(ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo or applicant;

(iii) prohibit the transfer of SPV's shares to any party other than TrustCo or applicant; and

(iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness other than the loan from applicant sufficient to cover the cost of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

Applicant's Legal Analysis

1. Applicant states that SPV may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act exempting SPV from all provisions of the Act. Section 6(c) of the Act permits the Commission to grant an exemption from the provisions of the Act if, and to the extent, that such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant state that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that SPV meets all of the requirements of rule 3a–5 except for one, which it cannot meet for Spanish tax and corporate law reasons. Rule 3a–5(b)(1)(i) under the Act requires that all of SPV's common stock be owned by applicant or a company controlled by applicant. Applicant asserts that, while for Spanish tax and corporate law reasons SPV's common stock will be held by HoldCo SPV, SPV will be organized to serve solely as a conduit for applicant's and the Operating Companies' capital raising activities. Applicant further states that SPV's function will be limited by its constitutional documents and any trust indenture agreement to the activities of a traditional finance subsidiary.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. SPV will comply with all provisions of rule 3a–5 under the Act, except with respect to rule 3a–5(b)(1)(i), over 95% of SPV's common shares will be held by HoldCo SPV (all of whose shares will in turn be held under the terms of an English law charitable trust), with the rest held by applicant. For purposes of rule 3a–5 under the Act, applicant will be deemed to be SPV's ''parent company'' and each Operating Company will be deemed to be a ''company controlled by the parent company.''

2. SPV's articles of association and memorandum of association and any trust indenture agreement will: (i) limit the SPV's activities is issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Companies (as well as other activities incidental to the issuance of the Notes, loaning the proceeds thereof, and the day-to-day operations of the SPV); and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV, TrustCo, or applicant.

3. HoldCo SPV's articles of association and its memorandum of association will: (i) limit HoldCo SPV's activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo (pursuant to the terms of the charitable trust) or applicant; (iii) prohibit the transfer of SPV's shares to any party other than TrustCo or applicant; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness, other than a loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33134 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40758; File No. SR–CHX–98–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating To Crossing Orders of 25,000 Shares or More

December 8, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CHX. 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

CHX is proposing to add Interpretation and Policy .02 to Article XX, Rule 23 of the Exchange's rules relating to the execution of certain cross transactions involving 25,000 shares or more on the Exchange's floor. The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 IV below. 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

The Exchange's general auction market procedures are codified in CHX Article XX, Rule 16, which provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has ''priority'' at that price, which means that the member is the first one in the market to be entitled to receive an execution at that price. If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on ''parity'' with each other, or equivalent in status.[3]

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

[2] 17 CFR 240.19b–4.

[3] Members are on parity with each other when two or more bids or offers are announced simultaneously, or after a trade takes place leaving several bids or offers unfilled at the same price as

Continued

Unlike the rules of certain other exchanges,[4] however, the CHX does not currently permit bids and offers that have parity to obtain precedence based on size (a so-called ''size-out'' rule).[5] In addition, unlike some other exchanges,[6] the CHX does not currently have a ''clean cross'' rule (as an exception to the normal priority rules) that would permit a member to cross a large block of stock, without the cross being broken up, by permitting the cross to obtain priority over all other existing bids and offers at the same price, regardless of the size of such bids or offers.[7]

The purpose of the proposed rule filing is to add new interpretation and policy .02 to Article XX, Rule 23, to allow a member or member organization who has an order to buy and an order to sell 25,000 shares or more of the same security to cross those orders at a price that is at or within the prevailing quotation, without the transaction being broken up at the cross price so long as (i) the size of the proposed cross transaction is of a size that is greater than the aggregate size of all interest communicated on the Exchange floor at that price at the time of the proposed cross, and (ii) neither side of the cross is for the account of the executing member or member organization.

As is the case for cross transactions that are permitted under existing CHX rules, prior to effecting the cross under the new proposal, the member will be required to make a public bid and offer on behalf of both sides of the cross.[8] The offer must be made at a price which is higher than the bid by the minimum trading variation permitted for such security. Under the proposal, another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

Because the proposal provides that the bid or offer of the member desiring to execute the cross would be entitled to priority at such price (over pre-existing bids and offers at that price) only if the size of the cross is greater than the aggregate size of all interest communicated on the Exchange floor (which includes the specialist's bid or offer—including any limit order reflected in such quote—and any communicated interest of floor brokers or market makers standing in the crowd), the proposed rule is more akin to a size-out rule rather than a special priority rule.

The difference between the CHX proposal and the size-out rules contained on other exchanges is that the priority of earlier bids and offers will not have to be removed, by means of a sale, before effecting the cross. In addition, a cross transaction effected in the CHX proposal does not affect the priority of existing orders in a specialist's book, and once the cross is executed, such priority (based on time rather than size) shall remain as it was before the execution of the cross transaction. In this sense, the proposal does have some attributes of a special priority rule. However, unlike the special priority rule afforded certain crosses on other exchanges, which are reported to the tape as ''stopped stock,'' cross transactions effected under the proposed rule will be reported to the tape without a ''tape designator.''

The CHX proposal limits the types of orders eligible to be crossed. Specifically, as stated above, no part of the cross can include an order for the account of the executing member or member organization. Under the proposal, only customer orders of a floor broker (*i.e.*, orders in which the floor broker acts as agent) can be included in the cross. For purposes of this proposal, the terms customer order includes professional orders not for the account of the executing member (*i.e.*, orders for the accounts of broker-dealers and other members or member organizations communicated from off the floor).

The proposal is intended to facilitate the execution of certain cross transactions on the CHX. The Exchange asserts that confining the proposed size threshold to block size orders of 25,000 shares or more would limit the effects of the rule primarily to actively traded, liquid securities.

The CHX further believes that the proposal, as drafted, furthers the important auction market principle of price improvement by allowing another member, certain conditions, to trade with either the bid or offer side of the cross transaction to provide a price that is better than the proposed cross price.

Finally, the Exchange believes that limiting the proposal to crosses not involving principal transactions of the executing broker (*i.e.*, limiting the proposal to orders in which the floor broker is acting as agent), is consistent with Section 11(a)(1)(G) of the Act[9] as well as portions of other crossing rules at other exchanges. For example, in approving a crossing rule for the PCX, the Commission stated that it ''believes that the [PCX] proposal would not grant priority, parity or precedence to the order of a member in a manner inconsistent with Section 11(a)(1)(G) of the Act or Rule 11a1–1(T)(a)(3) thereunder.''[10] The PCX proposal defined customer to include any order that the broker represents in an agency capacity, including a professional order that is not for an account associated with the executing brokers. The Commission concluded that because ''this definition of customer order excludes, and thus does not grant priority to, an order for an account over which the broker or an associated person of the broker exercises investment discretion, the Commission is satisfied that the proposed rule change complies with Section 11(a).''[11]

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles or trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

---

the executed trade. *See* CHX Art. XX, Rule 16 (b) and (c).

[4] *See* New York Stock Exchange (''NYSE'') Rule 72 and similar Philadelphia Stock Exchange and Boston Stock Exchange rules. The American Stock Exchange (''Amex'') has a modified version of a ''size out'' rule for crosses of 25,000 shares or more. *See* Amex Rule 126(g), commentary .01 and .02.

[5] Under a typical size-out rule, the priority of existing bids and offers are first removed by means of a sale so that all bids and offers are on parity. Then, a person desiring to execute a cross can usually do so by claiming precedence based on size, so long as the size of the cross is greater than any other single bid or offer at that price.

[6] *See, e.g.*, NYSE Rule 72(g) which gives priority to an agency cross transaction of 25,000 shares or more that is executed at or within the prevailing quotation, without regard to the size or price of existing bids or offers on the floor. Other members can typically interact with the cross only by bettering one side of the cross, and even then, can only do so after satisfying all other existing bids or offers at that price. The Pacific Exchange, Inc. (''PCX'') and Amex have similar crossing rules.

[7] While the CHX does have a crossing rule, Article XX, Rule 23, this rule only permits crosses *between* (and not at) the CHX disseminated market. Thus, under current rules, assuming a specialist has properly reflected all limit orders from his book in his quote, the crossing rule does not have any effect on the Exchange's general priority, parity and precedence rules because all crosses must be at a better price than the disseminated market. Therefore, they are entitled to priority because of price (and not because of a special priority rule giving certain crosses priority over other bids and offers).

[8] *See* CHX Art. XX, Rule 23.

[9] 15 U.S.C. 78k(a)(1)(G).

[10] *See* Exchange Act Release No. 33391 (December 28, 1993), 59 FR 336 (January 4, 1994) (order approving SR–PSE–91–11).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

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

CHX does not believe that the proposed rule change will 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

Written comments were neither solicited nor received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 U.S.C. 552, will be available for inspection and copying at 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 File No. SR–CHX–98–27 and should be submitted by January 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33135 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40762, File No. SR–DTC–98–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Institutional Delivery System

December 8, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 1, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on November 12, 1998, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

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

The proposed rule change modifies the Advice of Correction/Cancellation function in DTC's Institutional Delivery system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Current, DTC's Institutional Delivery (''ID'') system allows a broker-dealer to submit requests to cancel incorrect confirmations through its Advice of Correction/Cancellation function (''AOCC'').[3] In cases where the confirmation is not yet affirmed, DTC eliminates the confirmation from the ID system processing and distributes a cancellation message to all parties receiving the original confirmation. In cases where the confirmation has been affirmed, DTC does not immediately eliminate the confirmation from the ID system but instead distributes an ''attempt to cancel'' message on behalf of the broker to alert parties that the trade should not be settled. If no action is taken by S+21, the system automatically eliminates the confirmation.

The purpose of the proposed rule change is to modify DTC's AOCC function by allowing the affirming party to reverse an affirmed confirmation so that the confirmation would not be eligible for any further action other than an outright cancellation by the broker-dealer. By permitting a reversal, confirmations will be eliminated in a more timely manner thereby fostering greater certainty of trade information available on the ID system. The reversal action, which may be the response to an attempt to cancel by the broker-dealer or may be initiated by the affirming party, will be permitted up to 10:00 a.m. on the business day before the settlement date (S–1). Once a reversal action is executed, the trade will be deleted from the ID system, and subsequent reaffirmation of the reversed ID confirmation will not be permitted. In keeping with existing AOCC function procedures, the ID system will provide notification to all parties upon the systems's receipt of an AOCC that authorizes a reversal of an affirmed confirmation.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of transactions in securities by facilitating the cancellation of

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

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The ID system's AOCC function is one of three electronic mail features that enables an institution or its agent which has received a confirmation through the ID system to notify the broker of the reason(s) why the institution disagrees with the confirmation. This communication allows the broker-dealer to resolve the discrepancies between its records of the trade and the institution's records. *See* Securities Exchange Act Release No. 33466 (January 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving rule changes relating to enhancements to DTC's ID system); 36050 (August 2, 1995), 60 FR 41139, [File No. SR–DTC–95–10] (order approving rule changes relating to modifications of the AOCC feature and Authorization/Exception processing in DTC's ID system).

[4] 15 U.S.C. 78q–1