

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

The purpose of the proposed rule change is to make a clarifying amendment to Interpretation .04 of Rule 6.73, which requires a floor broker to continuously represent certain orders in the trading crowd.

Paragraph (a) of Rule 6.73, Responsibilities of Floor Brokers, states that a floor broker must use due diligence in handling an order to execute the order at the best price or prices available to the broker, in accordance with Exchange rules. In further clarifying a broker's responsibility to use due diligence, Interpretation .04 of Rule 6.73 states that a floor broker's use of due diligence includes the immediate and continuous representation of "market or marketable orders" at the trading station where the option class represented by the order is traded. The use of the term "marketable" has led to some ambiguity in the interpretation of the Rule, however, because some members have assumed that the term refers to marketable limit orders which are limit orders where the specified price at which to sell is below or at the current bid, or if to buy is at or above the current offer. In fact, however, the interpretation should read, and has been interpreted to mean, that a floor broker must immediately and continuously represent market orders or limit orders where the specified price to sell is at or below the current offer, or if to buy is at or above the current bid. Because this interpretation will require floor brokers to continuously and immediately represent some orders that are neither market orders or marketable limit orders, *i.e.* those orders whose limit price is between the bid and offer, the Exchange thought it was appropriate to revise the interpretation to clarify the intent of the term marketable. The proposed rule change will ensure that floor brokers will represent an order in a trading crowd when that order is likely to be executed soon, even if it is not immediately executable.

By clarifying an existing rule of the Exchange in order to clear up any possible ambiguity, the CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

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

The exchange 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 solicited or received with respect to the proposed rule change.

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

Because the foregoing rule change constitutes a stated policy with respect to the meaning, administration, or enforcement of an existing rule, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR-CBOE-96-26 and should be submitted by June 28, 1996.

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

Jonathan G. Katz,  
Secretary.

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[Release No. 34-37265; File No. SR-CHX-96-13]

**Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 by the Chicago Stock Exchange, Incorporated Relating to the Modification of the Hours of the Exchange's Primary Trading Session and the Establishment of a Post Primary Trading Session**

May 31, 1996.

I. Introduction

On April 9, 1996, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to modify the hours of the Exchange's Primary Trading Session and to establish a Post Primary Trading Session. On May 10, 1996 the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended by Amendment No. 1, was published for comment in Securities Exchange Act Release No. 37204 (May 13, 1996), 61 FR 24988 (May 17, 1996). On May 29, 1996 the Exchange submitted Amendment No. 2 to the proposed rule change.<sup>4</sup> This order

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Letter from David T. Rusoff, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated May 9, 1996 ("Amendment No. 1").

<sup>4</sup> See Letter from David T. Rusoff, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated May 29, 1996 ("Amendment No. 2") Amendment No. 2 amends Article XX, Rule 2 to clarify that this rule also applies to the Post Primary Trading Session and Interpretation and Policy .01 to this rule to correct an inaccurate cross-reference. In addition, Amendment No. 2 revises the proposed changes to Article IX, Rule 10(b) to clarify that if a security's primary market is the Pacific Stock Exchange, Incorporated ("PSE"), the Primary Trading Session for that security shall end no later than 3:00 p.m. (CT). Amendment No. 2 also revises the proposed changes to Article IX, Rule 10(b) to remove the extension of the Primary Trading Session for CHX exclusive issues from 3:00 p.m. to 3:30 p.m. (CT)

approves the proposed rule change, as amended by Amendment Nos. 1 and 2, on an accelerated basis.

## II. Description

Currently, the Exchange's Primary Trading Session runs from 8:30 a.m. to 3:00 p.m. (CT), Monday through Friday. One purpose of the proposed rule change is to amend Article XX, Rule 10(b) to conform the Exchange's Primary Trading Session hours for each traded security to the trading hours during which the security is traded on its primary market.<sup>5</sup> If a security's primary market is the CHX, the Primary Trading Session for such security will continue to run from 8:30 a.m. to 3:00 p.m. (CT).<sup>6</sup>

The proposed rule change would also add a Post Primary Trading Session ("PPS") on the trading floor.<sup>7</sup> The PPS for orders and securities designated as eligible for the PPS would be for one-half hour after the close of the regular trading session on the security's primary market.<sup>8</sup> Securities in which the CHX is the primary market will be eligible for the PPS.

Only orders designated as eligible for the PPS would be eligible for execution during the PPS.<sup>9</sup> Market, limit and

and to provide that CHX exclusive issues are eligible for the Post Primary Trading Session. Finally, Amendment No. 2 deletes a provision of proposed Article XX, Rule 37, Interpretation and Policy .05 that would have allowed a specialist to decline to accept, under certain circumstances, orders entered during the Post Primary Trading Session.

<sup>5</sup> The proposed rule change provides that for a security whose primary market is the PSE, the Primary Trading Session for that security shall end no later than 3:00 p.m. (CT). See Amendment No. 2, *supra* note 4.

<sup>6</sup> See Amendment No. 2, *supra* note 4. The proposal, as originally filed, would have changed the trading hours for securities whose primary market is the CHX to 8:30 a.m.–3:30 p.m. (CT). See Securities Exchange Act Release No. 37204 (May 13, 1996), 61 FR 24988 (May 17, 1996).

However, trading in the Chicago Basket, currently conducted on the Floor of the Exchange from 8:30 a.m. to 3:15 p.m. (CT), will be unaffected by the proposed rule change.

<sup>7</sup> The CHX represents that ITS will be available for both inbound and outbound trades during the PPS to the extent that other market centers (*i.e.*, the PSE and the Philadelphia Stock Exchange, Inc. ("Phlx")) are open for trading. The CHX also represents that the PPS will be surveilled in the same manner and using the same techniques as those used to surveil the Primary Trading Session. To facilitate the surveillance of the PPS, CHX's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS. See Letter from David T. Rusoff, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Division of Market Regulation, SEC, dated May 9, 1996 ("ITS/Surveillance Letter").

<sup>8</sup> For purposes of the PPS, the Exchange considers the close of regular trading to occur at 3:00 p.m. (CT) with respect to securities whose primary market is the PSE. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Jon Kroeper, Attorney, SEC, dated May 31, 1996.

<sup>9</sup> The Exchange will require order tickets of PPS-eligible orders to include an "E" designator, which

contingent order types currently acceptable would be accepted for PPS if so designated. In this regard, GTX orders would only be accepted if specifically designated as PPS-eligible. The Exchange's MAX System will not be available as an automated execution system or as an automated routing system during the PPS. As a result, order sending firms must contact a floor broker in order to send an order to the CHX for execution during the PPS.<sup>10</sup> Because the PPS will be an extension of the Exchange's daily auction market, all the Exchange's rules applicable to floor trading during the Exchange's Primary Trading Session, as modified by proposed Interpretation and Policy .05 of Rule 37, Article XX, will continue to be applicable.<sup>11</sup> For example, specialists will be required to quote markets and trading will occur based on real-time price and quote changes.

To accomplish the foregoing, the Exchange is amending Article XX, Rules 1 and 2 and Article XXI, Rule 1 to make it clear that these rules also apply to the PPS.<sup>12</sup> The Exchange is also amending Interpretation and Policy .02 of Rule 37,

will indicate that the order is eligible for execution during the PPS. See ITS/Surveillance Letter, *supra* note 7.

<sup>10</sup> The CHX has represented that it has held a number of meetings with its members in which it has explained the necessary steps members must take in order to make orders eligible for execution during the PPS. The CHX has represented further that it will distribute a Notice to Members that will state, among other things, that PPS orders may not be entered with a specialist prior to 3:00 p.m. (CT) and orders entered during the Primary Trading Session must be replaced after 3:00 p.m. (CT) with order tickets bearing the "E" designator in order to be eligible for the PPS. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Jon Kroeper, Attorney, SEC, dated May 31, 1996.

<sup>11</sup> As part of the proposed rule change, the Exchange has moved existing Interpretation and Policies .01–.03 of Rule 37(a), Article XX, currently found at the end of subparagraph (a) of Rule 37, to the end of Rule 37, and renumbered existing Interpretation and Policy .01 of Rule 37 as Interpretation and Policy .04.

<sup>12</sup> See Amendment Nos. 1 and 2, *supra* notes 3 and 4.

Article XX of the CHX Rules contains the Exchange's trading rules. Article XX, Rule 1 currently states that the rules contained in Article XX have general applicability to Exchange Contracts made on the Exchange during the Primary Trading Session, and, to the extent determined by the Exchange, to Exchange Contracts not made on the Exchange. Article XX, Rule 2 currently states that no member or member organization shall make any bid, offer or transaction upon the Floor of the Exchange, issue an ITS commitment from the Floor, or send an order in a Nasdaq National Market Security for execution via telephone to a Nasdaq System market maker other than during the Primary Trading Session, unless pursuant to the ITS Plan.

Article XXI, Rule 1 currently requires each Exchange member to promptly advise the Exchange of each of his or her transactions that are executed on the Floor of the Exchange during the Primary Trading Session or through the Portfolio Trading System.

Article XX to make it clear that although GTX orders are executable after the close of the PPS (*i.e.*, in the Exchange's Secondary Trading Session), they are executed based on trading that occurs in a security in a primary market's after-hours closing price trading session, at that closing price, and are not executable based on trading in, or the closing price established in, the PPS.<sup>13</sup>

In addition, the Exchange is amending Article IX, Rule 10(b) to provide that if trading on the Exchange is halted during the Primary Trading Session pursuant to Article XX, Rule 10A, and such trading halt is still in effect at the close of the Primary Trading Session, the PPS scheduled for that day will be canceled.<sup>14</sup> Finally, Article XX, Rule 2, Interpretation and Policy .01 is being amended in order to correct an inaccurate internal cross-reference.<sup>15</sup>

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the Federal Register.

## III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the CHX's proposal to modify the definition of its Primary Trading Session and to establish a post-primary auction market trading session extending to 3:30 p.m. (CT) is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>16</sup> Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the CHX's modification of the definition of its Primary Trading Session to track the hours that each security is traded on its primary market is a more flexible

<sup>13</sup> Therefore, under the proposed rule change, as amended, and the rules of the other national securities exchanges, as of May 31, 1996: the Primary Trading Session will run from 8:30 a.m. to 3:00 p.m. (CT); the PPS will run from 3:00 p.m. to 3:30 p.m. (CT); and the Secondary Trading Session will run from 3:30 p.m. to 5:00 p.m. (CT).

For a description of operation of the Exchange's Secondary Trading Session, see Securities Exchange Act Release No. 33991 (May 2, 1994), 59 FR 23904 (May 9, 1994) (File No. SR-CHX-93-23).

<sup>14</sup> See Amendment No. 1, *supra* note 3.

<sup>15</sup> Currently, Interpretation and Policy .01 refers to the Exchange's ITS rules as being located in Article XX, Rule 36, whereas they are actually located in Article XX, Rule 39.

<sup>16</sup> 15 U.S.C. 78f(b).

definition that the existing one in that it can readily accommodate future changes in the trading hours of the other national securities exchanges, without, at present, affecting a substantive change to the existing hours of trading in these securities on the Exchange.

The Commission also believes that the initiation of the PPS does not raise any new regulatory concerns. Currently, auction market trading after 4:00 p.m. (ET) occurs on the Phlx until 4:15 p.m. (ET) and the PSE until 4:50 p.m. (ET).<sup>17</sup> The CHX's PPS will operate in a substantially similar manner and enable the CHX to compete with both the Phlx and PSE for after-hours volume. Specifically, the CHX PPS will continue to provide full transparency by disseminating quotes through the Consolidated Quotation System and reporting trades to the consolidated tape. In addition, although the Exchange's MAX System will be unavailable for automated order routing or executions during the PPS, there will continue to be complete access to the CHX and the usual auction market trading rules of the Exchange will continue to apply.<sup>18</sup> Moreover, in order to preserve the execution quality of market, limit, contingent (including GTX) orders placed on the CHX specialists' books during the Primary Trading Session, such orders will not automatically migrate to the PPS, but rather will do so only if the order is so designated (*i.e.*, with an "E" indicator on the ticket) and entered with the specialist after 3:00 p.m. (CT).<sup>19</sup>

Furthermore, the Commission believes that the CHX's proposal to cancel the PPS for a particular day as a result of any trading halt during the Primary Trading Session pursuant to Article XX, Rule 10A that is still in effect at the close of the Primary Trading Session removes from its consideration any regulatory concerns that may have existed if this provision was not present.

The Commission notes, however, that the only other national securities

exchanges that will be operating an auction market after 4:00 p.m. (ET) will be the Phlx and PSE. In this regard, the CHX has represented to the Commission that the ITS will be available between the three exchanges during their post-4:00 p.m. (ET) auction market sessions.<sup>20</sup> Thus, ITS commitments will be able to be routed back and forth, just as during the regular hours of auction trading on the primary markets.

Although the NYSE is operating its Off-Hours Trading facility and the Amex is operating its After-Hours Trading facility during this time period, these sessions are limited to accepting single stock orders priced at either the NYSE or Amex closing price, respectively, or effecting portfolio trades. Because the PPS trading session will not overlap the 5:00 p.m. (ET) executions in Crossing Session I of the NYSE's Off-Hours Trading facility or the Amex's After-Hours Trading Facility, the proposal being approved today does not raise market structure issues regarding the interaction between the PPS and these two after-hours trading facilities.

Accordingly, the Commission does not believe that an extension of auction market trading on the CHX until 4:30 p.m. (ET) will have an adverse effect on the maintenance of fair and orderly markets or disadvantage public customers.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal to modify the definition of the Exchange's Primary Trading Session is appropriate because the CHX's proposal does not alter, at present, the existing hours of the Primary Trading Session. Moreover, the Commission will retain the ability to consider the effects of any future change in the hours of the CHX's Primary Trading Session brought about by the modification of another exchange's trading hours through its review under Section 19(b) of the Act of any proposed rule that would precipitate such a change.

The Commission believes that accelerated approval of the proposal to establish a PPS is appropriate because the CHX's proposal is substantively the same as the PPS currently operated by the Phlx, with the exception that the CHX's PPS remains open for an additional fifteen minutes.<sup>21</sup> In this

regard, the Commission does not believe that this difference is a significant one, as the same market situation that currently exists between 4:00 to 4:15 (ET) when only the Phlx and PSE are conducting auction market trading will prevail between 4:15 to 4:30 p.m. (ET) when only the CHX and PSE will be conducting such trading.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, Amendment Nos. 1 and 2, and all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. 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-96-13 and should be submitted by June 28, 1996.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act<sup>22</sup> that the proposed rule change is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

Jonathan G. Katz,

Secretary.

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[Release No. 34-37256; File No. SR-DTC-96-08]

### Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Establish a Custody Service For Certain Non-depository Eligible Securities

May 30, 1996.

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

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> See Securities Exchange Act Release No. 35188 (January 3, 1995), 60 FR 2422 (January 9, 1995) (SR-Phlx-94-46) (order approving establishment of Phlx PPS from 4:00 to 4:15 (ET)); Securities Exchange Act Release No. 29631 (August 30, 1991), 56 FR 46025 (September 9, 1991) (SR-PSE-91-21) (order approving extension of PSE post-1 p.m. session from 1:30 to 1:50 p.m. (PT)).

<sup>18</sup> The Commission notes that the CHX has represented that trading during the PPS will be surveilled in the same manner and using the same techniques as those used to surveil the Primary Trading Session. See ITS/Surveillance Letter, *supra* note 7.

<sup>19</sup> The Commission notes the CHX's representation that it will distribute a Notice to Members setting forth the procedures to be followed to make orders eligible for the PPS. See *supra* note 10.

<sup>20</sup> See ITS/Surveillance Letter, *supra* note 7.

<sup>21</sup> The Commission notes that the proposal to establish the Phlx's PPS was noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on it. See *supra* note 17.