proposed Exchange Rule 97(b)(6) must be recorded as such and the transactions in the aggregate may not exceed the number of shares required to facilitate the customer's order for such stock. Finally, the proposal would except proprietary transactions made by a member firm due to a stock's addition to an index or an increase in a stock's weight in an index, provided that the transactions in the aggregate do not exceed the number of shares required to rebalance the member firm's index portfolio.⁷

The Exchange has represented that a member firm's purchases exempted under proposed Exchange Rule 97(b)(6) would remain subject to the limitations on positioning to facilitate customer orders as discussed in Exchange Information Memorandum No. 95-28, "Positioning to Facilitate Customer Orders."⁸ These limitations generally preclude a block positioner that has committed to sell securities after the

⁵ This provision would extend the current exception that applies to a subsequent facilitation trade of block size (Exchange Rule 97(b)(5)) to a facilitation trade of less than block size provided that the stock was part of a basket of stocks being sold by a customer.

⁶ The term "existing customer's order" refers to an already existing order of a customer. Thus, the proposal does not provide an exception for anticipatory hedging. Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, Exchange; Richard Strasser, Assistant Director; and Michael Loftus, Attorney, Division of Market Regulation, Commission (June 25, 1998).

⁷ Proposed Exchange Rule 97(b)(7).

⁸ See Securities Exchange Act Release No. 35837 (June 12, 1995), 60 FR 31749 (June 16, 1995).

⁷ See American Stock Exchange Rule 300, and New York Stock Exchange Rule 313.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 39981 (May 11, 1998), 63 FR 27609 (May 19, 1998).

⁴ See Letter from Julius R. Leiman-Carbia, Goldman Sachs & Co., to Jonathan G. Katz, Secretary, Commission, dated June 5, 1998 ("Goldman Letter").