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. 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 US.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–98–35 should be submitted by November 12, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release Number 34–40560; File Number SR–CHX–98–15]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto Relating to the Payment of Listing Fees by Specialists

October 15, 1998.

1. Introduction

On June 16, 1998, the Chicago Stock Exchange, Inc. (''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 establish that Specialists, Co-Specialists and Relief Specialists may not pay listing fees for any issuing corporation for which they act as a Specialist, Co-Specialist or Relief Specialist.

The proposed rule change was published for comment in the **Federal Register** on July 22, 1998.[3] No comments were received on the proposal. On September 24, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change and grants accelerated approval to Amendment No. 1 thereto. The Commission is also soliciting comments on Amendment No. 1 to the proposed rule change.

II. Description of the Proposal

The Exchange proposes to adopt new Rule 20A to Article XXX to prohibit Exchange members and member organizations from directly or indirectly paying listing fees, including initial and maintenance fees, for any issuing corporation for which the member or member organization acts as a Specialist, Co-Specialist or Relief Specialist. According to the CHX, the purpose of the proposed rule is to avoid potential conflicts of interest, both actual and apparent, that could arise in such situations. The Exchange believes that Specialists have an obligation to maintain a free and open market in an issue. To maintain the integrity of the market, the Exchange believes that Specialists must remain independent of issuers.

III. Discussion

After careful review, the Commission finds that the proposed rule, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes the proposal is consistent with the requirements of Section 6(b)(5) of the Act[6] because the rule is designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and to protect investors and the public interest.

The Commission notes that proposed Rule 20A specifically prohibits CHX members from directly or indirectly paying listing fees for any issuer for which such member acts as a Specialist, Co-Specialist or Relief Specialist. The Commission believes that the proposed prohibition on specialists' payment of issuer listing fees, either directly or indirectly, should help to ensure and make clear that financial incentives given to an issuer to be listed, or remain listed, on the CHX will not be permitted. Any payment by a specialist to an issuer clearly raises a conflict of interest and puts into question the independence of the specialist in making a market in the issuer's stock. The Commission also notes that the proposed new rule is consistent with other CHX rules intended to ensure that Exchange specialists remain independent of issuers.[7]

The proposal has also been amended to explicitly prohibit specialists' from paying issuer listing fees either directly or indirectly. The Commission believes that the addition of this language will make clear that financial incentives to obtain or retain listings, irrespective of whether the incentive is received directly or indirectly from the specialist, is prohibited. This should further preserve the independence of CHX specialists and issuers.

While the Commission believes it is useful for the CHX to adopt an explicit prohibition under its rules to prohibit specialist payments to issuers, the Commission notes that any actions of specialists that raise questions as to their independence from an issuer when making a market in the issuer's stock would raise concerns under the Act. Based on the above, the Commission believes that the proposed new rule will enhance the integrity of the market and should help to ensure just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[8]

The Commission finds good cause for approving Amendment No. 1 to the proposed rule prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that Amendment No. 1 clarifies the proposed rule by specifically stating that indirect, as well as direct, payments of listing fees for issuers by specialists are prohibited. The amendment, therefore, does not substantively change the meaning or intent of the proposed rule. As Amendment No. 1 strengthens the original proposal by making clear that indirect payments of listing fees are prohibited, the Commission believes that Amendment No. 1 raises no new

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40202 (July 14, 1998), 63 FR 39319 (July 22, 1998).

[4] Letter from David T. Rusoff, Foley & Lardner to Deborah Flynn, Division of Market Regulation, Commission, dated September 23, 1998 (''Amendment No. 1''). In Amendment No. 1, the CHX amends its proposal to clarify that the proposed rule prohibits indirect as well as direct payments of listing fees, by a specialist, on behalf of an issuer.

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* CHX Article XXX, Rule 23.

[8] 15 U.S.C. 78f(b)(5).

issues of regulatory concern. For these reasons, the Commission believes that good cause exists, consistent with Section 6(b)(5)[9] and Section 19(b)[10] of the Act, to approve Amendment No. 1 to the proposed rule on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 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. 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 other 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–15 and should be submitted by November 12, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act.[11] that the amended proposed rule change (SR–CHX–98–15) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[9] U.S.C. 78(b)(5).

[10] U.S.C. 78s(b).

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

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40555; File No. SR–NASD–98–48]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers

I. Introduction

On July 10, 1998, the National Association of Securities Dealers, Inc., (''NASD'' or ''association'') through its wholly-owned subsidiary, NASD Regulation, submtited to the Securities and Exchange Commission (''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 amend Rule 10308 to set forth new procedures to be used to select arbitrators for arbitrations involving public customers.[3] Under the new procedures, NASD regulation will allow the parties to an arbitration to rank arbitrators from lists generated primarily using an automated process, providing parties with a larger role in determining the composition of their arbitration panels. NASD Regulation also is proposing conforming changes to Rules 10104, 10309, 10310, 10311, 10312, and 10313. In addition, NASD Regulation proposes to amend Rule 10315 concerning the scheduling of the first meeting of the parties and the arbitration panel to reflect that such meetings usually occur prior to the first hearing of an arbitration proceeding. Finally, NASD Regulation proposes to correct in its rules the name of the NASD Regulation committee that addresses arbitration and related matters, the National Arbitration and Mediation Committee.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 40261 (July 24, 1998) 63 FR 40761 (July 30, 1998). Three comment letters were received in response to the proposal.[4] NASD Regulation filed Amendment Nos. 3 and 4 to the proposed rule change [5] on August 14, 1998 and September 4, 1998, respectively. The NASD also responded to the comment letters.[6] Below is the text of the proposed rule change contained in the Amendment Nos. 3 and 4. Proposed new language is italicized; proposed deletions are in brackets.

10308. Selection of Arbitrators in Customer Disputes

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] NASD Regulation filed a proposed rule change to use a similar list selection process for intra-industry arbitrations (SR–NASD–98–64), which the Commission is approving on an accelerated basis simultaneously with this filing.

[4] *See* letters from Stephen G. Sneeringer, Chairman, Securities Industry Association (''SIA'') Arbitration Committee, to Jonathan G. Katz, Secretary, Commission, dated August 19, 1998 (''SIA Letter''); Scot D. Bernstein (''Bernstein''), Law Offices of Scot D. Bernstein, to Jonathan G. Katz, Secretary, Commission, dated August 19, 1998 (''Bernstein Letter''); and Richard P. Ryder (''Ryder''), Securities Arbitration Commentator, to Jonathan G. Katz, Secretary, Commission, dated September 2, 1998 (''Ryder Letter'').

[5] Amendment No. 3 amends the definition of ''non-public arbitrator'' to incorporate the standard terminology ''municipal securities dealer'' and to add an explicit reference to government and municipal securities to make clear that employees of banks or other financial institutions who engage in government or municipal securities transactions are included in the definition; by reordering proposed Rule 10308(b)(1) to make it more clear and to conform it to previously approved amendments to Rule 10308 and Rule 10302; by amending Rule 10308(b)(1) to clarify parties' right to change the panel composition if they all agree; to clarify in the rule language what information will be available with regard to the initial conflict of interest review by NLSS; to clarify in the rule language that the information on each arbitrator forwarded to the parties is employment information for a 10 year period and any other background information; to clarify in the rule language that a ranking of ''1'' means the most preferred arbitrator; to clarify in the rule language that when the Director must appoint an unranked arbitrator the Director will provide the parties Rule 10308(b)(6) information and the parties shall have the right to object to the arbitrator as provided in Rule 10308(d)(1); to delete the reference in the rule to parties acting cooperatively to rank arbitrators; and to reorder Rule 10312(d), (e), and (f) and to clarify the information contained in those paragraphs. *See* letter from John M. Ramsay, Vice President and Deputy General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated August 14, 1998 (''Amendment No. 3'').

Amendment No.4 amends Rule 10308(c)(5) to state that the Director must chose one of the public arbitrators as chairperson of the arbitration panel, subject to certain parameters; amends Rule 10308(c)(3) to eliminate the exception where a Director could determine not to consolidate a party's rankings with the other parties if he or she determines that their interests are ''sufficiently divergent;'' amends Rule 10313 to align the time period with previous revisions to rules 10312 and 10315; to clarify the effective date of the proposed rule change; and to respond to the comment letters. *See* letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated September 4, 1998 (''Amendment No. 4'').

[6] *See* Amendment No. 4 and letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated September 11, 1998 (''Response Two'').