

or her position in a specialty stock. In general, the rule requires such transactions to be effected "in a reasonable and orderly manner" in relation to the overall market. The rule also requires the market in the particular stock and the adequacy of the specialist's position to meet the reasonably anticipated needs of the market. NYSE Rule 104.10(6)(i)(A) provides that a specialist may liquidate a position by selling stock on a direct minus tick or by purchasing stock on a direct plus tick (destabilizing ticks), only if the transaction is reasonably necessary in relation to the specialist's overall position in the stock and if Floor Official approval is obtained. Floor Official approval provides an independent review of these destabilizing transactions for compatibility with the reasonableness test.

NYSE Rule 104.10(6)(i)(C) provides an exception to the Floor Official approval requirement for specialist purchases and sales on destabilizing ticks to offset position acquired by the specialist in executing odd-lot orders on the same day. Odd-lot orders are executed throughout the day in the odd-lot system against the specialist in that stock. Periodically, the specialist receives an automated notification of the net amount of odd lots that have been executed against his or her position. The specialist can then offset these odd-lot transactions by buying or selling for his or her own account.

The basis for the exception was that these odd-lot offsets would not have an impact on the market as a whole. However, there has been a marked increase in the volume of odd-lot transactions in the last several years³ and, as a result, an increase in specialist offset transactions. The Exchange believes that odd-lot offsets should be treated as other liquidating transactions and be netted with round lot transactions. All destabilizing transactions would require Floor Official approval pursuant to Exchange Rules.⁴ Therefore, the Exchange is proposing to delete the exception for odd-lots in paragraph (C).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section

6(b)(5) of the Act⁵ in that the proposed rule change is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

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

The NYSE 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

Written comments were neither solicited nor received.

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

Within 35 days of the 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 the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 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 NYSE. All submissions should refer to File No.

SR-NYSE-98-34 and should be submitted by December 28, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-32323 Filed 12-3-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40709; File No. SR-NYSE-97-28]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 1 and 2 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Capital and Margin Requirements for Joint Back Office Arrangements

November 25, 1998.

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 May 21, 1998, and September 28, 1998, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 1 and 2, respectively, to 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 Amendment Nos. 1 and 2 to the proposed rule change for interested parties.

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

The Exchange seeks to amend Exchange Rule 431, "Margin Requirements," to establish margin and net capital requirements for Joint Back Office ("JBO") arrangements among broker-dealers. The proposed rule change also relates to: (i) net capital computations for members carrying proprietary accounts of other broker-dealers; (ii) net capital computations for members carrying the accounts of approved specialists or market makers; and (iii) control and restricted securities.

The text of the proposed rule change, as amended, is available at the Office of the Secretary, the Exchange, and at the Commission.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Odd-lot volume exceeded 1 billion shares on the NYSE in 1997, an 87% increase from 1994.

Telephone conversation between Agnes Gautier, Vice President, Market Surveillance, NYSE, and Robert B. Long, Attorney, Division of Market Regulation, Commission, on October 23, 1998.

⁴ See Letter from Agnes Gautier, Vice President, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated November 20, 1998.

⁵ 15 U.S.C. 78f(b)(5).

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 Exchange 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

On October 2, 1997, the Exchange filed its JBO proposal with the Commission. Notice of the proposal was issued on December 29, 1997.³ The Exchange submitted Amendment No. 1 to the JBO filing on May 21, 1998, and Amendment No. 2 on September 28, 1998.

a. *The Original JBO Filing.* The Exchange's proposed rule change would amend Exchange Rule 431 to establish capital, margin, and other requirements for JBO arrangements among broker-dealers. Regulation T, issued by the Board of Governors of the Federal Reserve System ("FRB"), permits a broker-dealer to "effect or finance transactions of any of its owners if the [broker-dealer] is a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers]." ⁴ The Exchange's proposal would provide regulatory requirements for such JBO arrangements.

Under the Exchange's original proposal, a member organization carrying and clearing, or carrying JBO accounts would be required to: (i) provide written notification to the Exchange prior to establishing a JBO arrangement, (ii) maintain minimum tentative net capital ⁵ of \$25 million, or maintain minimum net capital of \$10 million if engaged in the primary business of clearing options market-

maker accounts,⁶ (iii) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers, and (iv) deduct from net capital, the "haircut" requirements pursuant to the Commission's net capital rule (Exchange Act Rule 15c3-1) ⁷ in excess of the equity maintained in the accounts of participating broker-dealers.

Furthermore, JBO participants would be required to be registered broker-dealers subject to Exchange Act Rule 15c3-1, and would be required to maintain an ownership interest in the JBO pursuant to Regulation T. Exclusive of their ownership interest in the JBO arrangement, JBO participants would be required to maintain a minimum liquidating equity of \$1 million. If the liquidating equity fell below \$1 million, the JBO participant would be required to eliminate the deficiency within five business days or would become subject to the margin requirements under other provisions of Exchange Rule 431.

b. *Amendment No. 1.* Amendment No. 1 proposes revisions that are designed to incorporate certain proposed maintenance margin requirements for non-equity securities, which are the subject of another recent Exchange filing, SR-NYSE-98-14 ("Related Filing").⁸ The Exchange's proposed rule change, as originally filed, requires that the Commission's net capital rule haircuts be used when a member organization computes its capital charges for Rule 431 purposes. However, in the Related Filing, the Exchange proposes margin requirements for non-equity securities for broker-dealer proprietary accounts which are less than the Commission's net capital rule haircut requirements. The Exchange believes it is necessary to maintain consistency between the Exchange's JBO filing and the Related Filing by incorporating into the JBO filing the most recently proposed margin requirements. Therefore, Amendment No. 1 incorporates the requirements proposed in the Related Filing.

The Exchange's JBO filing specifies certain regulatory requirements for

establishing and maintaining JBO arrangements. Among them is the requirement that each JBO participant maintain in its account minimum net liquidating equity of \$1 million. Amendment No. 1 clarifies the margin requirements that become operative when the equity in the account of a JBO participant falls below the prescribed levels. Specifically, if the amount of equity in a JBO participant's account drops below the \$1 million minimum, the participant no longer will be an eligible JBO participant unless the necessary minimum equity is reestablished in the JBO account within the required number of days (*i.e.*, 5 business days). Amendment No. 1 clarifies that JBO participants who lose their JBO eligibility would not be considered "exempted borrowers" (as defined in Regulation T) and therefore would be subject to the margin account requirements for customers set forth in Regulation T. In addition, such participants would be subject to the maintenance requirements pursuant to the other provisions of Rule 431.

Amendment No. 1 also requests that the revisions relating to Control and Restricted Securities be subject to separate consideration and review by the Commission, apart from the broader proposal relating to JBO arrangements and broker-dealer accounts, as well as the changes proposed in Amendment No. 1. The Exchange believes that bifurcating the consideration of the revisions regarding Control and Restricted Securities, on which no comments were received, would allow them to become effective more quickly than if they were considered together with all of the other modifications proposed in the JBO filing and Amendment No. 1.

c. *Amendment No. 2.* The Exchange notes that the Chicago Board Options Exchange, Incorporated ("CBOE") has also submitted a proposed rule change to establish margin and net capital requirements for JBO clearing firms and participants.⁹ The CBOE's proposal, which is similar to the Exchange's JBO filing, originally proposed capital requirements of \$25 million and \$10 million. In response to the publication of the CBOE's JBO filing in the **Federal Register**, the Commission received several comment letters from members

³ See Securities Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (Jan. 7, 1998).

⁴ See 12 CFR 220.7(c). Regulation T is entitled "Credit By Brokers and Dealers" and was issued by the FRB pursuant to the Act.

⁵ As discussed in the Exchange's Interpretation Handbook, the term "tentative net capital" generally refers to net capital before the application of "haircuts" and undue concentration charges on securities and options positions. See NYSE Interpretation Handbook, Section I(c)(2)(vi)(M)(04), "Tentative Net Capital."

⁶ Under the proposed rule change, clearance of option market maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the ratio of gross options market maker deductions to net capital (including gross deductions for JBO participant accounts) are options market maker deductions.

⁷ See 17 CFR 240.15c3-1, "Net Capital Requirements for Brokers or Dealers."

⁸ The Commission has published notice of the Related Filing but has not taken any dispositive action on the proposal. See Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998).

⁹ The CBOE's JBO filing, SR-CBOE-97-58, was filed with the Commission on October 27, 1997, and notice of its filing was issued on December 10, 1997. See Securities Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (Dec. 17, 1997). The CBOE filed Amendment No. 1 to its JBO filing on July 27, 1998. Notice of Amendment No. 1 was issued on November 25, 1998. See Securities Exchange Act Release No. 40708 (Nov. 25, 1998).

of the CBOE. The CBOE members contended that the proposed \$10 million net capital requirement for certain JBO clearing firms, whose primary business consists of clearance of options market makers' accounts, was too high.

As a result of discussions with other self-regulatory organizations such as the CBOE, as well as deliberations among the JBO subcommittee of the Exchange's Rule 431 Committee, the Exchange seeks to lower the proposed net capital requirement for member organizations carrying and clearing, or carrying JBO accounts from \$10 million to \$7 million. This modification is consistent with the revisions which the CBOE recently proposed for its JBO filing.¹⁰ Under Amendment No. 2, the \$7 million net capital requirement only would be available to member organizations whose primary business consists of the clearance of options market maker accounts. Consequently, the proposal's \$25 million tentative net capital requirement would continue to apply to all other member organizations carrying and clearing, or carrying JBO accounts. The Exchange believes the revised level of \$7 million will continue to require capital sufficient to satisfy safety and soundness concerns.

Amendment No. 2 also includes new provisions relating to member organizations that carry and clear, or carry JBO accounts that will require: (i) prompt written notification to the Exchange when such a member organization's tentative net capital or net capital, whichever may apply, falls below prescribed standards; and (ii) that appropriate action be taken, within three business days, to resolve any such capital deficiency. Failure to correct such deficiencies within the allotted period will preclude the JBO carrying and clearing, or carrying member organization from accepting new transactions pursuant to the JBO arrangement. The Exchange believes these requirements are consistent with provisions of the Commission's net capital rule that generally deal with net capital deficiencies.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act¹¹ in that it is designed to promote just and equitable principles of trade, and protect the investing public. The Exchange further believes the proposed rule change is consistent with the rules and regulations of the Board of

Governors of the Federal Reserve System that are intended to prevent the excessive use of credit for the purchase or carrying of securities, in accordance with Section 7(a) of the Act.¹²

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

The Exchange believes the proposed rule change will not 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

The Exchange did not solicit or receive written comments with respect to the proposed rule change. The Exchange notes, however, that the CBOE received written comments regarding its companion JBO filing. Item II(A)(1)(c) above includes the Exchange's response to the issues raised in the comment letters submitted to the CBOE.

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 Exchange consents, the Commission will:

(A) by order approve the 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 Amendment Nos. 1 and 2, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, 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 persons, 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 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 Exchange. All submissions should refer to File No. SR-NYSE-97-28 and should be submitted by December 28, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40712; File No. SR-NYSE-98-30]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Customer Account Transfer Contracts

November 25, 1998.

I. Introduction

On September 28, 1998, the New York Stock Exchange, Inc. ("NYSE" 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 relating to customer account transfer contracts.

The proposed rule change was published for comment in the **Federal Register** on October 27, 1998.³ One comment in support of the proposed rule change was received. This order approves the proposal.

II. Description of the Proposal

NYSE proposes to amend Exchange Rule 412, which regulates the transfer of customer accounts from one member organization to another, and the rule's stated interpretation. Transfers of customer accounts are generally effected through the Automated Account Transfer Service ("ACATS") which is administered by the National Securities

¹³ 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. 40571 (October 19, 1998), 63 FR 57347 (File No. SR-NYSE-98-30).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78g(a).