

Securities and Exchange Commission will hold the following meetings during the week of October 11, 1999.

An open meeting will be held on Wednesday, October 13, 1999, at 10 a.m. A closed meeting will be held on Wednesday, October 13, 1999, following the 10 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, October 13, 1999, at 10:00 a.m. will be:

The Commission will consider whether to propose new rules and rule amendments that are designed to enhance the independence and effectiveness of independent directors and to better enable investors to assess the independence of directors. The Commission also will consider whether to issue a companion release that would provide the views of its staff on a number of interpretive issues related to fund directors, and the views of the Commission on its role in disputes between independent directors and fund management. These initiatives follow on discussions at a Roundtable on fund independent directors hosted by the Commission earlier this year. For further information regarding the proposed substantive rule amendments, contact Jennifer B. McHugh at (202) 942-0690; regarding the proposed disclosure rule amendments, contact Heather A. Seidel at (202) 942-0721; or regarding the interpretive release, contact Brendan C. Fox at (202) 942-0660.

The subject matter of the closed meeting scheduled for Wednesday, October 13, 1999, following the 10:00 a.m. open meeting, will be:

Institution and settlement of injunctive actions  
Institution and settlement of administrative proceedings of an enforcement nature  
Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: October 6, 1999.

Jonathan G. Katz,

Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41922; File No. SR-CHX-99-11]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Specialist Retention Periods for Securities Traded on the Exchange

September 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 19, 1999, the Chicago Stock Exchange, Incorporated ("CHX" 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 CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to approve that portion of the proposal related to securities listed on the exchange on an accelerated basis.

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

The Exchange proposes to make permanent a pilot program<sup>3</sup> relating to the time periods for which a co-specialist must trade a security listed on the Exchange prior to deregistering as the specialist for that security as set forth in Article XXX, Rule 1, Interpretation and Policy .01. The Exchange also proposes to adopt separate co-specialist retention periods relating to the time periods for which a co-specialist must trade a Nasdaq National Market ("NM") security, which are traded on the Exchange pursuant to unlisted trading privileges, prior to deregistering as the specialist for that security. The text of the proposed rule change is available at the CHX and the Commission.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The pilot program expired on September 8, 1999.

#### 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 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 VI below. The CHX 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

(a) *Listed Securities:* Interpretation and Policy .01 to Article XXX, *Specialists*, Rule 1, *Registration and Appointments*, of the Exchange's rules set forth the procedures for allocating and reallocating securities among specialist units and co-specialists. The Exchange's Committee on Specialist Assignments and Evaluation ("CSAE") is responsible for appointing specialists and co-specialists<sup>4</sup> and conducting deregistration proceedings in accordance with Article XXX of the Exchange's rules. Several circumstances may lead to the need for assignment or reassignment of a security.<sup>5</sup> One of these circumstances is by specialist request. Subsection 2 of Interpretation and Policy .01 addresses the assignment and reassignment process when a specialist requests deregistration in one or more of its assigned securities. The Exchange amended Subsection 2 on a pilot basis in 1997 to specifically address the deregistration of co-specialists in securities.<sup>6</sup> Under the pilot program, a co-specialist awarded a security in competition was required to trade that security for at least one year before being able to deregister in the security, if no other specialist will be assigned to the security after posting and deregistration.<sup>7</sup> In addition, generally, two years had to elapse before an intra-

<sup>4</sup> A specialist is a "unit" or organization that has registered as such with the Exchange under Article XXX, Rule 1. A co-specialist is an individual who has registered such under Article XXX, Rule 1. See CHX Rules, Article XXX, Rule 1, Interpretation and Policy .01.4(a).

<sup>5</sup> CHX Rules, Article 1, Rule 1, Interpretation and Policy .01.

<sup>6</sup> Securities Exchange Act Release No. 39028 (Sept. 8, 1997), 62 FR 48329 (Sept. 15, 1997); see also Securities Exchange Act Release No. 40408 (Sept. 8, 1998), 63 FR 49375 (Sept. 15, 1998).

<sup>7</sup> Posting means that all specialist are put on notice that the security is available for reassignment.

firm transfer of the issue (*i.e.*, transfer of the issue to another co-specialist within the same specialist unit) would be permitted without posting. For securities awarded to co-specialists without competition, a co-specialist was required to trade the security for three months before being able to deregister in the security if no other specialist would be assigned to the security after posting and deregistration. Finally, no minimum time period was required to elapse before an intra-firm transfer is permitted for non-competitive assignments.

The pilot program was extended for another year in 1998.<sup>8</sup> Based on its success, the Exchange is requesting permanent approval of the requirements of the program.<sup>9</sup>

(b) *Nasdaq NM Securities.* In addition to requesting permanent approval of the provisions of the pilot program, the Exchange is also proposing to adopt specific retention periods for co-specialists in Nasdaq/NM securities. Because the number of Nasdaq/NM securities that the Exchange can trade pursuant to unlisted trading privileges ("UTP") is limited,<sup>10</sup> stock allocation issues relating to Nasdaq/NM securities that are distinct from allocation issues relating to other securities trade on the Exchange have developed. Specifically, because of the existing 1,000 security limit on the total number of Nasdaq/NM securities that can be traded UTP on an Exchange-wide basis, co-specialists in Nasdaq/NM securities cannot acquire a new Nasdaq/NM issue until they deregister in an issue they currently trade and that security is removed from the list of Nasdaq/NM securities traded on the Exchange. The current specialist deregistration rules, however, do not provide the flexibility to quickly complete this procedure. In addition, the current rules do not provide Nasdaq/NM specialist firms sufficient flexibility to reallocate stocks awarded in competition between co-specialists within the same specialist unit when a

co-specialist's stocks become active and volatile.<sup>11</sup>

To address these concerns, the Exchange is proposing to amend the retention restrictions on co-specialists for Nasdaq/NM securities in Interpretation and Policy .01 to Rule 1. The amended interpretation will permit co-specialists in Nasdaq/NM issues to deregister in an issue more quickly, to allow them to respond to market developments. The proposed amended interpretation will also allow for easier transfer of issues between co-specialists within a specialist unit. Specifically, the proposed rule change specifies no minimum retention periods for Nasdaq/NM issues. In addition, and, subject to the CSAE's continuing authority, the proposal will also permit co-specialists in Nasdaq/NM securities to deregister at any time after providing at least five calendar days notice to order sending firms, and allow intra-firm transfer of Nasdaq/NM securities awarded in competition without a mandatory retention period.<sup>12</sup>

The Exchange intends to ensure that there will be no disruption to the marketplace as a result of relaxed stock retention requirements. The Exchange believes that its recently filed rule change increasing the fee for such transfer to \$2,000 will prevent disruptive serial transfers and deregistrations that have not been carefully contemplated by the specialist.<sup>13</sup>

Finally, the proposed amendments relating to Nasdaq/NM securities will only be effective for so long as there is a limit upon the number of Nasdaq/NM issues that can be traded UTP on the Exchange. If the Commission eliminates this limitation, Nasdaq/NM issues and the co-specialists maintaining Nasdaq/NM issues will be subject to the regular retention periods applicable to all other issues traded on the Exchange.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>14</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons

regulating securities transactions, 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.

## 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 completion.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

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

The Exchange has requested accelerated approval of the proposed rule filing relating to listed securities. The CHX points out that this portion of the proposed rule change has existed as a pilot for approximately two years, and was previously published in the **Federal Register** and subject to notice and comment. The Exchange believes that the program provides a benefit both to specialists and the investing public by permitting specialists to add or deregister as a specialist in an orderly manner. In light of this, and the fact that the portion of the proposed rule change related to listed securities has already been subject to notice and comment, the Exchange believes that accelerated approval is appropriate in order to reactivate this program on a permanent basis.

With regard to that portion of the proposed rule change related to Nasdaq NM securities, within 35 days of the date of publication of this notice in the **Federal Register** or within such other 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 that portion of the proposed rule change related to Nasdaq NM securities, or

b. Institute proceedings to determine whether the portion of the proposed rule change related to Nasdaq NM securities should be disapproved.

## IV. Solicitation of Comments

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

<sup>8</sup> Securities Exchange Act Release No. 40408 (Sept. 8, 1998), 63 FR 49375 (Sept. 15, 1998).

<sup>9</sup> Pursuant to the original approval order, the Exchange was required to submit a report to the Commission describing its experience with the pilot program after a one year period. The Exchange submitted the required report and requested an extension of the pilot program for an additional one year period. The Commission again requested a report at the end of one year to further evaluate the program. The Exchange recently submitted this report in anticipation of this rule filing. See letter from Daniel J. Liberti, CHX, to Katherine A. England, Assistant Director, Commission dated July 7, 1999.

<sup>10</sup> Securities Exchange Act Rel. No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

<sup>11</sup> In such a situation, a specialist unit might deem it to be in the best interests of customers and the Exchange to transfer the stock to another co-specialist within the same specialist unit that is assigned to a fewer number of issues or is more experienced.

<sup>12</sup> There is currently no minimum retention period for intra-firm transfers of securities awarded without competition. See Article XXX, Rule 1, Interpretation and Policy .01.

<sup>13</sup> Securities Exchange Act Release No. 41569 (June 28, 1999), 64 FR 36726 (July 7, 1999).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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, DC 20549-0609. 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 person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR-CHX-99-11 and should be submitted by November 2, 1999.

#### V. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the portion of the proposed rule change relating to specialist retention periods for listed securities traded on the Exchange is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5)<sup>15</sup> requirements that the Exchange's rules 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, in general, to protect investors and the public interest.<sup>16</sup>

The Commission finds good cause for approving the portion of the proposed rule change relating to listed securities prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission believes that accelerated approval will promote continuity in specialist retention practices relating to listed securities, as conducted under the recently expired pilot program. In addition, the Commission specifically notes that the pilot program was previously published in the **Federal Register** and operated for several years without comment from the industry or the investing public.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the portion of the proposed rule change (File No. SR-CHX-99-11) relating to listed securities traded on the CHX is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Jonathan G. Katz,**

*Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41975; File No. SR-MSRB-98-08]

#### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G-38, on Consultants, Rule G-37, Political Contributions and Prohibitions on Municipal Securities Business, Rule G-8, on Books and Records, and Revisions to the Attachment Page to Form G-37/G-38

October 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 16, 1998, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. On August 26, 1999, the Board filed Amendment No. 1 which replaces and supersedes the proposed rule change.<sup>3</sup> The Commission is publishing

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> On June 16, 1998, the MSRB submitted its initial proposal which amended G-38 to define the meaning of "reportable contributions," outlined what Consultant Agreements should include, and provided dealers with a "reasonable efforts" defense. The defense would have held that a dealer does not violate Rule G-38 if the dealer fails to receive all required information from its consultant and thus, fails to report such information to the Board, but can demonstrate that it used reasonable efforts in attempting to obtain the information, including a statement in the dealer's Consultant Agreement that Board rules require disclosure of consultant contributions and payments, and send quarterly reminders to its consultants of the deadline for their submissions to the dealer of the required information. After discussions with the Commission, the Board amended the proposal and published it for comment. See Additional Requirements for Pending Amendments on Disclosure of Consultants' Contributions: Rule G-

this notice to solicit comments on the proposed rule change, as contained in Amendment No. 1, from interested persons.

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

The MSRB is proposing to amend Rule G-38, on consultants, Rule G-37, on political contributions and prohibitions on municipal securities business, Rule G-8, on books and records, and to revise the attachment page to Form G-37/G-38. The proposed rule change requires brokers, dealers, or municipal securities dealers ("dealers") to obtain from their consultants information on the consultants' political contributions and payments to state and local political parties and to report such information to the Board on Form G-37/G-38. The Board has requested that the Commission delay the effectiveness of the proposed rule change until April 1, 2000, to provide time for dealers to revise their contracts with their consultants and to put supervisory procedures in place for compliance with the proposed rule change. Below is the text of the proposed rule change. Additions are italicized; deletions are bracketed.

#### Rule G-38. Consultants

(a) Definitions.

(i)-(v) No change.

(vi) The term "reportable political contribution" means:

(A) if the consultant has had direct or indirect communication with an issuer on behalf of the broker, dealer or municipal securities dealer to obtain or retain municipal securities business for such broker, dealer or municipal securities dealer, a political contribution to an official(s) of such issuer made by any contributor referred to in paragraph (b)(i) during the period beginning six months prior to such communication and ending six months after such communication;

(B) the term does not include those political contributions to official(s) of an issuer made by any individual referred to in subparagraph (b)(i)(A) or (B) of this rule who is entitled to vote for such official if the contributions made by such individual, in total, are not in excess of \$250 to any official of such issuer, per election.

(vii) The term "reportable political party payment" means:

38, MSRB Reports, Vol. 19, No. 2 (April 1999) at 3-7. Amendment No. 1, among other things, modifies the "reasonable efforts" defense established in the initial proposal by imposing stricter requirements on dealers in monitoring their consultants' activities.

<sup>15</sup> 15 U.S.C. 78o(b)(5).

<sup>16</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).