Section 17(a) of the Act

8. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants submit that the Direct Funds and Underlying Portfolios may be deemed to be affiliated persons of one another by virtue of being under common control of KAM, or because the Direct Funds own 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Direct Funds could be deemed to be principal transactions between affiliated persons under section 17(a).

9. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

10. Section 6(c) of the Act provides that the Commission may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under sections 6(c) and 17(b) to permit the Direct Funds to purchase and redeem shares to the Underlying Portfolios.

11. Applicants state that the terms of the proposed transactions will be reasonable and fair and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Direct Funds in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Direct Funds and will be consistent with the policies as set forth in the registration statement of the Direct Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Direct Funds.

2. No Underlying Portfolio or Other Portfolio will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engaged in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees, and service fees relating to the shares of the Direct Funds, when aggregated with any sales charges, distribution-related fees, and service fees paid by the Direct Funds relating to their acquisition, holding, or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

4. Before approving any advisory contract under section 15 of the Act, the boards of directors/trustees of the Direct Funds, including a majority of the directors/trustees who are not ''interested persons,'' as defined in section (2)(a)(19), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Direct Funds.

5. Each Direct Fund will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28166 Filed 10–20 –98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40550; File No. SR–CHX–98–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Inc. Relating to the Submission of Written Statements by Respondents In Disciplinary Investigations, or ''Wells Submissions''

October 14, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4(e)(6) thereunder,[2] notice is hereby given that on October 7, 1998, the Chicago Stock Exchange, Incorporated (''CHX'' or the ''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 Exchange. 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

The Exchange proposes to add interpretation and policy .01 to Rule 1 of Article XII of the Exchange's Rules to codify the Exchange's practice of permitting, but not requiring, the Exchange staff to notify persons that they are the subject of an investigative report and give those persons the opportunity to submit a written statement prior to the CHX president's review of the investigative report to determine whether charges should be brought (a so-called Wells Submission).[3]

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

[2] 17 CFR 240.19b(e)(6).

[3] The CHX notes that its disciplinary procedures are currently being amended to change the person reviewing the report from the CHX President to an Initial Determination Panel. *See* SR–CHX–96–31. Upon approval by the Commission, this new interpretation will apply to current procedures, as well as procedures existing after the approval of SR–CHX–96–31.

The text of the proposed rule change is set forth below (additions are italicized):

ARTICLE XII

Discipline and Trial Proceedings

Rule 1

Interpretations and Policies:

.01 Notice and Statement. Prior to making a report pursuant to paragraph (a) of this Rule 1, the staff may notify the person(s) who is (are) the subject of the report (''Subject'') of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder or constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the board regulating the conduct of business on the Exchange, that appear to have been violated. The Subject(s) may, within the time frame set forth in the notice from the staff, then submit a written statement to the Exchange setting forth their interests and position in regard to the subject matter of the investigation. To assist a Subject in preparing such a written statement he or she shall, upon request, have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or her or his or her agents to the Exchange.

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

The purpose of the proposed rule change is to codify the Exchange's practice of permitting Wells Submissions in connection with its disciplinary process. Prior to submitting any investigative report in which the staff of the Exchange submits that there is a reasonable basis to believe a violation within the disciplinary jurisdiction of the Exchange has occurred, the staff may, but is not required to, notify the person who is the subject of the report (the ''Subject'') of the pending investigation. This notice includes the general nature of the allegations and the specific rule or by-law that appears to have been violated. If the staff provides such notice, the Subject will generally then submit a written statement to the staff setting forth his or her interests and positions regarding the subject matter of the investigation.[4] This written statement is usually referred to as a Wells Submission and is used by the Commission and other self-regulatory organizations in their enforcement programs. The Exchange has, in the past, accepted Wells Submissions and is now merely codifying such practice within its rules.[5] The current policy, as codified, gives the Subject notified of a pending disciplinary investigation a reasonable period of time, depending on the circumstances of the matter, to comment on the notice and proposed disciplinary action. The deadline for the responsive Wells Submission will be included in the notice to the Subject. If such a response is received within the timeframe set forth in the notice, the staff will include the Wells Submission with its report to the CHX President (or, upon approval of SR–CHX–96–31, to the Initial Determination Panel). The staff, of course, reserves the right to amend its report to respond to the arguments raised in the Wells Submission.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[6] of the Act, in general, and furthers the objectives of Section 6(b)(7),[7] in particular, by providing a fair procedure for the disciplining of members and persons associated with members by codifying the existing practice permitting the Exchange to (a) notify members and associated persons of their involvement in a disciplinary investigation, and (b) permit members and associated persons an opportunity to comment upon such notice prior to the commencement of enforcement proceedings.

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

The Exchange does not believe that the proposed rule change would 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from October 7, 1998, the date on which it was filed and, since the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and subparagraph (e)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appopriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solictation 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, 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

[4] Several additional non-substantive textual changes were also provided by telephone call on October 8, 1998. Telephone call between Kirsten M. Carlson, Foley & Lardner, and Anitra T. Cassas, Division of Market Regulation, Commission.

[5] *See* Chicago Board Options Exchange Rule 17.2(d), Philadelphia Stock Exchange Rule 960.2(e), and proposed Cincinnati Stock Exchange Rule 8.2(d) which are all similar to this rule, except that those rules require the staff of those exchanges to provide notification of pending disciplinary investigations. The proposed CHX rule permits, but does not require, the staff to provide such notification. The permissive nature of the proposed CHX rule is similar to current Commission procedures and is consistent with the NASD's policy, as addressed in connection with its recently revised disciplinary procedures. *See* NASD Notice to Members 97–55.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(6).

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 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–98–23 and should be submitted by November 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–28198 Filed 10–20–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40553; File No. 4–208]

Intermarket Trading System; Order Approving Thirteenth Amendment to the ITS Plan Relating to the Elimination of the Requirement That the Cincinnati Stock Exchange, Inc. Submit Proposed Rule Changes to its Rule 11.9 or the Description of NSTS Processing to Other ITS Participants for Review and Comment Prior to Filing Such Changes With the Securities and Exchange Commission, and Making Certain Technical Changes

October 14, 1998.

I. Introduction

On August 17, 1998, the Intermarket Trading System (''ITS'') submitted to the Securities and Exchange Commission (''Commission'') an amendment (''Thirteenth Amendment'') to the Restated ITS Plan (''Plan'')[1] pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[2] and Rule 11Aa3–2 thereunder[3] to eliminate the requirement that the Cincinnati Stock Exchange, Inc. (''CSE''), submit proposed rule changes to its Rule 11.9 or the description of National Securities Trading System (''NSTS'') processing to other ITS Participants for review and comment prior to filing such changed with the Commission, and to make certain technical changes. The proposed plan amendment was published for comment in the **Federal Register** on September 3, 1998.[4] No comments were received on the proposal. For the reasons discussed below, the Commission is approving the proposal.

The ITS is a communications and order routing network linking eight national securities exchanges and the electronic over-the-counter (''OTC'') market operated by the National Association of Securities Dealers, Inc. (''NASD''). The ITS was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.

Participants to the ITS Plan include the American Stock Exchange, Inc., (''Amex''), the Boston Stock Exchange, Inc., (''BSE''), the Chicago Board Options Exchange, Inc. (''CBOE''), the Chicago Stock Exchange, Inc. (''CHX''), the CSE, the NASD, the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''PHLX'').

II. Description

The purpose of the amendment is to: (1) eliminate the requirement that the CSE submit proposed changes to its Rule 11.9 or the description of NSTS processing to other ITS Participants for review and comment prior to filing such changes with the Commission; (2) recognize the change in corporate name from the Pacific Stock Exchange, Inc. (''PSE'') to the Pacific Exchange, Inc. (''PCX''); (3) change the corporate address of the CSE; and (4) make a technical correction to Section 8(e)(iv)(D).

The change concerning prior review of CSE rule changes responds to the Commission's request in its letter to all Participants, dated may 27, 1997.[5]

III. Discussion

The Commission finds that the proposed amendments to the Plan are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national market system plan, and, in particular, with the requirements of Section 11A.[6] Specifically, the Commission believes the proposal is consistent with the requirements of Sections 11A(a)(1)(C)(ii) and (D)[7] which provide for fair competition among the ITS Participants and their members, and the linking of all markets for qualified securities through communications and data processing facilities which foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to the best execution of such orders. The Commission also finds that the amendment is consistent with Rule 11Aa3–2(c)(2)[8] which requires the Commission to determine that the amendment is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

The ITS Plan currently provides a special right of review to ITS Participants for proposed rule changes involving the operating of the CSE's NSTS. NSTS, described in CSE Rule 11.9, is an electronic securities communications and execution system through which bids and offers of public orders and competing dealers are consolidated for review and execution. Under ITS Plan Section 8(e)(iii), any rule, interpretation, or amendment to CSE Rule 11.9, or the description of the NSTS, cannot be submitted by the CSE for Commission approval until other ITS Participants have been afforded a reasonable opportunity to review and comment on the interpretation or amendment. The Commission notes that when the NSTS–ITS link was approved in 1986, the novel nature of NSTS provided some support for this approach. The Commission believes, however, that eliminating the special right of review is appropriate because such review permits other Participants to hinder the CSE from improving its market without prior notice to and comment from its market competitors. Other markets do not have a similar impediment to adjusting their trading systems. The Commission further notes that any system changes to NSTS must be filed with the Commission, and market participants may present any views they have during the comment period.[9] In addition, the Commission notes that the ITS Participants have acted to eliminate this review requirement in response to the Commission's request.[10] Therefore, the Commission believes that the proposed

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[10] 17 CFR 200.30–3(a)(12).

[1] The ITS Plan is a National Market System (''NMS'') plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2. Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938.

[2] 15 U.S.C. 78k–1.

[3] 17 CFR 240.11Aa3–2.

[4] Exchange Act Release No. 40373 (August 27, 1998), 63 FR 47050.

[5] *See* letter from Jonathan G. Katz, Secretary, Commission, to ITS Participants, dated May 27, 1997 (''ITS Letter'').

[6] U.S.C. 78k–1.

[7] U.S.C. 78k–1(a)(1)(C)(ii) and (D).

[8] 17 CFR 240.11Aa3–2(c)(2).

[9] The Commission wishes to point out that this filing requirement for systems changes applies equally to all self-regulatory organizations.

[10] *See* ITS Letter, *supra* note 5.