

for firms that do not engage in public business. In order to reduce the potential impact on member firms that operate or are otherwise affiliated with other entities subject to the fee, the Exchange will impose on member firms operating additional entities (e.g., affiliated broker-dealers) 50% of the minimum fees for each additional entity.

The proposed fee is intended to permit the Exchange to recover a portion of the regulatory expenses incurred by the Exchange in its performance of its DEA responsibilities.<sup>7</sup> The Amex notes that the proposed fee is comparable to member fees imposed by the Chicago Board Options Exchange and New York Stock Exchange in connection with the DEA function of those exchanges.<sup>8</sup>

The proposed fees will be designated "Examination Fees" under the Exchange's Member Fees Schedule, attached as Exhibit A. In addition to adding the Examination Fees, the Member Fees Schedule has been revised to include member fees previously filed with the Commission, including: (1) under revised Section II (Initiation Fees), the Qualifying Membership Retesting Fee,<sup>9</sup> the Regular and Options Principal Special Transfer (Lease) fee under Article VII, Section 1(c) of the Exchange Constitution;<sup>10</sup> and (2) all fees under revised Section III (Membership Fees), including interim member fees,<sup>11</sup> fees for Associate Members and Off-Floor traders,<sup>12</sup> and Specialist Fees.<sup>13</sup> Former Section III (Permits), which, with the exception of Limited Trading Permit fees, included fees that are no longer applicable and have been

deleted, and former Section IV (Access Fees), which previously included only the electronic access fee, have been consolidated into revised Section III (Membership Fees).

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act<sup>14</sup> in general and furthers the objectives of section 6(b)(4) of the Act<sup>15</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

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

The Exchange does not believe that the proposed rule change will impose any 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

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act<sup>16</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>17</sup> because it establishes or changes a due, fee, or other charge imposed by the Amex. 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.<sup>18</sup>

## 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 Amex. All submissions should refer to file number SR-Amex-2002-10 and should be submitted by May 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-9883 Filed 4-22-02; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45770; File No. SR-CHX-2001-26]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic and Manual Execution Procedures

April 17, 2002.

## I. Introduction

On November 14, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 amend its rules to clarify a specialist's obligations relating to the automatic execution of orders and provide guidance regarding a specialist's ability to switch from automatic to manual execution mode. Notice of the proposed rule change was published for comment in the **Federal Register** on February 13, 2002.<sup>3</sup> The Commission received no comments with respect to the proposal. This order approves the proposed rule change.

<sup>7</sup> The fee is not designed to generate revenue. Telephone conversation between Michael Cavalier, Associate General Counsel, Amex, and Joseph Morra, Special Counsel, Division, SEC, April 15, 2002. The Commission expects that the Amex will monitor the fee carefully, and should the Amex collect more than is necessary to offset costs incurred in the performance of its DEA responsibilities, the Commission expects the Amex to adjust the fee.

<sup>8</sup> See Securities Exchange Act Release Nos. 43144 (August 10, 2000), 65 FR 50258 (August 17, 2000) (SR-CBOE-2000-24) and 20843 (April 9, 1984), 49 FR 15042 (April 16, 1984) (SR-NYSE-84-7).

<sup>9</sup> Securities Exchange Act Release No. 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (SR-Amex-2001-22).

<sup>10</sup> Securities Exchange Act Release Nos. 23823 (November 18, 1986), 51 FR 42955 (November 26, 1986) (SR-Amex-86-28) and 40426 (September 10, 1998), 63 FR 49766 (September 17, 1998) (SR-Amex-98-32).

<sup>11</sup> Securities Exchange Act Release No. 43016 (July 7, 2000), 65 FR 44552 (July 18, 2000) (SR-Amex-2000-19).

<sup>12</sup> Securities Exchange Act Release No. 43279 (September 11, 2000), 65 FR 56606 (September 19, 2000) (SR-Amex-2000-44).

<sup>13</sup> Securities Exchange Act Release No. 45725 (April 10, 2002) (SR-Amex-2002-8).

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

<sup>15</sup> 15 U.S.C. 78f(b)(4).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>18</sup> See note 4 *supra*.

<sup>19</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> Securities Exchange Act Release No. 45410 (February 6, 2002), 67 FR 6774.

## II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37 of the CHX Rules, which governs, among other things, automatic execution of market and marketable limit orders. The proposed rule change is intended to clarify a specialist's obligations relating to the automatic execution of orders and to provide CHX specialists and floor officials with additional guidance regarding the ability of a CHX specialist to switch to manual execution mode. The two rule changes are summarized below.

### *a. Reduction of Minimum Auto Execution Threshold*

The proposed change to Article XX, Rule 37(b), which governs automatic execution of eligible orders, would reduce the minimum auto execution threshold from 300 shares to 100 shares. This change is intended to reconcile a specialist's automatic execution obligation with the post-decimalization trading environment. The Exchange represents that, given the scattering of liquidity over multiple price points and resulting reduction in Best Bid or Offer ("BBO") size,<sup>4</sup> many specialists desire to reduce their automatic execution exposure for certain issues to levels that are commensurate with reduced BBO size. In order to preserve consistency and avoid customer confusion, the proposed rule change would apply to both Dual Trading System and Nasdaq/NM issues. Specialists would remain free to increase their auto execution thresholds to larger sizes if they believe that business/marketing considerations so demand. The Exchange represents that, in fact, a number of CHX specialists have indicated that they would reduce their auto execution threshold to 100 shares only in very limited instances.

### *b. Procedures for Floor Official Approval of Manual Execution Mode*

The Exchange also proposes to amend Article XX, Rule 37, Interpretation and Policy .04, which governs the procedures by which specialists are to obtain permission to switch from automatic execution mode to manual execution mode.

The proposed amendment to the Interpretation places greater responsibility on the specialist firm

seeking to shift to manual execution mode. Under current Interpretation .04, a specialist firm seeking to switch from automatic execution mode to manual execution mode must seek the permission of two floor officials before switching to manual mode; once in manual mode, the specialist firm must return to automatic execution functionality when the conditions that caused the switch to manual mode are no longer present. Specialists also must immediately reinstate the automatic execution functionality when the primary market quotes accurately reflect market conditions.

By contrast, under the proposed amendment to Interpretation .04, the specialist firm is required to secure the permission of its floor supervisor to switch to manual mode. To permit the specialist to remain in manual execution mode, the floor supervisor must immediately notify and secure the approval of one floor official. The permission granted by the floor official to operate in manual execution mode shall be in effect for a period of five minutes only. After that five minute period, the specialist firm's floor supervisor must again secure the permission of the floor official who granted the initial permission (and if such floor official is not available, then from another floor official) to allow the specialist firm to remain in manual execution mode. Documentation regarding the switch to manual mode must be filed with the CHX Market Regulation Department before the next business day's opening.

Finally, the proposed rule change reduces the time period in which a specialist firm may remain in manual execution mode when a certain analyst/reporter's report is broadcast on cable television, pursuant to the terms and conditions of Interpretation .04. Under current Interpretation .04, in the case of such a cable television broadcast, a specialist may switch from automatic to manual mode without floor official approval, and may remain in manual mode for no more than ten minutes. The proposed rule change reduces outside limit from ten to five minutes.

The Exchange represents that it anticipates that the proposed rule change will promote greater accountability and preclude reliance on manual execution mode in a manner that is potentially violative of CHX rules. Specifically, the Exchange believes that reducing the automatic execution threshold from 300 to 100 shares will reduce the likelihood of a specialist firm switching from automatic to manual mode without satisfying the

criteria in Interpretation .04.<sup>5</sup> The Exchange also believes that the proposed rule change will assist the Market Regulation Department in determining whether violations of the Exchange's rules regarding manual execution mode have occurred.

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).<sup>6</sup> Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)<sup>7</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to 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.

The Commission believes that reducing the size threshold for automatic execution from 300 to 100 shares will likely encourage CHX specialists to remain in the automatic execution mode for longer periods of time by decreasing their risk of exposure to larger sized orders. This in turn should enable investors to take greater advantage of the benefits of automatic execution with respect to speed and price of execution.<sup>8</sup> The Commission notes that, under the proposed rule change, specialists retain the ability to increase their automatic execution thresholds to a larger size if they choose to do so.

In addition, the Commission finds that new Interpretation .04 promotes investor protection and the public interest by imposing new requirements on specialists seeking to switch from

<sup>5</sup> Telephone conversation between Kathleen M. Boege, Associate General Counsel, CHX and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation ("Division"), Commission (March 22, 2002).

<sup>6</sup> 15 U.S.C. 78f(b). In approving this proposal, 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. 78f(b)(5).

<sup>8</sup> In the MAX System, the largest universe of orders that are eligible for price improvement are orders subject to automatic execution. For example, CHX Rule 37(h) sets forth price guarantees applicable to CHX's SuperMax 2000 system, a voluntary automatic execution program within the MAX System. SuperMax 2000 must be enabled on an issue-by-issue basis by the specialist, and these price guarantees apply only when the specialist is in automatic execution mode. Telephone conversation between Kathleen M. Boege, Associate General Counsel, CHX and Gordon Fuller, Counsel to the Assistant Director, Division, Commission (March 22, 2002).

<sup>4</sup> The Exchange represents that average size at BBO price points has declined significantly following the transition to decimal pricing, with approximate size reductions of 67% in the case of Tape A issues (securities listed on the NYSE), 37% for Tape B issues (securities listed on the Amex) and 44% for Tape O issues (securities listed on Nasdaq).

automatic execution to manual mode. The Commission notes that, in cases of breaking news stories broadcast on cable television, the specialist may switch to manual mode without floor official approval as under the previous language of the Interpretation; however, the maximum period of time in which the specialist may remain in manual mode without floor official approval has been reduced from ten minutes to five minutes. The Commission also notes that, in instances other than a cable news broadcast, the specialist must secure the permission of its floor supervisor to switch to manual mode; the floor supervisor in turn must obtain approval from one floor official to permit the specialist to remain in manual mode. It is significant that the specialist may remain in manual mode for only five minutes without the floor supervisor renewing the approval of the same floor official (or obtaining approval of another floor official if the first official is not available). Finally, the Commission notes that new Interpretation .04 requires that documentation regarding the switch be filed with the Market Regulation Department before the next business day's opening. The Commission believes that these safeguards will provide greater accountability on the part of specialists when they switch from automatic execution mode to manual execution mode.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.<sup>9</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-CHX-2001-26) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

[FR Doc. 02-9882 Filed 4-22-02; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45765; File No. SR-ISE-2002-10]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC to Establish a \$.10 Surcharge for Non-Customer Transactions in Options on Nasdaq Biotech Index® iShares

April 16, 2002.

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

#### ISE Schedule of Fees

Electronic Market Place	Amount	Billable Unit	Frequency	Notes
* * *	*	*	*	*
Execution Fees.				
* * *	*	*	*	*
• Surcharge for Options on Nasdaq 100 Index Tracking Stock <sup>sm</sup> and the Nasdaq Biotech Index® iShares.	\$0.10	contract/side .....	Transaction .....	Excludes customers
* * *	*	*	*	*

#### 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 on 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

The Exchange states that it has entered into a license agreement to use various trademarks regarding the Nasdaq Biotech Index® in connection

(“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 15, 2002, the International Securities Exchange LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (the “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 proposes to establish a \$.10 surcharge for non-customer transactions in options on Nasdaq Biotech Index® iShares.

The text of the proposed rule change appears below. New text is in italics.

with its trading of options on the Nasdaq-100 Index Tracking iShares®. The purpose of this proposed rule change is to adopt a fee for trading in these options to defray the licensing costs. The Exchange believes that charging the participants that trade in options on this instrument is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in the waiver of all transaction fees for customer

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

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.