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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–38 and should be submitted by October 30, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26724 Filed 10–8–97; 8:45 am]

BILLING CODE 8010–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39190; File No. SR–NYSE–96–27]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by New York Stock Exchange, Inc. Relating to an Interpretation of Rule 409 (''Statements of Accounts to Customers'')

October 2, 1997.

I. Introduction

On December 5, 1996,[1] the New York Stock Exchange, Inc. (''NYSE'' 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'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change interpreting Exchange Rule 409. A notice of the proposed rule change appeared in the **Federal Register** on January 9, 1997.[4]

The Commission received five comment letters addressing the proposed rule change.[5] One commenter endorsed the proposed amendments,[6] while the remaining commenters opposed the proposal.[7] This order approves the proposed rule change.

The proposed rule change sets forth an interpretation of Exchange Rule 409 with respect to the establishment of standards regarding the distribution of ''summary statements'' and the use of ''third party agents'' to prepare or distribute customer account statements. The proposed interpretation also codifies existing Exchange policy as to certain information that must be disclosed on account statements. Other items addressed in the proposed interpretation include account statements that reflect assets not in the possession or control of a member organization and the use of logos and trademarks on account statements by an entity other than the carrying or introducing organization.

II. Description of the Proposal

Exchange Rule 409 addresses the responsibility of member organizations carrying customer accounts to send statements of these accounts to their customers. Currently, the rule requires member organizations to send their customers account statements showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. As amended, the rule will allow Exchange member organizations, jointly with other financial institutions (*e.g.*, banks and investment companies), to formulate and distribute to common customers a ''summary statement'' of the customers' accounts with the respective institutions. These consolidated statements will reflect information from entities that are part of a financial services ''group'' or ''family,'' which could include an Exchange member organization that carries accounts for another broker-dealer.

Specifically, the Exchange will require that the summary statement: indicate that the statement is informational and includes assets held at different entities; identify each entity, their relationship to each other and their respective functions; distinguish clearly between assets held by each entity;[8] identify the customer's account numbers at each entity and provide a customer service telephone number at each;[9] disclose which entity holds each of the different assets on the summary; and identify each entity that is a member of the Securities Investor Protection Corporation (''SIPC'').[10] Additionally, any aggregation of account values must be recognizable as having been derived from the separately stated totals; the beginning and end of each separate underlying statement must be clearly distinguishable; and there must be a written agreement between the parties jointly distributing the statements that each has developed procedures and controls for testing the accuracy of its own information on the summary statement. Furthermore, the member organization must indicate on the summary statement that it is not responsible for any information derived from the customer or other external source relating to externally-held assets.

The proposed interpretation also clarifies that certain information must be disclosed on the front of account statement, *i.e.*, the identity of the introducing and carrying organizations, where customer assets included on the statement are held, whether such customer assets are covered by SIPC, and the opening and closing account balances. Moreover, the interpretation requires that where the account statement includes assets not within the possession or control of the member

[1] In response to comment letters and membership concerns, the NYSE has submitted three amendments to this proposed rule change. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 24, 1997 (responding to comment letters)(''Amendment No. 1''); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 9, 1997 (amending the rule language to clarify the proposed interpretation and stipulating to a one year phase-in period for implementation of the Rule's requirements)(''Amendment No. 2''); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Ms. Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated September 18, 1997 (eliminating redundant provisions in the interpretation)(''Amendment No. 3''). These amendments are technical in nature and do not need to be published for comment.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 38106 (December 31, 1996), 62 FR 1353 (January 9, 1997).

[5] Letter from Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association, to Jonathan G. Katz, Secretary, SEC, dated January 30, 1997 (''ABA Letter''); Letter from Deborah H. Kaye, Vice President and Assistant General Counsel, Retail Banking and Securities, The Chase Manhattan Bank, to Jonathan G. Katz, Secretary, SEC, dated January 28, 1997 (''Chase Letter''); Letter from Thomas W. Evans, Vice President, Citibank, to Secretary, SEC, dated January 29, 1997 (''Citibank Letter''); Letter from Steven J. Freiberg, Chairman and Chief Executive Officer, Citicorp Investment Services, to Secretary, SEC, dated January 29, 1997 (''CIS Letter''); Letter from Monica M. Barbour, Vice President and Legal Counsel, First Chicago NBD, to Margaret H. McFarland, Deputy Secretary, SEC, dated January 31, 1997 (''First Chicago Letter'').

[6] *See* First Chicago Letter.

[7] *See* ABA Letter, Chase Letter, Citibank Letter, and CIS Letter.

[8] Columns, coloring or other distinct forms of demarcation may be used to clearly distinguish assets. The Interpretation requires only that a physical distinction of assets be made on the summary page. It was not intended to mandate the manner in which such identification is made. *see infra* note 13, at pg. 4.

[9] Where the customer account number and telephone number for customer service at each entity are included on each entity's respective customer account statement, such account and telephone numbers need not be included on the summary statement. *See also* note 26, *infra.*

[10] *See supra* note 1, Amendment No. 2.

organization, such assets must be clearly separated on the statement. In addition, the statement must clearly indicate that such externally held assets: are not within the possession or control of the member organization and are included on the statement solely as a service to the customer; and are not covered by SIPC.

Concerning the use of logos and trademarks, the proposed interpretation provides that where the logo, trademark or other identification of an entity (other than that of the carrying or introducing organization) appears on an account statement, the identity of such entity and the relationship to the introducing, carrying or other organization must be provided on the statement. With respect to the summary statement, the location of the name of the entity may not be misleading or cause customer confusion. The proposed interpretation codifies that carrying firms are responsible for sending statements to customers and for ensuring the accuracy of such statements. However, because in many cases ''third party agents'' (*e.g.*, service bureaus or other independent entities) prepare or transmit customer account statements, the proposed interpretation to Rule 409 would also establish Exchange policy regarding use of ''third party agents'' to prepare or transmit statements of accounts and to set forth certain representations which must be made in writing by the member organization to the Exchange when employing their party agents.

Specifically, the member organization must represent that the third party is acting as agent for the member organization, that the member organization retains responsibility for compliance with Rule 409(a), that the member organization has developed procedures and implemented controls for reviewing and testing the accuracy of statements, and that it will retain copies of all such statements. In addition, the interpretation states that an introducing organization that is a provider of services included in a member organization's statements of accounts may not function as a ''third party agent'' and may neither prepare nor transmit such statements itself.

III. Summary of Comments

The Commission received five comment letters in response to the proposed rule change.[11] The First Chicago Letter generally endorsed the proposed rule change as a ''significant step in meeting customer needs by creating a more efficient and less costly delivery system of customer statements.[12] The remaining letters, however, raised several issues that the Commission believes should be addressed. The Exchange, at the Commission's request, has proffered a response.[13]

The remaining commenters argued that the Exchange lacked the authority to regulate how non-Exchange members communicate with their customers and the type of information disseminated to their customers.[14] One commenter, Chase, noted that if the NYSE member firm must develop procedures and controls for reviewing the accuracy of statements of accounts prepared by third party agents then this implies that the Exchange member must have access to bank records and statements.[15] Chase questioned whether the NYSE has the authority to require NYSE member firms to review bank statements.[16] Another commenter suggested that requiring banks (or other financial entities) to possibly establish and make accessible a customer service department was an indirect attempt by the Exchange to regulate banking activity and as such, was beyond the Exchange's purview.[17]

The NYSE states that its proposed Interpretation is directed only to those persons or entities that themselves are subject to the jurisdiction of the Exchange.[18] The Exchange believes that its interpretation will apply generically to the practice of formulating and disseminating summary statements together with combined statements of various entities, regardless of whether these entities are members.[19] The Exchange states that it is not seeking to directly impose regulation on third parties; however, to the extent that member organizations enter into contractual arrangements with third parties, these relationships will necessarily be affected by Exchange regulation.[20]

In its response, the NYSE has clarified its intent concerning specific jurisdictional issues raised by several commenters. First, the requirement that a member firm develop procedures and controls for reviewing the accuracy of statements of accounts prepared by third party agents only applies to the customer account statement of a member organization.[21] For example, ''if a third party agent prepares account statements which include assets held at the member organization broker-dealer, there must be a system in place to ensure the accurate receipt by the third party agent of such information and the transmission of accurate information to customers.'' [22] The Interpretation does not seek to address the responsibility for the preparation of statements or accuracy of information related to assets not held at the broker-dealer.[23] Thus, concerning customer information provided by non-member entities, the responsibility of ensuring the accuracy and transmission of their information lies solely with them.

Another concern most commonly raised addressed the requirement that each entity provide a customer service number on its respective customer account statement. In its response, the NYSE stated that the summary page must also identify the relevant customers' account numbers at each entity and provide a customer service number for each such entity, ''but *only* if such information is *not* included on each entity's underlying customer account statement.'' [24] According to the Exchange, indicating the customer service telephone numbers will allow customers to contact the appropriate entity for assistance in regard to the information presented on the summary page or any of the attached statements.[25]

The Commission believes the requirement that a customer service number be provided from each entity will ensure that inquiries concerning an asset or account are directed to the entity controlling the same. If a subsidiary does not have a customer service number, it may use the customer service number of its parent company or other affiliate.[26] With respect to the jurisdictional issues, the Commission recognizes that the development and distribution of these joint customer account statements would be a voluntary undertaking between the parties involved. If a broker-dealer affiliate chooses not to distribute joint account statements with the broker-dealer, then it would not be subject to the Interpretation.

Several comments took exception to the requirement that the summary

[11] *See supra* note 5.

[12] First Chicago Letter at pg. 2.

[13] *See supra* note 1, Amendment No. 1.

[14] Chase Letter, pp. 2–3, Citibank Letter, p. 3, and CIS Letter p. 4.

[15] Chase Letter, p. 3.

[16] *Id. See also* Citibank Letter, (stating that the NYSE has no authority to access customer account numbers or information or to require customer service numbers at a bank or other financial entity), p. 3.

[17] CIS Letter, pp. 3–4.

[18] Amendment No. 1, p. 2.

[19] *Id.*

[20] *Id.*

[21] Amendment No. 1, p. 5.

[22] *Id.*

[23] *Id.*

[24] Amendment No. 1, p. 4.

[25] *Id.*

[26] If an alternate number is used, the customer must be able to receive assistance concerning his inquiries or be directed to the appropriate person or department for assistance.

statement identify and distinguish between those accounts and assets covered and not covered by SIPC.[27] According to these commenters, most financial entities have already addressed insurance disclosure and have established procedures to comply with the banking regulators' requirements.[28] Thus, requiring banks to specifically disclose to customers that deposit accounts, insured by the Federal Deposit Insurance Corporation (''FDIC''), are not insured by SIPC would create unnecessary customer confusion [29] and may create the illusion that the two types of coverage are comparable.[30] One commenter noted that this requirement imposes a disproportionate impact [31] on financial entities because they would be burdened with distinguishing between FDIC and SIPC coverage and educating the customer about the differences.[32]

In its response, the NYSE notes that it intended that member organizations be required to make the standard SIPC disclosures on their customer account statements and on summary statements where brokerage assets are included.[33] The NYSE understands that if read literally, the proposal could be construed as requiring summary statement participants to make ''negative'' disclosures (*i.e.*, specific identification of account assets or accounts *not* covered by SIPC); however, this was not its intent. Thus, with respect to SIPC disclosures on the summary statement, the Exchange has amended the proposed Interpretation to require that an entity disclose its membership status, not the status of the accounts or assets.[34]

Finally, most commenters expressed concern about the additional costs and burdens financial institutions will incur in attempting to comply with the summary statement aspect of this proposal.[35] These commenters contend that expanding the disclosure requirements to include, among other things, identifying each entity from which information is provided or where the assets are held and explaining the relationship between the various entities on the summary statement, would not only increase the cost of producing the statement,[36] but would defeat the purpose of a statement summary by increasing its length.[37] If the proposal is approved, the commenters suggest that those entities currently disseminating summary statements pursuant to NYSE rules either be grandfathered [38] or provided with a grace period to implement the changes.[39]

The NYSE has agreed that some flexibility in implementation is warranted. Thus, the Exchange has agreed to a one year phase-in period, commencing with Commission approval.[40]

IV. Discussion

The Commission believes that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder. Specifically, the Commission believes that approval of the proposed rule change is consistent with section 6(b)(5) [4] of the Act. Pursuant to Section 6(b)(5), the proposed rule change benefits the public [42] by codifying the information to be disclosed and delineating the criteria for the use of third party agents in formulating and disseminating statements of accounts to customers. Exchange Rule 409 also benefits the public by establishing requirements for related financial entities to consolidate account information and distribute this information in a ''summary statement'' to their common customers. These summary statements will provide customers not only with an overview of their accounts at the separate entities, but with concise, detailed information that is easily accessible.[43]

Codifying the information to be disclosed on statements of accounts assures customers of consistency in the type of information received on their statements. It also establishes uniform standards which will be applicable to all Exchange members. The rule language establishes adequate procedures for members to follow if they chose to use third party agents to disseminate statements of accounts to their customers. The rule safeguards against possible conflicts of interest and requires that members who exercise this option, monitor the activity of the third party agents, to ensure accuracy of the information transmitted. Having members develop the requisite procedures and controls to monitor their agents' compliance with this rule should prevent the misuse of customer information.

A summary statement consolidating a customer's accounts from various related financial entities will provide the customer with convenient access to the information in a single document. The Commission agrees that if these statements are currently being produced and disseminated, then uniform requirements need to be established for member and non-member participants to follow. The Commission applauds the Exchange's efforts in establishing requirements that attempt to provide the customer with as much information as possible. However, the Commission believes there is a fine line between a useful summary statement and one that could prove misleading and could cause customer confusion. Consequently, we urge the Exchange to be sensitive to any concerns that may arise after the proposal is implemented.

The Commission also believes that allowing a one year phase-in period for implementation of the Interpretation will provide entities adequate time to comply with the requirements of the rule. Once the Interpretation is fully implemented, the resulting summary statement should achieve the Exchange's objectives while benefiting the customer through increased disclosure.

V. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the

[27] Chase Letter, p. 4, Citibank Letter, pp. 1–2, CIS Letter, p. 2, and ABA Letter, p. 4.

[28] *Id.* The banking regulators' requirements are outlined in the Interagency Statement on Retail Sales of Non-deposit Investment Products, dated February 15, 1997 (''Interagency Statement''). *See also* Joint Interpretations of the Interagency Statement, dated September 12, 1995, (indicating that the banking agencies may seek to apply the Interagency Statement more broadly outside the bank than they do within the bank).

[29] Chase Letter, p. 4, Citibank, p. 1, and ABA Letter, p. 4.

[30] Citibank Letter, pp. 1–2.

[31] CIS Letter, (requiring additional disclosures will have an anti-competitive effect because NYSE Rule 409 will disproportionately affect banks, thus disadvantaging a class of NYSE competitors) at p. 2.

[32] ABA Letter, pp. 3–4.

[33] Amendment No. 1, p. 4.

[34] Amendment No. 2, p. 2.

[35] Chase Letter, p. 1, Citibank Letter, p. 3, CIS Letter, p. 2, and ABA Letter, p. 3.

[36] Chase Letter, p. 3, Citibank Letter, p. 3, CIS Letter, p. 3 and ABA Letter, p. 3.

[37] Chase Letter, p. 5 and Citibank Letter, pp. 3–4.

[38] Citbank Letter, p. 4.

[39] Chase Letter, p. 6 and Citibank Letter, p. 4.

[40] Amendment No. 1, p. 3.

[41] Section 6(b)(5) requires the Commission to determine that a registered national securities exchange's rules are designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[42] Pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[43] The Commission notes that this approval order addresses the procedures that members and associated persons must follow to disseminate this customer information. The Commission, however, is not addressing the various entities' legal status or rights concerning this information.

provisions of the Act, and in particular with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–NYSE–96–27) be, and hereby is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[45]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–26723 Filed 10–8–97; 8:45 am]

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[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39178; File No. SR–PHLX–97–39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Regarding ITSFEA Supervisory Procedures

October 1, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 18, 1997, the Philadelphia Stock Exchange, Inc. (''PHLX'' 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 the self-regulatory organization. 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

PHLX, pursuant to Rule 19b–4[2] of the Act, proposes to amend Exchange Rule 761, Supervisory Procedures Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988 (''ITSFEA''), and Floor Procedure Advice F–13, in order to broaden the scope of their applicability. The text of the proposed rule change may be examined at the places specified in Item IV below.

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

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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

On April 16, 1992, the Exchange received approval to implement Exchange Rule 761[3] which imposed supervisory procedures on its floor units respecting ITSFEA. In 1993, the Exchange revised the rule in order to make minor changes for the sake of clarity.[4] The rule currently requires PHLX floor units to have every employee sign an attestation that he or she has read the most current version of the Exchange's ''Notice of Insider Trading'' and will ensure that the employer firm directly receives a duplicate account statement for all accounts in which the employee maintains a beneficial interest. Further, the rule requires all floor units to make and keep current an ''ITSFEA Account List'' and review all accounts listed with a view towards identifying possible misuse of material non-public information.

Currently, the rule only applies to PHLX floor units. Now, however, the PHLX has become the designated examining authority (''DEA'') for approximately eighteen firms over the past few years which do not have a floor presence. These firms are not now subject to the rule, and because no other self regulatory organization (''SRO'') is their DEA, they are exempt from these requirements entirely. In order to rectify this situation, the Exchange is proposing to change the phrase ''PHLX floor unit'' to ''PHLX member organization'' in the rule. That way, the rule will apply to all PHLX member organizations, with the caveat that any member organization which is required to have ITSFEA supervisory procedures pursuant to rules of another SRO which is its DEA, will not also be subject to PHLX Rule 761. Thus, all PHLX member firms for which the Exchange is the DEA will be subject to this rule, regardless of whether they conduct business on the floor of the Exchange or not.

The second purpose of this rule change is to add commentary .01, which will provide that for the purpose of the rule, an employee will include ''every person who is compensated directly or indirectly by the member organization for the solicitation or handling of business in securities, including trading securities for the account of the member organization, whether such securities are those dealt in on the Exchange or those dealt over-the-counter.'' Thus, independent contractors as well as actual ''employees'' will be subject to the requirements of the rule. This language is similar to the language in Exchange Rule 604(d).

Finally, Floor Procedure Advice F–13, which mirrors the language of Rule 761, with the addition of a fine schedule under the Exchange's minor rule plan, also will be revised in the same manner as Rule 761.

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general,[5] and particular, with Section 6(b)(5),[6] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by assuring that the requirements of the ITSFEA rule are equally applied to all broker dealers and all persons who conduct a securities business for such broker dealers whether they are considered employees or independent contractors.

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

The PHLX 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

No written comments were either solicited or received.

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**

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855.

[4] Securities Exchange Act Release No. 33008 (October 4, 1993), 58 FR 52518.

[5] 15 U.S.C. 78f.

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