

proposed rule change to rescind Chapter II, Section 23, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on April 17, 2000.³ Shortly thereafter, a proposed rule change filed by the Pacific Exchange rescinding its off-board trading rule was published for public comment.⁴ Similar proposed rule changes filed by the American Stock Exchange, Chicago Stock Exchange, and the Philadelphia Stock Exchange had already been published for public comment.⁵ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchange noted above.⁶

II. Description of the Proposal

Chapter II, Section 23 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange noted that "[a]dvances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading." The Exchange also noted that the NYSE had proposed to rescind its off-board trading rule, and that the Commission had requested that the Exchange review its restrictions on off-board trading.

III. Discussion

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. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁸ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁹

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Chapter II, Section 23 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in

the Act.¹⁰ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Chapter II, Section 23 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹¹ The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-00-02) is approved.

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. 34-42891; File No. SR-CHX-00-07]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Eliminate the Series 7B Qualification Examination for Floor Clerks Who May Accept Orders From Professional Customers for Execution on the Exchange's Trading Floor

June 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

³ Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497.

⁴ Securities Exchange Act Release No. 42660 (April 10, 2000, 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

⁵ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42459 (February 25, 2000, 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12).

⁶ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1.

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ Section 11A(a)(1)(C)(v) of the Act.

¹¹ NYSE Approval Order at 30179.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 17, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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.

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

The Exchange proposes to amend its Interpretation .01(d) of CHX Article VI, Rule 3 by eliminating the Series 7B Qualification Examination³ for Exchange floor clerks who may, among other functions, accept orders from professional customers⁴ for execution on the Exchange's complete the Exchange's Floor Membership Examination and either the Series 7 Examination or the Series 7A Qualification Examination.⁵ Proposed new language is in italics; proposed deletions are in brackets.

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ARTICLE VI

RESTRICTIONS AND REQUIREMENTS

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Training and Examination of Registrants

Rule 3. The Exchange may require the successful completion of a training course or an examination, or both, in connection with registration of members and persons associated with a member or member organization, and may

charge fees for such registration and examination. This provision shall apply to all members[,] and member organizations, including members and member organizations which are to be solely on the Floor of the Exchange.

Interpretations and Policies:

.01 (a) No change.

(b) No change.

(c) No change.

(d) Public Business Exam

Floor members who successfully complete the Series 7 Examination may conduct a public business which is limited to accepting orders while on the floor directly from non-broker-dealer customers. In lieu of the Series 7 Examination, Floor members who successfully complete the Series 7A examination may conduct a public business which is limited to accepting orders directly from professional customers for execution on trading floor. Floor clerks of floor members that have successfully completed the

Series 7 or Series 7A examination may accept orders from professional customers for execution on the trading floor so long as such clerks successfully complete *both the Floor Membership Exam and either the Series 7 Examination or the Series 7A[7B]E[xamination]*. For purposes of this interpretation and policy, a "professional customer" includes a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; a charitable or nonprofit educational institution regulated under the laws of the United States, or any state;[,] a [or] pension or profit sharing plan subject to ERISA, or of any agency of the United States or [as] of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

.02 No change.

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

In this 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 Section 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 proposes to amend its Interpretation .01(d) of CHX Article VI, Rule 3 to eliminate the Series 7B Examination for Exchange floor clerks. Under existing Exchange rules, a floor clerk of a qualified floor member may accept orders from professional customers for execution on the Exchange's trading floor, so long as the floor clerk has successfully completed either the Series 7 Examination or the Series 7B Examination.⁶ The Exchange's proposed rule change would require that Exchange floor clerks who will accept professional orders pass (i) the Floor Membership Examination⁷ already administered by the Exchange to prospective floor members and (ii) either the Series 7 or the Series 7A Examination. The CHX's Floor Membership Examination addresses the rules and practices of the Exchange's trading floor but has broader coverage than the Series 7B Examination.⁸

The Exchange notes that the New York Stock Exchange, Inc. ("NYSE") recently eliminated the Series 7B Examination and now requires its floor clerks to pass both a new Trading Assistant Examination ("Series 25 Examination")⁹ and either the Series 7 Examination or the Series 7A Examination before becoming eligible to accept professional orders.¹⁰ Like the CHX's Floor Membership Examination, the NYSE's new Trading Assistant Examination contains questions relating to its floor rules and policies but has broader coverage than the questions formerly included in the Series 7B Examination. The CHX therefore proposes to change its examination requirements to correspond to the recent NYSE changes that have been approved by the Commission. The CHX represents

⁶ See Securities Exchange Act Release No. 37690 (September 17, 1996), 61 FR 49803 (September 23, 1996).

⁷ The Exchange adopted the Floor Membership Exam in 1996. See Securities Exchange Act Release No. 37690 (September 17, 1996), 61 FR 49803 (September 23, 1996).

⁸ Telephone conversation between Michael Cardin, Market Regulation Department, CHX, and Susie Cho, Attorney, Division of Market Regulation, Commission, on April 5, 2000.

⁹ See Securities Exchange Act Release No. 40943 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving the Series 25 Examination).

¹⁰ See Securities Exchange Act Release No. 42092 (November 2, 1999), 64 FR 61375 (November 10, 1999) (order approving the elimination of the Series 7B Examination and establishing the Series 7A Examination as the appropriate qualification examination for NYSE floor clerks).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Series 7B Qualification Examination ("Series 7B Examination") was originally implemented by the NYSE in 1994, to serve as an alternative qualification examination to the General Securities Registered Representative Examination ("Series 7 Examination"). See Securities Exchange Act Release No. 34334 (July 8, 1994), 59 FR 35964 (July 14, 1994).

⁴ The Exchange's proposed rule change defines the term "professional customer" to include a bank; trust company; insurance company; investment trust; a state or political subdivision thereof; a charitable or nonprofit education institution regulated under the laws of the United States, or any state; a pension or profit sharing plan subject to ERISA, or of an agency of the United States or of a state or political subdivision thereof; or any person (other than a natural person) who has, or who has under management, net tangible assets of at least sixteen million dollars.

⁵ The Series 7A Qualification Examination ("Series 7A Examination") was originally implemented by the NYSE in 1993, to serve as an alternative qualification exam to the Series 7 Examination. See Securities Exchange Act Release No. 32698 (July 29, 1993), 58 FR 41539 (August 4, 1993).

that successful completion of the Exchange's Floor Membership Examination would ensure that clerks wishing to perform certain functions on the floor, such as accepting professional orders, are sufficiently familiar with the rules and practices of the Exchange's trading floor.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5)¹² in particular in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, 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

The Exchange did not solicit or receive written comments on 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 Exchange 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. 20549-0609. 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-00-07 and should be submitted by July 3, 2000.

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. 34-42886; File No. SR-CHX-99-28]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Delete Certain Provisions of Article VIII, Exchange Rule 9, Prohibiting Off-Floor Transactions by Exchange Members

June 1, 2000.

I. Introduction

On December 27, 1999, 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 rescind certain provisions of Article VIII, Exchange Rule 9, the Exchange's off-board trading rules. The proposed rule change was published for comment in the **Federal Register** on March 3, 2000.³ Proposed rule changes filed by the American Stock Exchange and the Philadelphia Stock Exchange to rescind their off-board trading rules were published on the same date as the CHX

proposing release.⁴ Shortly thereafter, the Boston Stock Exchange and the Pacific Exchange filed similar proposed rule changes.⁵ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchanges noted above.

II. Description of the Proposal

Certain provision of Article VIII, Exchange Rule 9 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange noted that the New York Stock Exchange, along with other exchanges, had submitted similar proposals to rescind their off-board trading rules,⁶ and that the Commission had recently adopted amendments to the Intermarket Trading System Plan ("ITS") to expand the ITS linkage with the National Association of Securities Dealers' Computer Assisted Execution System. Thus, "to confirm the Exchange's commitment to the competitive ideals on which those actions are based," the Exchange proposed to rescind certain provisions of its off-board trading rule, Article VIII, Exchange Rule 9.

III. Discussion

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. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the

⁴ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12).

⁵ Securities Exchange Act Release No. 42461 (April 10, 2000), 65 FR 20497 (April 17, 2000) (File No. SR-BSE-00-02); Securities Exchange Act Release No. 42660 (April 10, 2000), 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

⁶ Referring to Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 42459 (February 25, 2000), 65 FR 11619.