

when a trade-through that is exempted pursuant to the Commission's ITS Exemption Order occurs in the primary market.

### III. Discussion

After careful review, 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.<sup>14</sup> In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act<sup>15</sup> because it is designed to facilitate transactions in securities; 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 is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

By adopting the proposed exemption, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was on the CHX assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the CHX to make.<sup>16</sup>

### IV. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-CHX-2002-31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46762; File No. SR-CHX-2002-30]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection and Amendment No. 1 Thereto

November 1, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice hereby is given that on September 13, 2002, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On October 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup>

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

The Exchange proposes to amend CHX Article XX, Rule 37(a)(3) to clarify the rules relating to the execution of limit orders in the specialist's book in the event of a trade through in the primary market. The proposed rule change mirrors a change made to another CHX rule relating to the automated execution of limit orders, which required that a limit order be resident in the specialist's book for a time period of 0-15 seconds (as designated by the specialist) before it would be eligible for limit order protection. The text of the proposed rule change is available from the Office of the Secretary, the Commission, and the CHX.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See letter from Kathleen M. Boege, Assistant General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 29, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrected typographical errors contained in the proposed rule text.

#### 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding 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

On January 11, 2002, the Commission approved a proposed rule change submitted by the Exchange amending Article XX, Rule 37(b)(6) of the Exchange's rules, which, among other things, governs execution of limit orders in the specialist's book in the event of a trade through in the primary market.<sup>6</sup> That proposal required that a limit order be resident in the specialist's book for a time period of 0-15 seconds (as designated by the specialist) before it would be eligible for limit order protection.

Another provision of the CHX rules, however, also addresses the execution of agency limit orders and should have been amended as part of the Exchange's original proposal.<sup>7</sup> Through this submission, the Exchange modifies CHX Article XX, Rule 37(a)(3) to eliminate any confusion about the impact of the earlier rule change.

###### 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).<sup>8</sup> Specifically, the proposed rule is consistent with section 6(b)(5) of the Act<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in

<sup>6</sup> See Securities Exchange Act Release No. 45271, 66 FR 2712 (January 18, 2002)(order approving SR-CHX-2001-17).

<sup>7</sup> See CHX Article XX, Rule 37(a)(3).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> The Commission notes that the CHX's proposed rule change will remain in effect only until the expiration of the Commission's ITS Exemption Order on June 4, 2003.

<sup>17</sup> 15 U.S.C. 78f(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement of 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 Regarding 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**

Because the foregoing rule change does not:

- (1) Significantly affect the protection of investors or the public interest;
- (2) Impose any significant burden on competition; and
- (3) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> At any time within 60 days of the filing of such 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 purpose of the Act.

The Exchange requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that accelerating the operative date of the proposed rule change is consistent with the protection of investors and the public interest. The Commission notes that the substance of the proposed rule change has already been subject to a full notice and comment period as part of another proposal, which was approved by the Commission.<sup>12</sup> The instant proposed rule change simply amends another Exchange rule to be consistent with the previously approved change. As a result, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.<sup>13</sup>

### **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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 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 at the Commission's Public Reference Room. 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-2002-30 and should be submitted by November 25, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-46756; File No. SR-NASD-2002-156]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Primex Auction System'**

October 31, 2002.

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> notice is hereby given that on October 31, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and subparagraph (f)(2) of Rule 19b-5.<sup>4</sup> 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**

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System" ("Primex" or "System") as a Pilot Trading System, pursuant to Rule 19b-5 of the Act,<sup>5</sup> until November 30, 2002, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of Rule 19b-5,<sup>6</sup> Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in paragraph (c)(2) of Rule 19b-5 of the Act.<sup>7</sup> As such, Nasdaq was not required to file a proposed rule change under Rule 19b-4 of the Act<sup>8</sup> as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of Rule 19b-5, a system

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-5(f)(2).

<sup>5</sup> 17 CFR 240.19b-5.

<sup>6</sup> 17 CFR 240.19b-4(f).

<sup>7</sup> 17 CFR 240.19b-5(c)(2).

<sup>8</sup> 17 CFR 240.19b-4.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> See note 6, *supra*.

<sup>13</sup> For purposes only of accelerating the operative date of this proposal, the Commission has

considered the proposed rule's impact on efficiency, competition, and capital formation.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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