Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

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

The Exchange seeks to delete provisions in Article VIII, Exchange rule 9, ''Transactions Off the Floor,'' that restrict off-floor transactions by Exchange members. The text of the proposed rule change is available at the Exchange and at the Commission.

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

In its filing with the Commisison, 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

In December 1999, the NYSE proposed to repeal NYSE Rule 390, which restricts NYSE members from effecting certain off-floor transactions in specific securities (''19c–3 securities''). Furthermore, on December 9, 1999, the Commission adopted amendments to the Intermarket Trading System Plan (''ITS Plan'') to expand the ITS linkage with the NASD's Computer Assisted Execution System to all listed securities, including 19c–3 securities.[5] The ITS Plan amendment became effective on February 14, 2000. To confirm the Exchange's commitment to the competitive ideals on which those actions are based, the Exchange believes it is appropriate to delete portions of Article VIII, Exchange Rule 9 to remove any restrictions that might potentially limit a member's ability to engage in certain off-floor transactions.

2. Statutory Basis

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

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

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Within 35 days of the date of 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 (i) as to which the Exchange consents, the Commission will:

A. By order approve such 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 proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any persons, 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 Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–28 and should be submitted by March 24, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

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

Jonathan G. Katz,

Secretary.

[FR Doc. 00–5184 Filed 3–2–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42453; File Nos. SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–56; SR–PCX–97–49; SR–CHX–98–12; SR–Amex–99–26]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Philadelphia Stock Exchange, Inc., Pacific Exchange, Inc., Chicago Stock Exchange, Incorporated and American Stock Exchange LLC; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment to the Proposed Rule Changes That Adopt Capital and Equity Requirements for Joint Back Office Arrangements

February 24, 2000.

1. Introduction

On October 2, 1997, the New York Stock Exchange, Inc. (''NYSE''), October 27, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE''), November 7, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx''), December 18, 1997, the Pacific

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Exchange Act Release Nos. 42460 (Feb. 25, 2000) (File No. SR–Amex–00–05) and 42458 (Feb. 25, 2000) (File No. SR–Phlix–00–12).

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: (http://www.sec.gov/rules/sros/ny9948n.htm).

[5] *See* Securities Exchange Act Release No. 42212 (Dec. 9, 1999), 64 FR 70297 (Dec. 16, 1999).

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

[7] *See supra* notes 3 and 4.

[8] 17 CFR 200.20–3(a)(12).

Exchange, Inc. (''PCX''), May 28, 1998, the Chicago Stock Exchange, Incorporated (''CHX''), and July 16, 1999, the American Stock Exchange LLC (''Amex'') (collectively the ''SROs'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] proposed rule changes to adopt capital and equity requirements for joint back office (''JBO'') arrangements. The NYSE, PCX and Amex also filed proposed rule changes to their maintenance margin requirements for specialist, market-maker and broker-dealer accounts. In addition, the NYSE proposed to amend its margin provisions relating to the concentration of control and restricted securities.

The proposed rule change filed by the NYSE was published for comment on January 7, 1998.[3] On May 21, 1998, and September 28, 1998, the NYSE filed with the Commission Amendments Nos. 1 and 2 to the proposed rule change. Amendments Nos. 1 and 2 were published for comment on December 4, 1998.[4] On July 19, 1999, the NYSE filed with the Commission Amendments Nos. 3 and 4 to the proposed rule change.

The proposed rule change filed by the CBOE was published for comment on December 17, 1997.[5] On July 27, 1998, the CBOE filed Amendment No. 1 to the proposed rule change. Amendment No. 1 was published for comment on December 4, 1998.[6]

The Phlx filed Amendment No. 1 to the proposed rule change on November 24, 1997. The proposed rule change and Amendment No. 1 were published for comment on December 17, 1997.[7] On February 22, 1999, the Phlx filed Amendment No. 2 to the proposed rule change.

The proposed rule change filed by the PCX was published for comment on February 25, 1998.[8] On October 8, 1998, the PCX filed Amendment No. 1 to the proposed rule change. Amendment No. 1 was published for comment on December 4, 1998.[9] On March 15, 1999, the PCX filed Amendment No. 2 to the proposed rule change.

CHX filed Amendment No. 1 to the proposed rule change on July 16, 1998. The proposed rule change and CHX Amendment No. 1 were published for comment on September 9, 1998.[10] On November 17, 1998, the CHX filed Amendment No. 2 to the proposed rule change. On January 28, 1999, and September 16, 1999, the CHX filed Amendments Nos. 3 and 4 to the proposed rule change.

The proposed rule change filed by the Amex was published for comment on November 22, 1999.[11]

The Commission received seven comment letters on the Self Regulatory Organization (''SRO'') proposed rule changes. All of the comment letters concerned the JBO rule changes and specifically related to the CBOE's proposal. This Order approves each of the SRO proposed rule changes, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, NYSE Amendments Nos. 3 and 4, Phlx Amendment No. 2, PCX Amendment No. 2 and CHX Amendments Nos. 2, 3, and 4.

II. Description of the Proposals

A. Background

Section 220.7(c) of Regulation T,[12] which is promulgated by the Board of Governors of the Federal Reserve (''Federal Reserve Board''),[13] allows special margin treatment for broker-dealers without clearing operations, known as ''JBO participants,'' who invest in a ''clearing and servicing'' [14] broker-dealer, known as a ''JBO broker.'' Under Regulation T, the JBO participants are not treated as ''customers'' [15] of the JBO broker.

As part of a periodic review of its regulations, in 1995 the Federal Reserve Board proposed an amendment to Regulation T relating to JBO arrangements.[16] The Federal Reserve Board stated that the proposed amendment was prompted by the concerns of several stock exchanges that JBO brokers were extending credit to JBO participants far in excess of their ownership interests in the JBO broker.[17] Under the proposed amendment, the favorable margin treatment for a JBO arrangement would have been conditioned on the JBO participants' ownership interest in the JBO broker being related to the amount of business transacted through the JBO arrangement.

After Congress enacted the National Securities Market Improvement Act of 1996 (NSMIA),[18] the Federal Reserve Board stated that it decided not to adopt its proposed amendment to Regulation T relating to JBO arrangements.[19] Instead, the Federal Reserve Board stated that it ''believes it is appropriate to rely on the authority of the JBO's examining authority to ensure the reasonableness of JBO arrangements under its supervision.'' [20]

In April 1996, the SROs established committees to review and recommend changes to the SRO margin rules. These committees established subcommittees,[21] which included experienced industry representatives on margin and credit matters, in order to review specific margin provisions. Based on the recommendations by the committees and the review by the SRO's staff, the SROs proposed the following amendments.

B. JBO Proposals

1. NYSE JBO Proposal

(a) Original Filing

The NYSE proposed to amend NYSE Rule 431 [22] to include proposed subparagraph (e)(6)(B). Under proposed subparagraph (e)(6)(B), broker-dealers would be permitted to establish a JBO arrangement subject to specific requirements for JBO brokers and JBO participants. A JBO broker would be required to: (1) Provide written notification to the NYSE prior to establishing a JBO arrangement; (2)

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

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39497 (Dec. 29, 1997), 63 FR 899 (''NYSE Original Filing'').

[4] *See* Exchange Act Release No. 40709 (Nov. 25, 1998), 63 FR 67161 (''NYSE Amendments Nos. 1 and 2'').

[5] *See* Exchange Act Release No. 39418 (Dec. 10, 1997), 62 FR 66154 (''CBOE Original Filing'').

[6] *See* Exchange Act Release No. 40708 (Nov. 25, 1998), 63 FR 67155.

[7] *See* Exchange Act Release No. 39419 (Dec. 10, 1997), 62 FR 66169.

[8] *See* Exchange Act Release No. 39680 (Feb. 18, 1998), 63 FR 9622.

[9] *See* Exchange Act Release No. 40710 (Nov. 25, 1998), 63 FR 67164.

[10] *See* Exchange Act Release No. 40384 (Aug. 31, 1998), 63 FR 48286.

[11] *See* Exchange Act Release No. 42129 (Nov. 10, 1999), 64 FR 63834.

[12] 12 CFR 220.7(c).

[13] The Federal Reserve Board promulgated Regulation T pursuant to Section 7(a) of the Exchange Act, which authorizes it to prescribe regulations relating to credit extensions on securities. *See* 15 U.S.C. 78g(a).

[14] Regulation T does not define the term ''clearing and servicing.'' However, the Regulation describes a JBO broker as a clearing and servicing firm.

[15] The term customer is defined in section 220.2 of Regulation T.

[16] Board of Governors of the Federal Reserve System Docket No. R–0772 (June 21, 1995), 60 FR 33763 (June 29, 1995).

[17] *Id.*

[18] National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996).

[19] Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996).

[20] *Id.*

[21] The subcommittees that were formed were entitled the ''Control Stock,'' ''Joint Back Office,'' ''Good Faith Securities,'' ''Options'' and ''Other'' subcommittees. NYSE Original Filing, *supra* note 3.

[22] NYSE Constitution and Rules, ¶2431, NYSE Rule 431.

maintain a minimum of $25 million of ''tentative net capital'' [23] as computed under Exchange Act Rule 15c3–1 [24] or maintain a minimum of $10 million in ''net capital'' [25] if the JBO broker is engaged in the primary business of clearing options market-maker accounts, [26] (3) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; (4) deduct from its net capital each JBO participant's ''haircut'' [27] requirment under Exchange Act Rule 15c3–1 in excess of the equity maintained in the JBO participant's account. In addition, a JBO broker would be permitted to establish a JBO arrangement if it either cleared and carried or carried customer accounts.[28]

Under proposed subparagraph (e)(8)(B), a JBO participant would be required to be a registered broker-dealer subject to exchange Act Rule 15c3–1 and would be required to maintain an ownership interest in its JBO broker in accordance with Regulation T. Further, a JBO participant would be required to maintain in the JBO arrangement a minimum of $1 million in liquidating equity. This $1 million requirement would be exclusive of the JBO participant's required ownership interest in the JBO broker under Regulation T. If a JBO participant's liquidating equity would fall below $1 million, the firm would be required to deposit the deficiency within five business days or would become subject to the other margin requirements under NYSE Rule 431.

(b) NYSE Amendment No. 1

NYSE Amendment No. 1 proposed to incorporate a related NYSE rule change (''Related Filing'') [29] into proposed subparagraphs (e)(5)(A), (e)(5)(B), (e)(6)(A), and (e)(6)(B)(i)(3) of NYSE Rule 431. Under the Related Filing, a broker-dealer's maintenance margin requirement would be reduced below the haircut requirement under Exchange Act Rule 15c3–1 for certain non-equity securities held in an ''exempt account.'' [30] Under NYSE Amendment No. 1, a JBO broker would be permitted to alternatively deduct from its net capital the difference between a JBO participant's account equity and the maintenance margin requirement under the Related Filing,[31] as opposed to the haircut requirement under Exchange Act Rule 15c3–1 originally proposed. The NYSE stated that this amendment would establish consistency by incorporating the most recent maintenance margin requirements of the Related Filing into the JBO filing.[32]

NYSE Amendment No. 1 also clarified that if the amount of equity in a JBO participant's account would fall below the $1 million minimum, it would lose its JBO participant status unless the deficiency is cured within five business days. In addition, unless the JBO participant would be an ''exempted borrower,'' [33] it would be subject to the margin account requirements under Regulation T and the other maintenance margin requirements under NYSE Rule 431.

(c) NYSE Amendment No. 2

NYSE Amendment No. 2 proposed to lower the minimum net capital requirement for a JBO broker whose primary business is clearing options market-maker accounts to $7 million, instead of the $10 million originally proposed. The NYSE stated that this change was in response to the comments from CBOE members concerning the CBOE's original JBO proposal, which required a minimum of $10 million. [34] In addition, the NYSE stated that it believes that the proposed $7 million minimum net capital requirement would be sufficient to satisfy the safety and soundness concerns related to JBO arrangements. [35]

NYSE Amendment No. 2 proposed to also require: (1) prompt written notification to the NYSE when a JBO broker's tentative net capital or net capital, whichever applies, would fall below the prescribed requirement; and (2) any net capital deficiency by a JBO broker be resolved within three business days. In addition, if a JBO broker would fail to correct a net capital deficiency within the required three business days, it would not be permitted to accept new transactions through the JBO arrangement. The NYSE stated that these requirements are consistent with the Exchange Act Rule 15c3–1 provisions dealing with net capital deficiencies. [36]

(d) NYSE Amendments Nos. 3 and 4

NYSE Amendment No. 3 proposed to permit a six month phase-in of the NYSE's rule changes relating to JBO

[23] The term ''tentative net capital'' generally refers to net capital before haircuts and undue concentration charges on proprietary securities and options positions. *See* NYSE Interpretation Handbook, Rule 15c3–1(c)(2)(vi)(M)/04.

[24] 17 CFR 240.15c3–1. This rule is referred to as the ''Net Capital Rule.''

[25] The term ''net capital'' is defined under Exchange Act Rule 15c3–1 and is generally calculated by deducting illiquid assets from a firm's ''net worth,'' as determined under Generally Accepted Accounting Principles (GAAP), adding to that amount properly subordinated debt under Appendix D of the Rule and further deducting haircuts from securities held in the firm's proprietary accounts.

[26] Under the proposed amendments, the clearance of option market-maker accounts would be deemed a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in its ratio of gross options market-maker deductions to net capital (including gross deductions for JBO participant accounts) are options market-maker deductions. Subparagraph (c)(2)(x) of Exchange Act Rule 15c3–1 limits the amount of specialist and market-maker options positions a firm may guarantee, endorse or carry to a ratio of 10 to 1 of options market-maker and specialist deductions to net capital. In addition, subparagraph (a)(6) of the Rule exempts an options market-maker and specialist from the haircut provisions of the Rule provided that, among other things, the firm maintains an account liquidating equity equal to the percentage described in subparagraph (a)(6)(iii)(A) of the Rule.

[27] Exchange Act Rule 15c3–1 requires a broker-dealer to reduce its net worth by certain percentages, or ''haircuts,'' of the market value of its proprietary securities.

[28] *See* Letter from Scott Holz, Counsel, Federal Reserve Board, to Raymond J. Hennessy, Vice President, NYSE, dated April 16, 1999 (stating that a carrying firm may be considered a clearing and servicing firm within the meaning of the JBO provisions of Regulation T).

[29] Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882 (Aug. 5, 1998). To date, the Commission has not taken action on the Related Filing. Accordingly, this Order does not approve the Related Filing or its application to the margin amendments contained in this filing. However, upon Commission approval of the Related Filing, this Order would permit the Related filing's application as described in the Related Filing, as amended.

[30] The Related Filing proposed to adopt subparagraph (a)(13) to NYSE Rule 431 that would define an ''exempt account'' as a: (1) Member organization; (2) non-member broker-dealer; (3) ''designated account;'' or (4) person with at least a $40 million net worth. In addition, the Related Filing proposed to revise subparagraph (a)(3) of NYSE Rule 431 to define a ''designated account'' as the account of: (1) A bank; (2) a savings association; (3) an insurance company; (4) an investment company; (5) a state or political subdivision thereof; or (6) a pension or profit sharing plan.

[31] The alternative deduction under NYSE Amendment No. 1 would apply to securities covered by the Related Filing's proposed subparagraphs (e)(2)(F) and (e)(2)(G) to NYSE Rule 431. These securities include: exempted securities, mortgage related securities, major foreign sovereign debt securities, highly rated foreign sovereign debt securities, and investment grade debt securities. Generally, the maintenance margin requirement for these securities under the Related Filing would be less than the current maintenance margin requirement under NYSE Rule 431 and the haircut requirements under Exchange Act Rule 15c3–1.

[32] NYSE Amendments Nos. 1 and 2, *supra* note 4.

[33] The term ''exempted borrower'' is defined in section 220.2 of Regulation T. Subparagraph (a)(2) of NYSE Rule 431 specifically excludes an exempted borrower from its definition of ''customer.''

[34] NYSE Amendments Nos. 1 and 2, *supra* note 4. *See infra* text and accompanying notes 69 to 77 for a discussion of the comments relating to the additional net capital requirements for options market-maker clearing firms under the SRO JBO proposals.

[35] *Id.*

[36] NYSE Amendments Nos. 1 and 2, *supra* note 4. Subparagraph (c)(2)(x) of Exchange Act Rule 15c3–1 requires an options market-maker carrying firm's ratio of gross options market-maker deductions to net capital to not exceed a ratio of 10 to 1 for a period of more than three consecutive business days.

arrangements. The NYSE stated that a six month phase-in would allow sufficient time for firms to comply with the capital and risk analysis requirements for JBO arrangements and for firms to implement new or make changes to their existing systems.

NYSE Amendment No. 4 clarified the current citation to the provisions of Regulation T relating to JBO arrangements. [37]

(e) Impact of the NYSE JBO Filing on Other SROs

Generally, the other SRO JBO filings were similar to the NYSE's filing. However, some of the SRO filings contained different requirements. For example, the other SRO filings did not incorporate the alternative deduction for certain non-equity securities covered by the NYSE's Related Filing. If a firm is a dual member of the NYSE and another SRO, however, the firm may nevertheless be permitted to elect to be bound by the NYSE's margin rules. [38] By making this election, the firm would be permitted to take advantage of the NYSE's proposed alternative deduction.

2. PCX JBO Filing

The PCX and the NYSE JBO filings are substantially similar, as amended. However, unlike the NYSE's filing, the PCX filing would require a JBO broker to provide immediate telegraphic or facsimile notice to the PCX if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels. The PCX filing would also subject a JBO broker to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections. In addition, the PCX filing would prohibit a JBO broker that was only a carrying firm.[39]

3. CBOE, Phlx, CHX and Amex JBO Filings

The CBOE, Phlx, CHX, and Amex all had similar JBO filings as the NYSE's filing, as amended. However, unlike the NYSE filing, these SROs would require a JBO broker to comply with the PCX's additional requirements and also establish and maintain written ownership standards for JBO accounts. In addition, a JBO participant would be required to employ or have access to a qualified Series 27 principal and would not be eligible to operate under subparagraph (b)(1) of Exchange Act Rule 15c3–1.[40] Lastly, the Phlx JBO proposal would permit foreign currency options participants to be JBO participants.

C. Reduced Margin Proposal for Specialist, Market-Maker and Broker-Dealer Accounts

1. NYSE Proposal

(a) Original Filing

The NYSE proposed to amend subparagraphs (e)(5) and (e)(6) of NYSE Rule 431. Subparagraphs (e)(5) and (e)(6) require a carrying broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required maintenance margin under NYSE Rule 431. Under the proposed amendments, a broker-dealer would instead deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required haircut in accordance with Exchange Act Rule 15c3–1.[41] The NYSE stated that this rule change would provide ''equitable treatment'' for the maintenance margin requirements of broker-dealer accounts with the proposed treatment for JBO participants.[42]

(b) NYSE Amendment No. 1

NYSE Amendment No. 1 proposed to incorporate the Related Filing into the amendments to subparagraphs (e)(5) and (e)(6) of NYSE Rule 431 that were proposed in the NYSE's original filing. Under NYSE Amendment No. 1, for certain non-equity securities covered by the Related Filing, a carrying broker-dealer would be permitted to alternative deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the maintenance margin requirement under the Related Filing, as opposed to the haircut requirement under Exchange Act Rule 15c3–1 as originally proposed. [43]

2. PCX and Amex Proposals

The PCX and Amex included provisions to permit a clearing firm to carry the proprietary account of another registered broker-dealer on a mutually satisfactory margin basis, provided that the firms comply with Regulation T and do not maintain the account in an equity deficit. The PCX and Amex did not include a provision incorporating the alternative deduction for certain non-equity securities covered by the NYSE's Related Filing.

D. NYSE's Concentration Reduction Proposal for Control and Restricted Securities

The NYSE proposed to amend subparagraph (e)(8)(C)(iv) of NYSE Rule 431.[44] Subparagraph (e)(8)(C)(iv) sets forth the conditions that determine if a customer's account contains a concentration of control and restricted securities for purposes of computing a broker-dealer's net capital deduction under NYSE Rule 325 [45] for a customer margin deficiency under subparagraph (e)(8)(B)(i).[46] Specifically, subparagraph (e)(8)(c)(iv) currently provides that a concentration exists whenever a customer's aggregate position of control

[37] Prior to the filing of NYSE Amendment No. 4, the NYSE's JBO proposal contained the Regulation T citation for JBO arrangements of section 220.11. Subsequently, the Federal Reserve Board changed the citation to section 220.7(c). *See* Board of Governors of the Federal Reserve System Docket Nos. R–0905, R–0923 and R–0944 (Jan. 8, 1998), 63 FR 2806 (Jan. 16, 1998).

[38] For example, CBOE Rule 12.11 specifies that in lieu of meeting the CBOE's margin requirements, a firm may elect to be bound by the initial and maintenance margin requirements of the NYSE. CBOE Constitution and Rules, ¶ 2381, Rule 12.11.

[39] The PCX's original proposal was similar to the NYSE's, which permits a JBO broker to clear and carry or carry customer accounts.

[40] Subparagraph (b)(1) of Exchange Act Rule 15c3–1 exempts certain broker-dealers, satisfying enumerated conditions, from the requirements of the Rule.

[41] For example, in the case of a long position in an equity security the proposed amendments would require a JBO broker to compute its net capital deduction for deficient specialist, market-maker and broker-dealer accounts based on the 15% haircut requirement of Exchange Act Rule 15c3–1(c)(2)(vi)(J), rather than the 25% maintenance margin requirement of NYSE Rule 431(c)(1).

[42] NYSE Amendments Nos. 1 and 2, *supra* note 4.

[43] *See supra* text and accompanying notes 29 to 32 for a discussion of the application of the NYSE's Related Filing to its JBO filing.

[44] The NYSE proposed this amendment in its original filing with the Commission, along with its broader proposal relating to JBO arrangements. Subsequently, in Amendment No. 1 the NYSE requested that these amendments be subject to separate Commission review. The NYSE stated that by bifurcating the proposed rule changes the proposals would become effective more expeditiously than if they were considered by the Commission together. However, the Commission decided not to bifurcate the NYSE's proposals and is issuing this Order to cover each of the proposed amendments in the NYSE's original filing. NYSE Amendments Nos. 1 and 2, *supra* note 4.

[45] NYSE Constitution and Rules, ¶ 2325, Rule 325. NYSE Rule 325 requires a firm to comply with additional net capital requirements than those imposed by Exchange Act Rule 15c3–1.

[46] Subparagraph (e)(8)(B)(i) of NYSE Rule 431 provides that a broker-dealer must, in computing net capital under NYSE Rule 325, deduct ''any margin deficiencies in customers' accounts based upon a margin requirement as specified in subparagraph (e)(8)(C)(iv)'' for control and restricted securities.

and restricted securities in one security exceeds either: (1) 10% of the security's outstanding shares; or (2) 100% of the security's average weekly volume during the preceding three months.

Under the proposed amendments to subparagraph (e)(8)(C)(iv), in determining if a concentration exists, a broker-dealer would deduct from its customer's aggregate position of control and restricted securities ''excess securities,'' which would be defined as the amount of securities by which the aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement. The NYSE stated that this proposal would correct an anomaly of subparagraph (e)(8)(C)(iv), which effectively imposes stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension.[47] By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposed amendments would subject these securities to a greater margin requirement based only on financed control and restricted securities.

The NYSE further proposed to amend subparagraph (e)(8)(D) of NYSE Rule 431, which exempts from the requirements of subparagraph (e)(8) control and restricted securities satisfying the following conditions: (1) The securities are considered ''then saleable[48] under Securities Act Rule 144(k),[49] Securities Act Rule 145(d)(2)[50] or Securities Act rule 145(d)(3):[51] and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Exchange Act;[52] and (3) the securities are owned by a ''non-affiliate''[53] of the issuer. Under the proposed amendments, the exemption of subparagraph (e)(8)(D) would also include control and restricted securities held by an affiliate, provided that the securities otherwise satisfy the other requirements for the exemption. The NYSE stated that it believes that the maintenance margin requirements under NYSE rule 431 for an affiliate that satisfied the time conditions of Securities Act Rule 144(k) for control and restricted securities should be the same as a non-affiliate because the Commission's interpretations under Securities Act Rule 144(k) permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates.[54] In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to ''tack'' the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of SEC Rule 144(k) are met.[55]

The NYSE further proposed to amend subparagraph (e)(8)(C)(ii) of NYSE Rule 431. Subparagraph (e)(8)(C)(ii) requires a broker-dealer to incur a net capital charge by the amount of aggregate credit it agrees to extend to its customers on control and restricted securities that exceeds 10% of its ''excess net capital''[56] for purposes of determining its status under NYSE Rule 326.[57] Under the proposed amendments to subparagraph (e)(8)(C)(ii), a broker-dealer would be required to have a written agreement to extend credit to a customer for control and restricted securities. In addition, a firm would incur a net capital charge under subparagraph (e)(8)(C)(ii) of NYSE Rule 431 based on the greater of the aggregate credit agreed to in writing and the credit actually extended.[58]

E. Comment Summary

The Commission received seven comment letters on the SRO proposed rule changes. All of the comments concerned the JBO proposed rule changes and specifically related to the CBOE's proposal. The following is a summary of the comments.

1. Comments Concerning the $7 Million Net Capital Requirement for Options Specialists and Market-Maker Clearing Firms

The original JBO proposals would have required options market-maker clearing firms to maintain $10 million in net capital. At the time the proposals were filed with the Commission, some of these firms did not need to maintain $10 million of net capital to finance their business.[59] However, the Committees established to review and recommend changes to the SRO margin rules believed that these firms would eventually need this amount by the time the Commission would approve the JBO proposals.[60] Accordingly, the SROs originally proposed a $10 million net capital requirement for options market-maker clearing firms.

Although the capital needs for options market-maker clearing firms have in fact increased,[61] several comment letters expressed opposition to the $10 million net capital requirement originally proposed.[62] Since receiving these

[47] NYSE Amendments Nos. 1 and 2, *supra* note 4. Currently, the NYSE interpretations to subparagraph (e)(8)(B) encourages a firm to require its customers to deposit with it all their control and restricted securities on which the firm extends credit. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(B)/01.

[48] The term ''then saleable'' refers to where all the conditions under Securities Act Rule 144 have been satisfied and, the securities are thus immediately saleable within the parameters of SEC Rules 144 and 145(d) under the Securities Act. *See* NYSE Interpretation Handbook, Rule 431(e)(8)(C)(iv)/02. Generally, Securities Act Rule 144 provides a safe harbor for the resale of restricted securities, which includes volume limitations, manner of sale and notice requirements.

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[49] 17 CFR 230.144(k).

[50] 17 CFR 230.145(d)(2).

[51] 17 CFR 230.145(d)(3).

[52] *See* 15 U.S.C. 78m and 78o(d).

[53] An affiliate of an issuer is ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with'' the issuer. 17 CFR 230.144(a).

[54] Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, dated May 28, 1999.

[55] *See* Securities Act Release No. 6862 (Apr. 23, 1990), 55 FR 17933 (Apr. 30, 1990).

[56] The term ''excess net capital'' generally refers to a firm's net capital in excess of its prescribed requirements under Exchange Act Rule 15c3–1.

[57] NYSE Constitution and Rules, ¶ 2326(a)–(d), Rule 326. NYSE Rule 326 generally limits the activities of a broker-dealer if the firm's net capital falls below certain prescribed percentages.

[58] Currently, a broker-dealer is required to comply with this requirement under the NYSE's interpretation of NYSE Rule 431. *See* NYSE Interpretation Handbook, NYSE Rule 431(e)(8)(C)(ii)/01.

[59] CBOE Original Filing, *supra* note 5.

[60] *Id.*

[61] *Id.*

[62] *See* Letter from William M. Cousins, President, AB Financial LLC, to Jonathan G. Katz, Secretary, Commission, dated January 6, 1998 (''AB Financial Letter''); Letter from William C. Floersch, President and CEO, O'Connor & Company LLC, to Jonathan G. Katz, Secretary, Commission, dated January 7, 1998 (''O'Connor Letter''); Letter from Ray Woods to Jonathan Katz, Secretary, Commission, dated January 6, 1998 (''Woods Letter''); Letter from Lee E. Tenzer, Chairman, Lee E. Tenzer Trading Company, to Jonathan G. Katz, Secretary, Commission, dated January 6, 1998 (''LETCO Letter''); Letter from Phyllis M. Wyse, Senior Vice President, Sage-Clearing, to Jonathan Katz, Secretary, Commission, dated January 6, 1998 (''Sage Letter''); Letter from Timothy Mullen, Chairman and CEO, LIT Clearing Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated

comments, the SROs have amended their JBO proposals to reduce the requirement to $7 million.

Four of the seven commenters believed that $10 million in net capital was excessive.[63] These commenters noted that the minimum dollar net capital requirement under Exchange Act Rule 15c3–1 for clearing firms is $250,000,[64] which is far below the $10 million net capital requirement originally proposed. Indeed, one commenter pointed out that a $10 million net capital requirement equals 40 times the minimum amount required under Exchange Act Rule 15c3–1 and 10 times the $1 million minimum required by the Options Clearing Corporation (''OCC'').[65]

These four commenters stated that a $10 million requirement is arbitrary and without basis under Exchange Act Rule 15c3–1. These commenters noted that Exchange Act Rule 15c3–1's minimum dollar net capital requirements are nominal and that a firm's overall minimum net capital requirement increases based on the size of its business.[66] By the JBO proposals requiring a minimum of $10 million in net capital, one of these commenters argued that the requirement would ''represent an entirely new and unprecedented type of capital test.'' [67]

In addition, two of these four commenters argued that the risk management practices currently in place [68] reduce the need for additional net capital requirements.[69] One of the two commenters stated ''setting capital requirements without regard to the size or risk of the business engaged in essentially ignores all risk management techniques established over the past ten years.'' [70]

These four commenters stated that a $10 million requirement would be ''anti-competitive'' and lead to a concentration of JBO business in fewer firms. As a result, these commenters cautioned that systemic risk would increase in the financial markets. One of these commenters elaborated that, as a result of the increased costs of maintaining additional net capital,[71] smaller firms would have to decide whether to raise the required net capital or exit the JBO clearing business.[72] If these firms would opt to abandon the JBO business, the commenter predicted ''larger firms will be clearing more of the JBO business and thereby concentrating this type of account among fewer firms.'' [73]

Two of these four commenters criticized the JBO proposals' distinction between options market-maker clearing firms, which under the original JBO filings would have been required to maintain $10 million in net capital, and other JBO brokers, which are required under the JBO proposals to maintain $25 million in tentative net capital.[74] One of the two commenters stated that a JBO broker that is required to maintain $25 million in tentative net capital would not be required to consider its haircuts on proprietary positions, even though ''it is conceivable that a broker-dealer could have tentative net capital in excess of $25 million but net capital less than $10 million.'' [75] Further, the JBO broker would not be subject to the 10:1 ratio of gross options market-maker deductions to net capital, which effectively imposes minimum net capital requirements on a firm based on the amount of business it conducts.

In addition, the same commenter noted that maintenance margin requirements for broker-dealer accounts are permitted to be the same as JBO participant accounts. As a result, the commenter argued that a minimum dollar requirement on a JBO broker would present ''an uneven playing field.'' [76]

The same commenter proposed that the JBO net capital requirements should include the 10:1 ratio requirement for all JBO brokers, and that the proposals should eliminate any minimum dollar net capital requirements. The commenter also suggested that a JBO broker should be able to satisfy its net capital requirements through undrawn and available subordinated debt. [77]

2. Comments Concerning the $1 Million Equity Requirement for JBO Participants

The JBO filings require a JBO participant to maintain account equity of $1 million, which is exclusive of its ownership interest in the JBO broker required under Regulation T.

Two commenters stated that it is unreasonable to require a JBO participant to maintain $1 million account equity, and thereby be subject to margin calls for a deficiency.[78] The two commenters stated that due to temporary market fluctuations, JBO participants would be subject to frequent calls on the $1 million equity requirement. Accordingly, the two commenters proposed to require an initial minimum equity amount, and a call amount of 50% to 60% of the initial minimum.

The two commenters also stated that the proposed requirement that a JBO broker deduct from its net capital each JBO participant's haircut requirement under Exchange Act Rule 15c3–1 in excess of the equity maintained in the JBO participant's account, is inconsistent with current margin rules that apply to broker-dealer accounts. In addition, the two commenters noted that it is unclear from the JBO proposals that the $1 million equity requirement would also be subject to a net capital charge. Accordingly, the two commenters proposed to instead require a JBO broker's net capital charge to be the lesser of: (1) The sum of each JBO participant's haircut charges and any deficiency of the $1 million account equity requirement; and (2) the maintenance margin requirement of the JBO participant.

The two commenters also stated that the term ''equity'' is vague. The two commenters noted that under Exchange Act Rule 15c3–1, the term equity includes each account of a JBO participant. However, for margin

[63] AB Financial Letter, O'Connor Letter, LETCO Letter and Sage Letter, *supra* note 62.

[64] Exchange Act Rule 15c3–1 imposes minimum dollar net capital requirements based on the type of business a firm conducts.

[65] O'Connor Letter, *supra* note 62.

[66] In addition to the minimum dollar requirements, Exchange Act Rule 15c3–1 requires a firm's overall minimum net capital requirement to increase based on either a percentage of its liabilities, or alternatively, a percentage of its customer debits. Further, subparagraph (c)(2)(x) of the Rule requires an options market-maker carrying firm's ratio of gross options market-maker deductions to net capital to not exceed a ratio of 10:1.

[67] *Id.*

[68] For instance, CBOE Rule 15.8 requires options market-maker clearing firms to establish and maintain written procedures for assessing and monitoring the potential risks of market-maker positions to a firm's capital. CBOE Constitution and Rules, ¶ 2448, Rule 15.9.

[69] O'Connor Letter and Sage Letter, *supra* note 62.

[70] O'Connor Letter, *supra* note 62.

[71] A clearing firm's net capital may fluctuate due to the changes of the daily net deductions for its customers. In order to cover these fluctuations, many clearing firms maintain revolving subordinated loan arrangements. According to the CBOE, there is a one time charge to establish a facility of approximately $10,000 per $1 million (1%). The cost to maintain such a facility, undrawn, approximates $10,000 per year per $1 million (1%), or $28 per day. The cost to draw down such a facility approximates $95,000 per year per $1 million of drawn funds (at 1% over an 8½% prime), or $264 per day. However, the CBOE stated that it believes these costs are not excessively burdensome. CBOE Original Filing, *supra* note 5.

[72] AB Financial Letter, *supra* note 62.

[73] *Id.*

[74] AB Financial Letter and Sage Letter, *supra* note 62.

[75] AB Financial Letter, *supra* note 62.

[76] *Id.*

[77] Paragraph (b) of Appendix D of Exchange Act Rule 15c3–1 sets forth the minimum requirements for debt under a subordination agreement to be considered net capital. Under paragraph (b), generally a subordination agreement must have a minimum term of one year, except for certain temporary subordination agreements under subparagraph (c)(5) of Appendix D.

[78] Woods Letter and LETCO Letter, *supra* note 62.

purposes the term equity refers to each individual account. Accordingly, the two commenters believes that more clarification is needed in defining the term equity.

In regard to the definition of equity under the JBO proposals, several commenters proposed to define equity as all cash and other assets (including the amount paid by the JBO participant for its share of the JBO and the value of the CBOE memberships owned by the JBO participant, if applicable) plus all positions minus all short positions. Two commenters stated that it is appropriate to include in the $1 million account equity requirement a JBO participant's ownership interest in the JBO broker because ''it is often a significant amount of money and adds to the financial stability of the JBO as a whole.'' [79]

B. Comments Concerning the Written Risk Analysis Requirement

Under the JBO proposals, a JBO broker must maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant. One commenter criticized this requirement as not being ''entirely clear.'' [80]

C. Comments Concerning the Written Ownership Requirement

Some of the JBO filings would require a JBO broker to establish and maintain written ownership standards for JBO accounts. One commenter criticized this requirement as not having provided guidance regarding the minimum standards.[81] In addition, the commenter stated that under the CBOE filing, the CBOE would have discretion to determine what is an appropriate ownership standard. As a result, the commenter argued that JBO brokers, would have an incentive to ''establish overly restrictive ownership standards.'' [82]

5. Comments Concerning the Series 27 Principal Requirements

Some of the JBO filings would require JBO participants to employ, or have access to, a Series 27 principal. One commenter criticized this requirement and stated that some broker-dealers who limit their activities to proprietary trading and do not transact business with non-broker-dealers are not currently required to employ a Series 27 principal.[83] In addition, the commenter believed that the requirement was vague and not relevant.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule changes are consistent with the Exchange Act and the rules and regulations under the Exchange Act applicable to a national securities exchange. In particular, the Commission believes that the proposed rule changes are consistent with Section 6(b)(5) of the Exchange Act,[84] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest.[85]

A. Approval of JBO Provisions

The Commission believes that each of the SROs has proposed reasonable capital and equity requirements for JBO brokers and JBO participants. The Commission also believes that the SRO requirements fulfill the Federal Reserve Board's mandate for the SROs to provide rules that ''ensure the reasonableness of JBO arrangements.'' [86]

With respect to JBO brokers, the Commission believes that it is reasonable for SROs to require a JBO broker to: (1) Provide written notification to its designated examining authority (''DEA'') prior to establishing a JBO arrangement; (2) maintain a minimum of $25 million in tentative net capital or $7 million in net capital if the JBO broker's primary business is clearing options market-maker accounts and, for these firms, the Commission also believes that it is reasonable to deem a broker-dealer's primary business to be the clearance of options market-maker accounts if a minimum of 60% of its aggregate deductions in its ratio of gross options market-maker deductions to net capital (including gross deductions for JBO participant accounts) are options market-maker deductions; (3) provide prompt written notification to the SROs if its tentative net capital or net capital, whichever applies, would fall below the prescribed requirements; (4) resolve any net capital deficiency within three business days or not be permitted to accept additional transactions through the JBO arrangement; (5) maintain a written risk analysis methodology for assessing the amount of credit extended to each JBO participant; and (6) deduct from its net capital each JBO participant's haircut requirement in excess of the equity maintained in the JBO participant's account.[87]

The Commission believes that the $7 million net capital requirement for JBO brokers is a reasonable response to the need for a capital cushion for the fluctuations in net capital resulting from the daily changes in JBO participant accounts and would avoid unnecessary and inadvertent violations of the net capital requirements at the times when a firm's capital needs are more volatile, such as the week that options expire or during severe market stresses.

In addition, for those SROs that would so require, the Commission believes that it is reasonable to require a JBO broker to establish and maintain written ownership standards for JBO accounts and to require a JBO broker to provide immediate telegraphic or facsimile notice to the SRO if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels. The Commission also believes that it is reasonable for a JBO broker to be subject to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections.

The Commission believes that it is reasonable for the SROs to require a JBO broker to be either a clearing and carrying, clearing, or carrying firm in accordance with the requirements under Regulation T and the Federal Reserve Board's applicable interpretations.

With respect to JBO participants, the Commission believes that it is

[79] LIT Letter and First Options Letter, *supra* note 62.

[80] Woods Letter, *supra* note 62.

[81] *Id.*

[82] *Id.*

[83] LETCO Letter, *supra* note 62.

[84] 15 U.S.C. 78f(b)(5).

[85] In approving these proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[86] Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 24, 1996), 61 FR 20386 (May 6, 1996).

[87] To date, the Commission has not taken action on the NYSE's Related Filing. Accordingly, this Order does not approve the Related Filing or its application to the margin amendments contained in this filing. However, upon Commission approval of the Related Filing, this Order would, for certain non-equity securities, permit a JBO broker to deduct from its net capital the difference between the equity maintained in the account of a JBO participant and the maintenance margin requirement specified in the Related Filing, as amended.

Although the SROs, except for the NYSE, have not proposed a similar alternative deduction, the Commission recognizes that some SRO rules permit dual NYSE registered firms to elect to be bound by the NYSE's maintenance margin requirements. By making this election, these firms would be permitted to take advantage of this alternative deduction.

reasonable for the SROs to require a JBO participant to: (1) Be a registered broker-dealer subject to Exchange Act Rule 15c3–1; (2) maintain an ownership interest in the JBO broker in accordance with Regulation T; and (3) maintain a minimum liquidating equity of $1 million in an account with the JBO broker. The Commission also believes that it is reasonable to require a JBO participant, whose liquidating equity would fall below the required $1 million, to deposit the deficiency within 5 business days or lose its JBO participant status and become subject to the customer margin account requirements under Regulation T and the other SRO maintenance margin requirements.

The Commission believes that the requirement of $1 million equity in the account is not unreasonable, considering the lack of regular maintenance margin requirements and the substantial leverage that would be obtained by the JBO participant.

In addition, for those SROs that would so require, the Commission believes that this is reasonable to require a JBO participant to employ or have access to a qualified Series 27 principal and to prohibit a JBO participant from operating under paragraph (b)(1) of Exchange Act Rule 15c3–1. The Commission also believes that it is reasonable to permit a foreign currency option participant to be a JBO participant.

The Commission believes that it is important for the SROs and the firms to be adequately prepared to implement and monitor the revised rules. Therefore, the Commission believes that it is appropriate to permit firms to allow a six-month phase-in of these new rules relating to JBO arrangements.

B. Approval of Reduced Margin for Specialist, Market-Maker and Broker-Dealer Accounts

The Commission believes that it is reasonable to require a broker-dealer to deduct from its net capital the difference between the equity maintained in the account of a specialist, market-maker and broker-dealer and the required haircut in accordance with Exchange Act Rule 15c3–1. The Commission believes that it is appropriate and equitable for SROs to require the same maintenance margin requirements for specialist, market-maker and broker-dealer accounts as JBO participant accounts.

In addition, the Commission believes that it is reasonable to permit SROs, which have not previously adopted these provisions, to allow a clearing firm to carry the proprietary account of another registered broker-dealer on a mutually satisfactory margin basis, provided that the firms comply with Regulation T and do not maintain the account in an equity deficit.

C. Approval of the Proposed Changes to the Concentration Provisions for Control and Restricted Securities

The Commission believes that it is reasonable for the NYSE to permit a firm to deduct the amount of its customers' excess control and restricted securities in determining if a concentration of control and restricted securities exists for purposes of deducting from its net capital any margin deficiencies in a customer's account under of subparagraph (e)(8)(c)(i) of NYSE Rule 431. Excess securities includes securities by which a customer's aggregate position in control and restricted securities of any one issue exceeds the aggregate amount of securities that would be required to support the aggregate credit extended on those securities, assuming a 50% margin requirement.

The Commission notes that the current concentration provisions for control and restricted securities appear to be inappropriate because they impose stricter requirements on accounts that have more control and restricted securities than necessary to collateralize a credit extension. By limiting the determination of whether a concentration of control and restricted securities exists to two times the credit extension, the proposal would subject these securities to a greater margin requirement based only on financed control and restricted securities. The Commission believes that this is a reasonable and appropriate margin requirement.

The Commission believes that it is reasonable for the NYSE and other SROs to exempt affiliate securities from the margin provisions relating to control and restricted securities provided that the securities otherwise meet the requirements of subparagraph (e)(8)(D), including that: (1) The securities are considered then saleable under Securities Act Rule 144(k), Securities Act Rule 145(d)(2) or Securities Act Rule 145(d)(3); and (2) the issuer is current in its filings pursuant to the continuous disclosure system under the Exchange Act.

The Commission notes that its interpretations under Securities Act Rule 144(k) may, under certain circumstances, permit a broker-dealer to sell control and restricted securities of an affiliate in default without regard to the volume and other restrictions imposed on affiliates. In addition, subparagraph (d)(3)(iv) of Securities Act Rule 144 permits a broker-dealer to ''tack'' the ownership period of an affiliate in default to its own for purposes of determining if the time conditions of Securities Act Rule 144(k) are met. Accordingly, the Commission believes that it is appropriate for affiliate securities, which otherwise meet the requirements of subparagraph (c)(8)(D), to be exempt from the maintenance margin rules for control and restricted securities.

The Commission believes that it is reasonable for the NYSE to require a broker-dealer to incur a net capital charge by the amount of aggregate credit it agrees to extend to its customers on control and restricted securities that exceed 10% of its excess net capital for purposes of determining its status under NYSE Rule 326. The Commission believes that it is reasonable for the NYSE to require a broker-dealer to have a written agreement to extend credit to a customer for control and restricted securities and require a firm to incur a net capital charge based on the greater of the aggregate credit agreed to in writing and the credit actually extended. The Commission notes that this rule change is currently required under the NYSE's interpretation of NYSE Rule 431.

D. Accelerated Approvals

The Commission finds good cause for approving NYSE Amendments Nos. 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. NYSE Amendment No. 3 proposed to permit a six-month phase-in of the NYSE's rule changes relating to JBO arrangements. NYSE Amendment No. 4 clarified the current citation to the provisions of Regulation T relating to JBO arrangements. The Commission believes that NYSE Amendment No. 3 is necessary because it is important for the NYSE and its members to be adequately prepared to implement and monitor the new rules relating to JBO arrangements. The Commission believes that NYSE Amendment No. 4 is necessary to reflect the current citation of Regulation T. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve NYSE Amendments Nos. 3 and 4 on an accelerated basis.

The Commission finds good cause for approving Phlx Amendment No. 2 and CHX Amendments Nos. 2, 3 and 4 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. These amendments generally proposed to: (1) Lower the minimum net capital

requirement for a JBO broker whose primary business is clearing options market-maker accounts to $7 million, instead of the $10 million originally proposed; (2) require a JBO broker to provide immediate telegraphic or facsimile notice to the SRO if its tentative net capital or net capital, whichever applies, would fall below the prescribed minimum levels; and (3) subject a JBO broker to the equity capital withdrawal restrictions of paragraph (e) of Exchange Act Rule 15c3–1 and the prohibitions against the reduction, prepayment, and repayment of subordination debt of paragraph (b) of Appendix D of Exchange Act Rule 15c3–1, as if the firm's net capital would be below the minimum standards specified by those sections. These amendments also clarified the requirement that if a JBO participant's liquidating equity would fall below the required $1 million it must deposit the deficiency within 5 business days or lose its JBO participant status and become subject to the margin account requirements under Regulation T and the other SRO maintenance margin requirements.

Furthermore, these amendments clarified the current citation to the relevant provisions of Regulation T, and proposed to prohibit a JBO broker to be only a carrying firm. The Commission believes that these amendments are reasonable and are consistent with some of the other SROs' JBO requirements. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve Phlx Amendment No. 2 and CHX Amendments Nos. 2, 3, and 4 on an accelerated basis.

The Commission finds good cause for approving PCX Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. PCX Amendment No. 2 would prohibit a JBO broker to be only a carrying firm. The PCX's original filing would have permitted a JBO broker to carry and clear or carry customer accounts. The Commission believes that PCX Amendment No. 2 is reasonable and is consistent with some of the other SROs' JBO requirements. Accordingly, the Commission finds it is consistent with Section 19(b) of the Exchange Act to approve PCX Amendment No. 2 on a accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing SRO amendments not previously published in the **Federal Register**, including whether the proposed rule changes, as modified by the amendments, are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW, 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 persons, 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 Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the SROs. All submissions should appropriately refer to SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–56; SR–PCX–97–49; SR–CHX–98–12 and should be submitted by March 24, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[88] that the proposed rule changes (SR–NYSE–97–28; SR–CBOE–97–58; SR–Phlx–97–49; SR–CHX–98–12; SR–Amex–99–26), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[89]

Margaret H. McFarland,

Deputy Secretary.

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[88] 15 U.S.C. 78s(b)(2).

[89] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42458; File No. SR–Phlx–00–12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Rescind Exchange Rule 132, ''Dealings Outside of Exchange in Securities Dealt in on the Exchange''

February 25, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2000, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's (''NYSE'') proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal (''NYSE Notice'') and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.[3] Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

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

The Exchange seeks to rescind Exchange Rule 132, ''Dealings Outside of Exchange in Securities Dealt on the Exchange.'' The text of the proposed rule change is available at the Exchange and at the Commission.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000) (File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the American Stock Exchange and the Chicago Stock Exchange. *See* Securities Exchange Act Release Nos. 42460 (Feb. 25, 2000) (File No. SR–Amex–00–05) and 42459 (Feb. 25, 2000) (File No. SR–CHX–00–12).

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: (http://www.sec.gov/rules/sros/ny9948n.htm).