

Committees have discussed this issue in great detail and believe that the proposed changes will be beneficial to the operation of the Exchange.¹¹

2. Basis

For these reasons, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and further the objectives of Section 6(b)(5)¹³ in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism 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 CBOE does not believe that the proposed rule change will impose any burden on competition 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

On November 1, 2000, the Chairmen of the Floor Directors, MTS Appointments, and Lessors Committees distributed to the membership an Information Circular that discussed the prescribed changes and requested comment. To date, the Exchange has received no written comments in opposition to the amendment of the rule. The Exchange notes that the Chairman of the Floor Directors Committee received, via telephone, the views of one commenter who supported abolishing the transfer fee altogether.¹⁴ The Exchange believes the proposed amendments will enable it to achieve the original intent of the transfer fee,

This commenter supported abolishing the transfer fee altogether. The Exchange also received a copy of a letter sent to the Commission by another commenter. This commenter opposed the filing of the proposed rule change under Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), which would have rendered it effective on filing. The commenter believed that the proposed rule change should be subject to public comment and review pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). See letter from Lawrence J. Blum to Jonathan G. Katz, Secretary, SEC, dated November 24, 2000. The filing was subsequently re-filed under Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2). See Amendment No. 1, *supra* note 3.

¹¹ The Exchange believes the proposed changes will address the potential shortcomings of the current DPM transfer fee. However, the Exchange will continue to evaluate the fee and make changes to it in the future if such changes are deemed necessary. Any such changes would be submitted to the Commission pursuant to Section 19(b) of the Act (15 U.S.C. 78s(b)).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 10.

thereby negating the need to abolish the fee altogether. The Exchange also received a copy of a letter sent to the Commission from another commenter. This commenter opposed allowing the proposed changes to become effective on filing, and urged that they be subject to public comment and review.¹⁵ In Amendment No. 1 to the proposed rule change, the Exchange re-designated the filing as a submission pursuant to Section 19(b)(2) of the Act.¹⁶

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 CBOE. All submissions should refer to File No. SR-CBOE-00-61 and should be submitted by February 12, 2001.

¹⁵ See *supra* note 10.

¹⁶ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43835; File No. SR-CHX-00-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Preopening Orders

January 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2000, the Chicago Stock Exchange, Incorporated ("Exchange" or "CHX") 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 CHX. On December 20, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.³ The Commission is published 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 the CHX rule governing preopening orders in Nasdaq/NM securities to explicitly define "preopening orders" in Nasdaq/NM securities, and to explicitly provide for a single price opening at or better than the NBBO at the first unlocked, uncrossed market.

Below is the text of the proposed rule change. Proposed new language is in *italics* and proposed deletions are in brackets.

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¹⁷ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy, J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 20, 2000 ("Amendment No. 1"). In Amendment No. 1, the CHX clarified the rule text to reflect that the 8:25 a.m. cutoff time for preopening orders is "Central Time".

Chicago Stock Exchange Rules**Article XX, Rule 37(a)**

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4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [at the Exchange opening trade price] *on a single price opening at or better than the NBBO at the first unlocked, uncrossed market.* In trading halt situations, order will be executed based on the Exchange reopening price. For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) *preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.*

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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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any concerns it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 of, the Proposed Rule Change

1. Purpose

The Exchange proposed to amend the CHX rule governing preopening orders in Nasdaq/NM securities to provide for additional clarity regarding the types of orders eligible for treatment as preopening orders and the price at which such orders will be filled. Because Article XX, Rule 37(a)(4) of the Exchange's rules does not explicitly define what constitutes a preopening order in the case of Nasdaq/NM securities, there has been some confusion as to which orders are eligible for treatment as preopening orders, and consequently, some unintended execution guarantees. The proposed rule change will expressly provide that for

an order to be considered a preopening order, an order must be received at or prior to 8:25 a.m. (Central Time) of the date of the opening.

The Exchange also proposed to provide additional clarity regarding the price at which each preopening order will be filled. Currently, the rule provides that preopening orders for Nasdaq/NM securities must be filled "at the Exchange opening trade price." The Exchange believes that it is in the best interest of its order-sending firms and their customers to provide for greater specificity as to the parameters governing the fill price for preopening orders. Accordingly, the proposed rule change provides that each preopening order must be filled "on a single price opening at or better than the NBBO at the first unlocked, uncrossed market."

2. Statutory Basis

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).⁴ In particular, the proposed rule is consistent with Section 6(b)(5) of the Act 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.⁵

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 either solicited or received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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-00-31 and should be submitted by February 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43841; File No. SR-CTA-01-01]

Consolidated Tape Association; Notice of Filing Seventh Charges Amendment to the Second Restatement of the CTA Plan

January 12, 2001.

Pursuant to Rule 11Aa3-2¹ of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on January 9, 2001, the Consolidated Tape Association Plan ("CTA Plan") participants ("Participants")² filed with

⁶ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 240.11Aa3-2.

² Each participant of the Plan executed the amendments. The Participants include the American Stock Exchange, LLC, Boston Stock