SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40559; File No. SR–Amex–98–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Opening Transactions in Flexible Equity Options

October 15, 1998.

Pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934[1] notice is hereby given that on September 28, 1998, the American Stock Exchange, Inc. (''Amex'' 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 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 Amex proposes to change the required minimum value size for opening transactions in FLEX Equity Options series that have no open interest, so that the minimum value size will be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Amex included statements concerning the purpose of, and statutory 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 Amex 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 change the minimum value size for opening transactions (other than FLEX Quotes responsive to FLEX Request for Quotes) in any FLEX Equity Option series in which there is no open interest at the time the Request for Quotes is submitted. Currently, Rule 903G states that the minimum value size for these opening transactions shall be 250 contracts. The Exchange is proposing to change this rule such that the minimum value size for these transactions shall be the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities.

The Exchange is proposing this change because it believes the current rule is overly restrictive. The rule was originally put in place to limit participation in FLEX Equity options to sophisticated, high end worth individuals. However, the Exchange believes that this limit tied to the number of contracts alone hurts the liquidity and trading interest in FLEX Equity Options for higher priced equities. The Exchange believes the value of the securities underlying FLEX Equity Options is just as valid a restraint as one tied solely to the number of contracts and if set at the right limit can prevent the participation of investors who do not have adequate resources. In fact, the limitation on the minimum value size for opening transactions in FLEX Index Options is tied to the same type of standard, the Underlying Equivalent Value. The Exchange believes the number of contracts overlying $1 million in underlying securities is adequate to provide the right amount of investor protection. An opening transaction in a FLEX Equity series on a stock priced at more than $40 would reach this limit before it would reach the contract size limit *i.e.*, 250 contracts times the multiplier (100) times the stock price ($40) equals $1 million in underlying value. It should also be noted that the minimum value size in FLEX Equity series overlying low priced stocks may currently be permitted although the transaction may overlie a much smaller value. For example, FLEX Equity Options overlying a $10 stock would be permitted although the underlying value for Options may be $250,000 *i.e.*, 250 times 100 (multiplier) times $10 (stock price).

(2) Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[2] in general, and furthers the objectives of Section 6(b)(5),[3] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

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.

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

Because the foregoing proposed rule change is based on substantively identical rules relating to the minimum opening transaction size in FLEX Equity Options at the Chicago Board Options Exchange, Inc.[4] and: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from September 28, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(e)(6)[6] thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise furtherance of the purposes of the Act.

IV. Solicitation of Comments

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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] *See* Securities Exchange Act Release No. 40451 (September 18, 1998), 63 FR 51393 9September 25, 1998).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(e)(6).

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

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 US.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 the Amex. All submissions should refer to File No. SR–Amex–98–35 should be submitted by November 12, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release Number 34–40560; File Number SR–CHX–98–15]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Payment of Listing Fees by Specialists

October 15, 1998.

1. Introduction

On June 16, 1998, the Chicago Stock Exchange, Inc. (''CHX'' 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish that Specialists, Co-Specialists and Relief Specialists may not pay listing fees for any issuing corporation for which they act as a Specialist, Co-Specialist or Relief Specialist.

The proposed rule change was published for comment in the **Federal Register** on July 22, 1998.[3] No comments were received on the proposal. On September 24, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and grants accelerated approval to Amendment No. 1 thereto. The Commission is also soliciting comments on Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 20A to Article XXX to prohibit Exchange members and member organizations from directly or indirectly paying listing fees, including initial and maintenance fees, for any issuing corporation for which the member or member organization acts as a Specialist, Co-Specialist or Relief Specialist. According to the CHX, the purpose of the proposed rule is to avoid potential conflicts of interest, both actual and apparent, that could arise in such situations. The Exchange believes that Specialists have an obligation to maintain a free and open market in an issue. To maintain the integrity of the market, the Exchange believes that Specialists must remain independent of issuers.

III. Discussion

After careful review, the Commission finds that the proposed rule, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[6] because the rule is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and to protect investors and the public interest.

The Commission notes that proposed Rule 20A specifically prohibits CHX members from directly or indirectly paying listing fees for any issuer for which such member acts as a Specialist, Co-Specialist or Relief Specialist. The Commission believes that the proposed prohibition on specialists' payment of issuer listing fees, either directly or indirectly, should help to ensure and make clear that financial incentives given to an issuer to be listed, or remain listed, on the CHX will not be permitted. Any payment by a specialist to an issuer clearly raises a conflict of interest and puts into question the independence of the specialist in making a market in the issuer's stock. The Commission also notes that the proposed new rule is consistent with other CHX rules intended to ensure that Exchange specialists remain independent of issuers.[7]

The proposal has also been amended to explicitly prohibit specialists' from paying issuer listing fees either directly or indirectly. The Commission believes that the addition of this language will make clear that financial incentives to obtain or retain listings, irrespective of whether the incentive is received directly or indirectly from the specialist, is prohibited. This should further preserve the independence of CHX specialists and issuers.

While the Commission believes it is useful for the CHX to adopt an explicit prohibition under its rules to prohibit specialist payments to issuers, the Commission notes that any actions of specialists that raise questions as to their independence from an issuer when making a market in the issuer's stock would raise concerns under the Act. Based on the above, the Commission believes that the proposed new rule will enhance the integrity of the market and should help to ensure just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[8]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule by specifically stating that indirect, as well as direct, payments of listing fees for issuers by specialists are prohibited. The amendment, therefore, does not substantively change the meaning or intent of the proposed rule. As Amendment No. 1 strengthens the original proposal by making clear that indirect payments of listing fees are prohibited, the Commission believes that Amendment No. 1 raises no new

[8] 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. 40202 (July 14, 1998), 63 FR 39319 (July 22, 1998).

[4] Letter from David T. Rusoff, Foley & Lardner to Deborah Flynn, Division of Market Regulation, Commission, dated September 23, 1998 (''Amendment No. 1''). In Amendment No. 1, the CHX amends its proposal to clarify that the proposed rule prohibits indirect as well as direct payments of listing fees, by a specialist, on behalf of an issuer.

[5] 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).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* CHX Article XXX, Rule 23.

[8] 15 U.S.C. 78f(b)(5).