commencement of the public offering. In the absence of the safe harbor, the exemption for the private offering may be in doubt, as it could be integrated with the public offering. The Task Force Report recommended that Rule 152 be revisited with a view towards permitting a company to switch from a private offering to a public offering without an intervening termination of the private offering.[61] Comment is solicited with respect to whether this proposal would resolve much of the strain resulting from the erosion of distinctions between private and public offerings. Would this enhance an issuer's ability to access the capital markets more efficiently? Would there be a loss of investor protection from such a change? If Rule 152 is expanded, should its availability be limited to offerings other than those that may give rise to disclosure abuses (*e.g.* blind pools, blank check companies or penny stocks)?

Similarly, should the Commission modify its view that the act of filing a registration statement in connection with a non-shelf offering is deemed to commence a public offering in all cases? Should the Commission create a safe harbor for private offerings that are undertaken while the issuer has ''quietly'' filed a registration statement?[62]

7. General solicitation. Effective June 10, 1996, the Commission adopted Rule 1001,[63] which exempts from registration under the Securities Act certain small offerings that are exempt from state law registration under the California Corporations Code.[64] The California law provides an exemption for offerings by California-related issuers to ''qualified purchasers'' (which are similar to accredited investors as defined in Securities Act Regulation D). Under the California law, a general announcement with limited contents may be widely published and circulated, much like that under the Commission's Regulation A ''test the waters'' process. Comment is solicited with respect to whether the Commission should extend the approach in Rule 1001 to offerings on a nationwide basis so that a general solicitation could precede an exempt sale to qualified purchasers.

Comment also is requested with respect to a broader relaxation of general solicitation prohibitions on offerings made under Regulation D Rules 505 and 506.[65] Is the inability to reach out broadly to find qualified investors for such Regulation D offerings unnecessarily hampering the utility of the regulation and raising costs to issuers? Would relaxation of such prohibition be appropriate?[66]

8. Other Questions. Would modification of the existing shelf registration system provide the equivalent benefits to issuers and other participants in the markets, and investors, in both the primary and secondary markets, as the new company registration system may provide?

Would modifications to the existing regulatory system (including shelf registration) provide equivalent benefits to eliminating the need for regulatory distinctions (such as ''private versus public,'' ''domestic versus offshore,'' and other similar issues) as would the new company registration system if companies opted into full company registration?

Would it be better to have a pilot program for company registration, while maintaining the current system, or should instead the current system be modified?

III. Conclusion

The Commission is soliciting public comment on a variety of issues relating to the Securities Act offering process, including the effect of any changes in the regulatory scheme on the operation of both the primary and secondary markets. In addition to responding to the questions presented in this release, the Commission encourages commenters to provide any information to supplement the information and assumptions contained herein regarding the functioning of the capital-raising process, the roles of market participants, the advantages and disadvantages of suggested reforms, the expectations of investors, and the other matters discussed. The Commission also invites commenters to provide views and data as to the costs and benefits associated with possible changes discussed above in comparison to the costs and benefits of the existing regulatory framework. The Commission also seeks comment concerning whether, given the passage of time and the evolution of the capital markets since adoption of the registration system, legislative reform is needed. In order for the Commission to assess the impact of changes to the Securities Act regulatory scheme on capital formation and the protection of investors, comment is solicited from the point of view of investors, issuers, underwriters, broker-dealers, analysts, and other interested parties, including accountants and attorneys involved in the registration process.

By the Commission.

Dated: July 25, 1996.

Margaret H. McFarland,

Deputy Secretary.

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[61] *See* Task Force Report at pp. 29–30.

[62] An issuer ''quietly'' files a registration statement when the filing of such document with the Commission is not accompanied by a marketing effort for the securities, including the circulation of a preliminary prospectus.

[63] 17 CFR 230.1001 (Regulation CE).

[64] Securities Act Release No. 7285 (May 1, 1996) [61 FR 21356].

[65] 17 CFR 230.505 and 230.506.

[66] See the discussion and solicitation of comment contained in Securities Act Release No. 7185 (June 27, 1995) [60 FR 35638]. Comment letters have been received in response to that solicitation of comments and are available in the Commission's Public Reference Room File No. S7–15–95. Such letters will be considered in connection with this release and need not be resubmitted.

[Release No. SIPA–159/July 25, 1996]

Securities Investor Protection Act of 1970; Securities Investor Protection Corporation; Notice of Determination That WestLB Securities Americas Inc. Is a Member of SIPC

Notice is hereby given that on June 11, 1996, the Securities Investor Protection Corporation (''SIPC'') informed the Securities and Exchange Commission (''Commission'') that WestLB Securities Americas Inc. (''WestLB'') is no longer eligible for the exclusion from SIPC membership under section 3(a)(2)(A)(i)[1] of the Securities Investor Protection Act of 1970 (''SIPA''). The Commission is publishing this notice to inform the public that, pursuant to SIPC's determination, WestLB is now a member of SIPC.

I. Introduction

Section 3(a)(2)[2] of SIPA provides that, with certain exceptions, all broker-dealers registered pursuant to Section 15(b)[3] of the Securities Exchange Act of 1934 are members of SIPC. Section 3(a)(2)(A)(i) provides an exception to SIPC membership for broker-dealers whose principal business, in the determination of SIPC, taking into account the business of affiliated entities, is conducted outside the United States and its territories and possessions.

II. Background and Discussion

WestLB, formerly known as RWS Securities, Inc., is a corporation organized under the laws of the United States and is a wholly owned subsidiary of Westdeusche Landesbank

[1] 15 U.S.C. § 78ccc(a)(2)(A)(i) (1995).

[2] 15 U.S.C. § 78ccc(a)(2)(A) (1995).

[3] 15 U.S.C. § 78o(b) (1995).

Gironzentrale (''Westdeusche Landesbank''). WestLB registered with the Commission pursuant to Section 15(b) on June 4, 1976 and is a member of the National Association of Securities Dealers, Inc. In 1985, SIPC determined that WestLB qualified for an exception from SIPC membership under Section 3(a)(2)(A)(i), and on July 17, 1985, the Commission affirmed SIPC's determination that WestLB was a person whose business was conducted outside the United States, its territories and possessions, and therefore was not a member of SIPC.[4] At that time, WestLB had only one customer, Westdeusche Landesbank, located in Germany, and the firm cleared all of its transactions on a fully disclosed basis through a SIPC member. Although WestLB received revenues from its clearing broker in the United States, those revenues stemmed exclusively from transactions conducted by WestLB for Westdeusche Landesbank, acting on behalf of its customers located in Germany.

However, on June 11, 1996, SIPC determined that WestLB is no longer eligible for exclusion from SIPC membership under Section 3(a)(2)(A)(i) of SIPA because WestLB's principal business is no longer conducted outside the United States, its territories or possessions.[5] In the information supplied to SIPC, WestLB now reports that it has U.S. customers and that the majority of its gross revenues from the securities business for its latest fiscal year arise out of transactions in the United States, its territories, and possessions.

III. Protection Under SIPA

The effect of SIPC's determination is that WestLB now is a member of SIPC; therefore, WestLB's customers are afforded the protections of SIPA. In the event of a broker-dealer's liquidation, under SIPA, customers of a failed firm receive securities that are in the possession of the firm, that are registered in their names and that are not in negotiable form. Customers are then entitled to their pro rata share of all remaining cash and securities of customers held by the firm. After the above distribution, SIPC funds are available to satisfy the remaining claims of each customer up to a maximum of $500,000, including no more than $100,000 for cash claims (as distinct from claims for securities).

Margaret H. McFarland,

Deputy Secretary.

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[4] Release No. SIPA–124 (July 17, 1985).

[5] Letter from Stephen P. Harbeck, Secretary, SIPC, to Arthur Levitt, Chairman, SEC, dated June 11, 1996.

[Release No. 34–37456; File No. SR–CBOE–96–48]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Consolidation of Minor Rule Violation Cases Involving the Same or a Related Transaction or Occurrence

July 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 10, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE, the Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') proposes to amend its Minor Rule Violation rule to permit the consolidation of, into one hearing, the review of certain conduct involving trading conduct or decorum fines levied against different members and involving the same or related transaction or occurrence. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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

In its filing with the Commission, CBOE 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 CBOE 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, Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's Minor Rule Violation rule to permit the Exchange's Business Conduct Committee (''BCC'') to consolidate in a single hearing the review of trading conduct or decorum fine exceeding $2500 and the review of such fines not exceeding $2500 where the alleged violations involve the same or a related transaction or occurrence.[1] If the review of a fine is to be based upon written submissions, then that review may not be consolidated. Currently, subsection (c)(1) of Rule 17.50 permits any person against whom a fine exceeding $2500 has been imposed pursuant to subsection (g)(6) (Violations of Trading Conduct and Decorum Policies) of the Rule to contest the determination by filing a written answer pursuant to Exchange Rule 17.5, at which point the matter becomes subject to review by the BCC. On the other hand, subsection (d)(1) of Rule 17.50 requires a person contesting a fine not exceeding $2500 imposed pursuant to subsection (g)(6) to make a written application pursuant to Rule 19.2(a), at which point the matter becomes subject to review by the Appeals Committee. In short, matters involving violations of the trading conduct and decorum policies pursuant to subsection (g)(6) are subject to review by different Exchange Committees depending upon whether the fine is (i) above $2500 (Business Conduct Committee) or (ii) $2500 or below (Appeals Committee).

The Exchange has been faced with at least one situation where a trading conduct and decorum policy incident on the floor resulted in fines of varying amounts for the participants involved, which subsequently lead to separate hearings for the different individuals before different Exchange Committees. The Exchange believes that granting the BCC the authority to conduct a consolidated hearing covering all violations resulting from the same or a related transaction or occurrence would

[1] Examples of conduct that are considered to be violations of the Exchange's trading conduct and decorum policy are: use of abusive language, abusing Exchange property, violation of the Exchange's book priority, physical violence, food or drink on the floor, and unbusinesslike conduct. The Exchange periodically distributes to its membership a list of the conduct considered to be violative of the policy and a fine schedule for the various types of conduct. Currently, the fine schedule permits Exchange Floor Officials to fine a member more than $2,500 under the trading conduct and decorum policy only when the conduct involves fighting on the floor.