

29, 1996. In making the decision to withdraw the Security from listing on the Amex, the Company considered the direct and indirect costs and the division of the market resulting from dual listing on the Amex and NYSE.

Any interested person may, on or before February 13, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

Jonathan G. Katz,
Secretary.

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[Release No. 34-38187; File No. SR-CHX-96-29]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Approval of Applicants to Membership

January 21, 1997.

On December 6, 1996,¹ the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder.³ The proposed rule change would amend Article I, Rule 5 and Rule 6 of its rules

relating to approval procedures for applicants to membership.

Notice of the proposed rule change as amended, together with the substance of the proposal, was published in the Federal Register.⁴ No comment letters were received. This order approves the proposed rule change.

I. Background

Rules 5 and 6 of Article I of the Exchange's rules govern the application and approval process for applicants to Exchange membership. Once an application for membership has been submitted in writing to the Exchange, the rules require the staff to investigate the applicant's qualifications to determine if such applicant meets the requirements for membership. If the staff recommends that the applicant not be admitted to membership, the applicant may appeal such staff recommendation to the Executive Committee. If the staff recommends that an applicant be elected to membership, the applicant then must go through a 10 business day posting period before membership may be transferred. The purpose of the 10 business day posting period is to allow any member to file an objection to the election of the applicant to membership. At the expiration of the posting period, the Executive Committee then must consider the applicant and vote upon the applicant for membership. Transfers of memberships become effective upon election to membership.

Because the Act requires the CHX to approve an applicant to become a member of the Exchange if such applicant meets the requirements of the Act and the Exchange's rules for becoming a member, the Executive Committee has limited discretion in approving a qualified applicant to become a member. As a result, the purpose of the proposed rule change is to limit the role of the Executive Committee during the approval process to situations where an objection is raised, or material adverse information is received, during the posting period, or where the staff does not recommend an applicant for membership and the applicant decides to appeal.

II. The Terms of Substance of the Proposed Rule Change

Under Rules 5 and 6 of Article I, as proposed to be amended, if the staff recommends an applicant for membership and if no objections are received, and no material adverse

information is received, during the subsequent posting period, the membership transfer would become effective at the beginning of the next business day following completion of the posting without any action taken by the Executive Committee. As with the existing procedure, the Executive Committee would hear an appeal if the staff does not recommend an applicant for membership. Similarly, the Executive Committee would either approve or disapprove the applicant if an objection or material adverse information is received during the posting period.

Finally, the proposed rule change reduces the affirmative vote required to elect an applicant to membership from the current requirement of not less than two-thirds affirmative votes of the members of the Executive Committee present at the time of voting to a majority of the affirmative votes of the members.

III. Discussion

The proposed rule change is consistent with Section 6(b)(7) of the Act in that the rules of the exchange, in general, provide a fair procedure for the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. The proposed rule change reduces a possible obstacle to the election of an applicant to membership by reducing the affirmative votes of the members of the Executive Committee present at the time of voting required to elect an applicant to membership from the current not less than two-thirds to a majority of the affirmative votes of the members.

Furthermore, the proposed rule change is consistent with Section 3 of the Act in that the proposed rule change will promote efficiency, competition, and capital formation. The new procedure would eliminate the requirement that the Executive Committee perform the pro forma role of approving each membership transfer. At the same time, it would allow the Executive Committee to make a determination if there is some information brought to the Exchange's attention during the posting period which was not known to the staff at the time of its investigation.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR-CHX-96-29 be, and hereby is, approved.

¹ The proposal was originally filed with the Commission on November 6, 1996. The CHX subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 amends Rule 6 of Article I to change the vote required by the Executive Committee to approve an applicant to membership. Currently, CHX rules require the affirmative vote of not less than two-thirds of the members of the Executive Committee present at the time of the vote. Amendment No. 1 changes the requirement to an affirmative vote of a majority of the Executive Committee present at the time of the vote. Letter from David T. Rusoff, Foley & Lardner to Karl J. Varner, Division of Market Regulation, SEC, dated December 6, 1996.

² 15 U.S.C. § 78s(b)(1) (1988).

³ 17 CFR 240.19b-4 (1993).

⁴ Securities Exchange Act Release No. 38034 (December 6, 1996), 61 FR 66065 (December 16, 1996).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38196; File No. SR-NASD-96-51]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Rule 11890 Regarding Clearly Erroneous Transactions

January 22, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD and The Nasdaq Stock Market, Inc. ("Nasdaq"). On January 17, 1997, the NASD and Nasdaq submitted to the Commission Amendment No. 1 to the proposed rule change.¹ 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

Pursuant to Section 19(b)(1) under the Act and Rule 19b-4 thereunder, the NASD and Nasdaq are submitting this rule filing to amend Rule 11890, the rule related to clearly erroneous transactions. The proposed amended language for Rule 11890 is set forth below. [new text is italicized; deleted text is bracketed].

11890. Clearly Erroneous [Trades] Transactions

(a) Authority to [Declare] Review Transactions [Void]

(1) [In circumstances in which the Association deems it necessary to maintain a fair and orderly market and to protect investors and the public interest, the Association may, pursuant to the procedures set forth in paragraph (b) below, declare any transaction

arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by the Association or any subsidiary thereof and approved by the Commission, null and void on the grounds that one or more of the terms of the transaction are clearly erroneous.

(2) For the purposes of this Rule, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.

(2) *Officers of The Nasdaq Stock Market, Inc. ("Nasdaq") designated by the President of Nasdaq shall, pursuant to the procedures set forth in paragraph (b) below, have the authority to review any transaction arising out of the use or operation of any automated quotation, execution, or communication system owned or operated by Nasdaq and approved by the Commission. A Nasdaq officer shall review transactions with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Based upon this review, the Officer shall decline to act upon a disrupted transaction if the officer believes that the transaction under dispute is not clearly erroneous, or, if the officer determines the transaction in dispute is clearly erroneous, he or she shall declare that the transaction is null and void or modify one or more terms of the transaction. When adjusting the terms of a transaction, the Nasdaq officer shall seek to adjust the price and/or size of the transaction to achieve an equitable rectification of the error that would place the parties to a transaction in the same position, or as close as possible to the same position, that they would have been in had the error not occurred. Nasdaq shall promptly provide oral notification of a determination to the parties involved in a disputed transaction and thereafter issue a written confirmation of the determination.*

(b) Procedures for Reviewing [Declaring a] Transactions [Void]

(1) Any member or person associated with a member that seeks to have a transaction reviewed [declared null and void] pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) for transactions occurring prior to 10:00 a.m., Eastern Time, complaints must be submitted 10:30 a.m., Eastern Time; and

(B) for transactions occurring on or after 10:00 a.m., Eastern Time,

complaints must be submitted within thirty minutes.

[notify an officer of the Association designated by the President of the transaction during Nasdaq operating hours on the same business day the transaction occurs, and shall provide such official all facts and information necessary for a determination under paragraph (a). Information communicated orally shall be confirmed promptly in writing.]

(2) *Once a complaint has been received in accord with subparagraph (b)(1) above:*

(A) *the complainant shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise;*

(B) *the counterparty to the trade shall be verbally notified of the complaint by Nasdaq staff and shall have up to thirty (30) minutes, or such longer period as specified by Nasdaq staff, to submit any supporting written information concerning the complaint necessary for a determination under paragraph (a)(2), via facsimile or otherwise; and*

(C) *either party to a disputed trade may request the written information provided by the other party pursuant to this subparagraph.*

(3) *Notwithstanding paragraph (b)(2) above, once a party to a disputed trade communicates that it does not intend to submit any further information concerning a complaint, the party may not thereafter provide additional information unless requested to do so by Nasdaq staff. If both parties to a disputed trade indicate that they have no further information to provide concerning the complaint before their respective thirty-minute information submission period has elapsed, then the matter may be immediately presented to a Nasdaq officer for a determination pursuant to paragraph (a)(2) above.*

(4) *Each member and/or person associated with a member involved in the transaction shall provide the Association with any information requested by the Association in order to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above.*

(5) *Once a party has applied to Nasdaq for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered pursuant to paragraph (a)(2).*

⁵ 17 CFR 200.30-3(a)(12).

¹ See letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, SEC, dated January 17, 1997. Amendment No. 1 corrects typographical errors in the text of the proposed rule change.