the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to such issuers concerning each consultant used by the municipal securities firm to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G–9 will require municipal securities firms to maintain these records for a six-year period.

III. Comment Letters

As noted above, the Commission received one comment letter concerning the proposed change. The Rubin Letter argued that although the proposed rule change may assist in uncovering payments to third parties that are intended to influence the awarding of municipal securities business, such business will continue to be awarded based on criteria other than merit until issuers are required to select the best underwriters for debt issuance. The Commission agrees with the Rubin Letter that the rule change approved today, standing alone, will not operate to cleanse the municipal market of all practices resulting in issuers awarding municipal securities business on a basis other than the merits of the underwriting firm chosen.[18] As noted above, however, the rule change approved today is intended to provide additional information to issuers and to the public to assist in determining the extent to which payments to consultants influence the issuer's selection process in connection with municipal securities business, as well as the extent to which such payments increase the cost of bringing municipal securities issues to market.

IV. Discussion and Findings

The Commission finds that the rule change is consistent with the provisions of Section 15B(b)(2)(C) [19] of the Act, which provides that the Board's rules shall be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. The Commission believes that the rule change removes impediments to and perfects the mechanism of a free and open market in municipal securities in that the amendments enhance the ability of municipal securities firms to compete for, and be awarded, municipal securities business on the basis of merit, rather than political or financial influence. Such healthy competition will act to lower artificial barriers to those municipal securities firms not willing or able to hire consultants to obtain or retain municipal securities business, thereby maintaining the integrity of the municipal securities market, as well as the public trust and confidence that is essential to the long-term health and liquidity of the market.

The Commission also believes that the rule change is in the public interest in that the amendments enhance the ability of investors to determine whether an underwriter may have made improper payments in order to secure municipal securities business. The Commission has recognized that ''information concerning financial and business relationships among the parties involved in the issuance of municipal securities may be critical to an evaluation of the underwriting.'' [20]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–MSRB–95–15 be, and hereby is, approved, effective March 18, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[18] The MSRB determined not to include within the definition of consultant persons who are engaged by a dealer at the request or direction of the issuer because those persons do not assist the dealer in obtaining or retaining municipal securities business. The MSRB stated in its filing that it will review the issue of ''issuer-designated'' professionals and other issuer involvement in the underwriting process and will address this subject, including the question of requiring disclosure of issuer-designated persons, at a future time. The Commission encourages the MSRB to consider such further initiatives in this area in order to promote the awarding of municipal securities business based on merit.

[19] 15 U.S.C. 78*o*–4.

[20] First Fidelity, *supra* n. 13, quoting Statement of the Commission Regarding Disclosure Obligations of Municipal Securities Issuers and Others, Securities Act Release No. 7049 (Mar. 9, 1994), 59 FR 12748 (Mar. 17, 1994).

[Release No. 34–36730; File No. SR–CHX–95–18]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Relating to Priority and Precedence of Agency and Professional Orders

January 17, 1996.

I. Introduction

On July 14, 1995, the Chicago Stock Exchange, Incorporated (''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 modify the priority and precedence of agency and professional orders. On July 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 36373 (Oct. 16, 1995), 60 FR 54268 (Oct. 20, 1995). No comments were received on the proposal.

II. Description of Proposal

Currently, under the Exchange's rules, specialists are not required to accept professional orders for the book unless such orders better the existing market.[4] A specialist also is not required to provide primary market protection to professional orders pursuant to the Exchange's Best Rule [5] as it does for

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

[2] 17 CFR 240.19b–4.

[3] See letter from David Rusoff, Foley & Lardner, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated July 26, 1995. In Amendment No. 1, the Exchange notified the Commission that the proposed rule change was approved by the Exchange's Executive Committee on July 20, 1995.

[4] See CHX Article XXX, Rule 2. A professional order is any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. See Interpretation .04 of CHX Article XXX, Rule 2.

[5] See Article XX, Rule 37(a). Under the Exchange's Best Rule, Exchange specialists are required to guarantee executions of market and limit orders under certain circumstances. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if the bid or offer at the limit price has been exhausted in the primary market, there has been price penetration of the limit in the primary market (a trade through of a CHX limit order), or the issue is trading at the limit price on the primary market, unless it can be demonstrated that such order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related or other criteria for requiring a fill.

agency orders.[6] Moreover, a specialist may retain priority over a professional order provided it is displaying its interest, including the size, over the quotation system (''Specialist Priority Rule''). Specialists, however, are always required to give precedence (*i.e.*, yield) to agency orders.[7] On the other hand, under the current CHX rules, agency orders do not have priority over professional orders, and professional orders that have established time priority are not required to give precedence to agency orders.[8]

The Exchange believes that the interplay among the Specialist Priority Rule, the Best Rule, and the Exchange's other rules of priority and precedence [9] often results in the unintended anomaly of providing the professional order the benefit of the Best Rule and/or the specialist being unable to retain priority over professional orders as provided in the Specialist Priority Rule. For example, assume a specialist accepts a professional order for his book and thereafter an agency order is entered on the book at the same price. If the agency order is due a fill under the Best Rule because of prints in the primary market, the professional order must also be filled because it has higher (*i.e.*, time) priority in the book. Moreover, assume a specialist bid is entered first in time and thereafter a professional order and an agency order at the same price are entered respectively. Under the current rules, even if the specialist's bid may retain priority over the professional order and only has to yield to the public agency order at the same price, in this situation the specialist bid must yield to both orders because the professional order has time priority over the public agency order.

The Exchange states that due to this anomaly, specialist are hesitant to accept professional orders. The Exchange proposes to add interpretation and policy .05 to Rule 2 of Article XXX of the Exchange's Rules to give specialists an incentive to accept professional orders for inclusion in the book.

Currently, as well as under the proposed rule change, when a professional order ''has the post,'' (*i.e.*, is the highest priority order in the specialist's book at a given price), the professional order would not be required to yield precedence to an agency order at the same price that has not established time priority over the professional order. Under the proposal, however, in the event that the agency order is due a fill under the Exchange's Best Rule, the agency order would be filled even though the professional order, which has a higher priority on the book, is not filled. Therefore, although an incoming MAX order will be filled against the professional order and not against subsequently entered agency orders that have not established time priority, if the subsequently entered agency orders are due a fill under the Best Rule, the agency orders would be executed without filling the professional order, which only has post protection.

Moreover, under the proposed rule change if a specialist's own order has the post (*i.e.*, an order that originates with the specialist as dealer is the highest priority order in the specialist's book at a given price) and a professional order and an agency order are subsequently entered in the book at the same price, the professional order must yield precedence to the agency order if the specialist's own order yields precedence to the agency order. Therefore, the specialist bid second, and the professional order third. This proposed interpretation and policy is intended to allow the agency order to displace the specialist's order while at the same time allow the specialist's order to retain priority over the professional order in accordance with the Specialist Priority Rule.

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, and, in particular, with the requirements of Section 6(b).[10] The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with the requirements of the Act because it may contribute to the depth and liquidity of the CHX market if, as the CHX suggests, more order flow is attracted to the Exchange. The Commission notes that the Exchange has represented that the proposed rule change does not affect the primary market protection afforded to agency orders under the Exchange's Best Rule, affect the standing of agency orders in relation to a dealer's orders for its own account, or modify the conditions under which a specialist's bid may retain priority over a professional order. In addition, the Exchange has represented to the Commission that the proposed rule change will not affect the application of the Exchange's current quote dissemination policy, which requires all customer limit orders, regardless of priority, to be displayed in the CHX specialist's quote when the customer order improves the specialist's quote or the national best bid or offer. The Commission, therefore, believes that the rule change will not disadvantage public agency orders.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act.[11] that the proposed rule change (SR–CHX–95–18) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

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[6] Professional market orders with a ''Z'' designator receive automatic executions based on the CHX's Best Rule. The Z designator may be used by an order sending firm after it negotiates with the specialist and the specialist agrees to accept the firm's professional orders for automatic execution on the CHX's automated order routing and execution system (''MAX''). Limit orders sent with the ''Z'' designator will be represented on the specialist's book as professional orders and do not receive the benefits of the Best Rule. Securities Exchange Act Release No. 35505 (Mar. 17, 1995), 60 FR 15613 (Mar. 24, 1995) (File No. SR–CHX–95–09).

[7] See CHX Artile XXX, Rule 2.

[8] With regard to the display of limit orders, however, the Exchange has represented to the Commission that all bids and offers that improve the current CHX quote are displayed in the revised CHX quotation. Telephone conversation between George Simmon, Craig Long, and David Rusoff, Foley & Lardner, and Holly Smith, Ivette Lopez, Glen Barrentine, and Jennifer Choi, Division of Market Regulation, SEC, on December 19, 1995. See also CHX Rule 7, Article XX. Therefore, assuming that the primary market quote in XYZ is 20¼–20½, if a professional order to buy 1,000 shares of XYZ at 20¼ was entered at 9 a.m. and a public agency order to buy 1,000 of XYZ at 20¼ was entered at 9:05 a.m., the CHX specialist quotation would show at least 2,000 shares of XYZ at 20¼.

[9] See CHX Article XX, Rules 15 (Precedence of Bids); 16 (Precedence of Bids at Same Price); 17 (Precedence of Offers); 18 (Precedence of Offers at Same Price); 19 (Precedence of Offers to Buy ''Seller's Option''); and 20 (Claim of Prior or Better Bid).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[Release No. 34–36731; File No. SR–NYSE–95–41]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Vendor Service Administrative Fee

January 17, 1996.

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