

CBOE noted the formula for determining market maker participation percentage on the 100 Spoke RAES Wheel. CBOE explained that in order to calculate a market maker's participation percentage, the "non-RAES agency trading volume" for a given market maker is divided by the "total volume," *i.e.*, the sum of the volume of the non-RAES agency trades for all traders in a particular options class (which is determined by adding together the trading volume for each market maker and DPM during his or her relevant review period).

### III. Discussion

After careful review, the Commission finds that implementation of the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act<sup>12</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> Specifically, the Commission believes that the proposal, as amended, is consistent with Sections 6(b)(5) and 6(b)(8) of the Act.<sup>14</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest.<sup>15</sup> Section 6(b)(5) also requires that those rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

As the Commission stated in its original approval order for the 100 Spoke RAES Wheel as a pilot program, the Commission believes that CBOE's implementation of the 100 Spoke RAES Wheel system as a pilot program was an important step forward, as it rewarded those market makers who consistently

execute a greater portion of agency orders in the trading crowd, rather than randomly assigning contracts to all market makers logged on RAES. Although the 100 Spoke RAES Wheel does not reward a market maker for improving the Exchange's displayed quotation, it does reward the market maker for providing liquidity to orders in the trading crowd by linking the market maker's percentage of RAES contracts to the percentage of agency contracts it executed in the trading crowd.

Unlike the two means of allocation that were used exclusively prior to the 100 Spoke RAES Wheel pilot program, under which the size of the order assigned to a particular market maker is determined randomly,<sup>16</sup> the 100 Spoke RAES Wheel more closely allocates the percentage of contracts that a particular market maker can receive on a single revolution of the Wheel to the percentage of in-person agency contacts (excluding RAES contracts) traded on CBOE by that market maker. With the 100 Spoke RAES Wheel, market makers have a greater incentive to compete effectively for orders in the crowd, and this, in turn, should benefit investors and promote the public interest.

The Commission reiterates that implementation of the 100 Spoke RAES Wheel will have no effect on the prices offered to customers. Under CBOE Rule 6.8(d)(i), RAES automatically provides to each retail customer order its execution price, generally determined by the prevailing market quote at the time of the order's entry into the system. The 100 Spoke RAES Wheel merely provides for a different contract allocation system than currently exists for automatic execution of small retail orders.

The proposed rule change also will eliminate the "vacation penalty" that resulted under the original rule when a market maker was absent for one or more days. Under the proposed rule change, as amended, the review period will be the period not in excess of 10 trading days, *i.e.*, last ten days in which the market maker had trading activity, subject to the condition that the review period cannot extend back more than 30 calendar days (in order to assure that the review period is not based on stale activity). In addition, the Commission notes that under the proposal, all market maker's review periods will be of equal size, regardless of whether the Exchange may look at different underlying time periods to ascertain the most recent

days of trading activity for a specific market maker. The Commission finds that these changes relating to the "vacation penalty" are consistent with the Act.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change, as amended (SR-CBOE-2002-27) is approved on a permanent basis.

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

**Margaret H. McFarland,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46932; File No. SR-CHX-2002-34]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Nasdaq/NM Securities

November 29, 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 25, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "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 Exchange. 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 has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expired on November 1, 2002. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2003. The text of the proposed rule change is available at the

they log on RAES during the first review period they traded that class on the Exchange floor. Telephone conference among Madge Hamilton, Legal Division, CBOE, Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and Geoffrey Pemble, Special Counsel, Division of Market Regulation, Commission (November 26, 2002).

<sup>12</sup> 15 U.S.C. 78f.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(5) and (b)(8).

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

<sup>16</sup> Under Variable RAES, the market maker has some flexibility in limiting the extent of its exposure during each revolution of the Wheel.

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

<sup>18</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.

principal offices of the CHX and at the Commission. This proposed extension of the pilot does not alter the text of the pilot language, but simply extends the expiration date of the pilot through November 1, 2003.

## 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 the 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. CHX 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 Exchange has requested a one-year extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amends Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules. The pilot program currently is due to expire on November 1, 2002; the Exchange proposes that the pilot remain in effect through November 1, 2003.

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.<sup>3</sup> Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the "MAX" system).<sup>4</sup>

<sup>3</sup> See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR-MSER-87-2); see also, Securities Exchange Act Release Nos. 8146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

<sup>4</sup> The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX Rules, Article XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does

not apply, but MAX system handling rules remain applicable. On January 3, 1997, the Commission approved, on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to SEC Rule 11Ac1-1 (the "NBBO").<sup>5</sup> When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.<sup>6</sup> The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time to approve the pilot program on a permanent basis. On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.<sup>7</sup> On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.<sup>8</sup> On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.<sup>9</sup> On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.<sup>10</sup> On January 31,

not apply, but MAX system handling rules remain applicable.

<sup>5</sup> See Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

<sup>6</sup> See Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

<sup>7</sup> See Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

<sup>8</sup> See Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

<sup>9</sup> See Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

<sup>10</sup> See Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999) (the Commission notes that it requested additional data regarding the CHX's pilot in connection with this Release).

2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.<sup>11</sup> On May 1, 2000, the Commission approved the pilot for an additional six-month period, until November 1, 2000.<sup>12</sup> On November 15, 2000, the Commission approved the pilot for an additional one-year period, until November 1, 2001.<sup>13</sup> On November 1, 2001, the pilot was extended for an additional one-year period, until November 1, 2002.<sup>14</sup> In light of the evolving nature of the Nasdaq market and unlisted trading of Nasdaq/NM securities, the Exchange now requests another extension of the current pilot program, through November 1, 2003. The Exchange is not requesting approval of any changes to the pilot program in this submission.

Under the pilot program, specialists must continue to accept agency market orders<sup>15</sup> or marketable limit orders, but only for orders of 100 to 5099 shares in Nasdaq/NM securities. This threshold order acceptance requirement is referred to as the "auto acceptance threshold." Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. Specialists are required to automatically execute Nasdaq/NM orders in accordance with certain amendments to the pilot program that were approved by the Commission.<sup>16</sup>

The pilot program requires the specialist to set the MAX auto-execution threshold at 100 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the size of the specialist's quote are

<sup>11</sup> See Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

<sup>12</sup> See Securities Exchange Act Release No. 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

<sup>13</sup> See Securities Exchange Act Release No. 43565 (November 15, 2000), 65 FR 71166 (November 29, 2000) (the Commission notes that it requested additional data regarding the CHX's experience with the pilot in connection with this Release).

<sup>14</sup> See Securities Exchange Act Release No. 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001).

<sup>15</sup> The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Article XXX, Rule 2, Interpretation and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

<sup>16</sup> See Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001) (SR-CHX-2001-11).

executed automatically (in an amount up to the size of the specialist's quote). Orders of a size greater than the specialist's quote are automatically executed up to the size of the specialist's quote, with the balance of the order designated as an open order in the specialist's book, to be filled in accordance with the Exchange's rules for manual execution of orders for Nasdaq/NM securities. Such rules dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, "oversized" orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>17</sup> generally, and Section

6(b)(5) of the Act<sup>18</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 general, to protect investors and the public interest.

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

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6)<sup>20</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such 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.

The CHX has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>21</sup> The Commission notes that

waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trading of Nasdaq/NM securities from lapsing.

The Commission notes that in approving prior extensions of this pilot program, it has found that the Exchange's program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>22</sup> Specifically, the Commission has found that the proposed rule change is consistent with Section 6(b)(5)<sup>23</sup> of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, 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. The Commission has also stated its belief that the proposal is consistent with Section 11A(a)(1)(C)<sup>24</sup> and 11A(a)(1)(D)<sup>25</sup> of the Act. The Commission has found that the proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions, and with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.<sup>26</sup> In connection with this effort, the Commission requests an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> See Securities Exchange Act Release Nos. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000)(SR-CHX-99-27) and 42740 (May 1, 2000) 65 FR 26649 (May 8, 2000)(SR-CHX-00-11).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>25</sup> 15 U.S.C. 78k-1(a)(1)(D).

<sup>26</sup> See January 1997 Order, *supra* note 7.

<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

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

automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for one year so that the Exchange may continue to compile this data for the Commission's review.

The Commission also requests that the Exchange continue its effort to rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. Therefore, the Commission finds that it is appropriate to accelerate the operative date of the proposed rule change.

#### 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 20549-0609. 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No.

SR-CHX-2002-34 and should be submitted by December 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>27</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46938; File No. SR-NASD-2002-149]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Make Permanent Nasdaq's Transaction Credit Pilot Program for Exchange-Listed Securities, and To Increase the Percentage of Revenue Available for Distribution From 40% to 50%

December 3, 2002.

On October 18, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with 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 codify on a permanent basis Nasdaq's InterMarket Transaction Credit Pilot Program ("Program"), and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. The proposed rule change was published for notice and comment in the **Federal Register** on October 29, 2002.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

Nasdaq proposes to make the Program permanent, and to raise the percentage of revenue available for distribution under the Program from 40% to 50%. As set forth in its July 2, 2002 Order of Summary Abrogation ("Abrogation Order"),<sup>4</sup> the Commission will continue to examine the issues surrounding

market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow Nasdaq to make its Program permanent, and increase the revenue available for distribution, because these changes to the Program leave Nasdaq on substantially similar footing as other self-regulatory organizations.<sup>5</sup>

Thus, 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 association<sup>6</sup> and, in particular, the requirements of Section 15A of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 15A(b)(5) of the Act,<sup>8</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow Nasdaq to make permanent its Program, and to increase the percentage of revenue available for distribution, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>9</sup>, that the proposed rule change (SR-NASD-2002-149) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> See e.g., Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR-CSE-99-03).

<sup>6</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>27</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.

<sup>3</sup> See Securities Exchange Act Release No. 46712 (October 23, 2002), 67 FR 66031.

<sup>4</sup> Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR-NASD-2002-61, SR-NASD-2002-68, SR-CSE-2002-06, and SR-PCX-2002-37) (Order of Summary Abrogation).