

rules filed by the exchanges noted above.⁶

II. Description of the Proposal

Exchange Rules 5 and 6 restrict a member's ability to effect transactions in Exchange-listed securities (Rule 5) and bonds (Rule 6) off a national securities exchange. In the proposing release, the Exchange explained that these rules were originally intended to "centralize buying and selling interest in listed securities to ensure the execution of orders at the best possible prices. Over time, however, these off-board trading restrictions came to be viewed by many as anticompetitive." The Exchange also noted that Chairman Levitt had recently called for the elimination of off-board trading rules.

The Exchange proposed to eliminate Exchange Rule 5 because the rule is "largely irrelevant" to the trading of Amex-listed equity securities, given the applicability of Commission Rule 19c-3⁷ and the fact that most Amex-listed stocks were listed for trading after April 26, 1979. The Exchange also noted that Exchange Rule 5 only applies to Amex members, and that non-member firms do in fact trade Amex-listed equities off an exchange. With respect to Exchange Rule 6, the Exchange stated that the rule was of "little practical consequence" due to the exceptions in the rule that permit "the great bulk of listed bond transactions to occur over-the-counter." Therefore, in light of the "limited practical impact of the Exchange's off-board trading rules and the changing view on their propriety," the Exchange proposed to eliminate its off-board trading restrictions for Amex-listed equities and bonds.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

⁶ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000 the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

⁷ Commission Rule 19c-3 prohibits a national securities exchange from imposing off-board trading restrictions to equity securities listed after April 26, 1979. 17 CFR 240.19c(3).

applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁹ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11(A)(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.¹⁰

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restricting can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Exchange Rules 5 and 6 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in the Act.¹¹ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Exchange Rules 5 and 6 may have in enhancing the interaction of investor

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78k-1.

¹⁰ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ Section 11A(a)(1)(C)(v) of the Act.

orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task is removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹² The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-Amex-00-05) is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42887; File No. SR-BSE-00-02]

Self-Regulatory Organizations; Boston Stock Exchange Inc.; Order Approving Proposed Rule Change to Rescind Chapter II, Section 23, the Exchange's Off-Board Trading Rule

June 1, 2000.

I. Introduction

On March 9, 2000, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a

¹² NYSE Approval Order at 30179.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change to rescind Chapter II, Section 23, the Exchange's off-board trading rule. The proposed rule change was published for comment in the **Federal Register** on April 17, 2000.³ Shortly thereafter, a proposed rule change filed by the Pacific Exchange rescinding its off-board trading rule was published for public comment.⁴ Similar proposed rule changes filed by the American Stock Exchange, Chicago Stock Exchange, and the Philadelphia Stock Exchange had already been published for public comment.⁵ The Commission received no comments on any of these proposals. Today, in separate orders, the Commission is approving the proposed rule changes to rescind off-board trading rules filed by the exchange noted above.⁶

II. Description of the Proposal

Chapter II, Section 23 restricts a member's ability to effect transactions in Exchange-listed securities off a national securities exchange. In the proposing release, the Exchange noted that "[a]dvances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading." The Exchange also noted that the NYSE had proposed to rescind its off-board trading rule, and that the Commission had requested that the Exchange review its restrictions on off-board trading.

³ Securities Exchange Act Release No. 42661 (April 10, 2000), 65 FR 20497.

⁴ Securities Exchange Act Release No. 42660 (April 10, 2000, 65 FR 21052 (April 19, 2000) (File No. SR-PCX-00-11).

⁵ Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR-Amex-00-05); Securities Exchange Act Release No. 42459 (February 25, 2000, 65 FR 11619 (March 3, 2000) (File No. SR-CHX-99-28); Securities Exchange Act Release No. 42458 (February 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR-Phlx-00-12).

⁶ The New York Stock Exchange was first to submit a proposed rule change rescinding its off-board trading rule, Rule 390. Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) ("NYSE Release").

On May 5, 2000, the Commission approved the New York Stock Exchange's proposed rule change to rescind Rule 390. Securities Exchange Act Release No. 34-42758 (May 5, 2000), 65 FR 30175 (May 10, 2000) ("NYSE Approval Order").

In the NYSE Release, the Commission also solicited the public's views on a broad range of issues related to market fragmentation—the trading of orders in multiple locations without interaction of those orders. The period for public comment on market fragmentation expired on May 12, 2000. The Commission currently is reviewing the comments submitted in response to the NYSE Release.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act. The rescission of the Exchange's off-board trading restrictions is also consistent with Section 11A of the Act⁸ which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Specifically, rescinding the off-board trading restrictions will help further the national market system objective in Section 11A(a)(1)(C)(i) to assure the economically efficient execution of securities transactions, and in Section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.⁹

As discussed more fully in the NYSE Approval Order, the existence of off-board trading restrictions can no longer be justified in an age when advancing technology and expanding trading volume are introducing new competitive challenges for the U.S. securities markets, both at home and abroad. Off-board trading rules such as Chapter II, Section 23 directly restrict a certain type of market center competition—competition between exchange markets and markets other than exchange markets. Their rescission today eliminates an inappropriate regulatory burden on competition that runs contrary to the objectives set forth in the Act.

Off-board trading restrictions have been justified on the basis that they promote the interaction of investors' orders without participation by a dealer—indeed an objective set forth in

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78k-1.

⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

the Act.¹⁰ The Commission believes, however, that whatever beneficial effect off-board trading restrictions such as Chapter II, Section 23 may have in enhancing the interaction of investor orders can no longer justify their anticompetitive nature. To the extent off-board trading rules enhance order interaction, they do so in an undesirable way—by attempting a direct restriction on competition. Such attempts are never wholly successful and typically only distort, rather than eliminate, competition and introduce unnecessary costs ultimately borne by investors.

The outcome of competition between market centers should depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible prices; the Commission's regulatory task removing unwarranted regulatory barriers to competition between market centers. As stated in the NYSE Approval Order, the rescission of off-board trading rules is "intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers."¹¹ The same rationale and motivation support the Commission's action today.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-00-02) is approved.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42891; File No. SR-CHX-00-07]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Eliminate the Series 7B Qualification Examination for Floor Clerks Who May Accept Orders From Professional Customers for Execution on the Exchange's Trading Floor

June 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹⁰ Section 11A(a)(1)(C)(v) of the Act.

¹¹ NYSE Approval Order at 30179.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).