

potentially confusing; it may also operate to the financial detriment of the CHX.

For the foregoing reasons, the CHX believes that it is appropriate to delete Article XX, Rule 7, Interpretation and Policy .02. The CHX anticipates that deletion of the mandatory \$.10 auto-quote spread will result in a significant reduction in CHX quotation traffic, which benefits the national market system. Moreover, because the vast majority of the Exchange's automatic executions are based on execution guarantees that supplement the specialist's quotation, the Exchange does not believe that the proposed rule change will have any negative effect on execution prices.⁸ In short, the only material consequence of the proposed rule change will be CHX specialist quotations that do not flicker continuously throughout the trading day. The CHX would note that each CHX specialist remains subject to their fundamental obligation to maintain "fair and orderly markets."⁹ The CHX believes that this obligation will ensure that specialists will not abuse the auto-quote functionality to generate quotations that are useless or disruptive to the national market system.

2. Statutory Basis

The CHX believes the proposal 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).¹⁰ The CHX believes the proposal is consistent with section 6(b)(5) of the Act¹¹ 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 Exchange 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

No written comments were either solicited or received with respect to the proposed rule change, as amended.

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 the 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, as amended, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CHX-2003-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 filings will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2003-17 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48985; File No. SR-CHX-2003-37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to ITS Trade-Throughs

December 23, 2003.

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 November 26, 2003, the Chicago Stock Exchange, Inc. ("CHX") 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 Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(1)⁴ thereunder, which renders the proposal effective upon filing with the Commission. 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 certain provisions of CHX Article XX, Rule 40, which incorporates certain provisions of the Intermarket Trading System ("ITS") Plan ("ITS Plan"). Specifically, the CHX seeks to add Interpretation and Policy .06 to expressly recognize that certain executions will not be considered "trade-throughs" if an ITS commitment is sent contemporaneously with the execution of a trade through the bid or offer of another market center.

The text of the proposed rule change is below. Proposed new language is in *italics*.⁵

* * * * *

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-1 4(f)(1).

⁵ The Commission made a technical change to the rule text to address a minor error in the proposed

Continued

⁸ CHX Article XX, Rule 37(b) requires that orders executed automatically on the CHX be executed at the national best bid or offer in effect at the time the order is received.

⁹ See CHX Article XXX, Rule 1, Interpretation and Policy .02.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

ITS "Trade-Throughs" and "Locked Markets"

RULE 40. (a) Definitions

(1) An "Exchange trade-through," as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase on the Exchange of a security traded through ITS (an "ITS Security") at a price which is higher than the price at which the security is being offered (or initiates the sale on the Exchange of such a security at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated an Exchange trade-through."

(2) A "third participating market center trade-through," as that term is used in this Rule, occurs whenever a member on the Exchange initiates the purchase of an ITS Security by sending a commitment to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the offer (bid) then being displayed on the Exchange from such other market center. The member described in the foregoing sentence is referred to in this Rule as the "member who initiated a third participating market center trade-through."

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Interpretations and Policies:

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.06 Contemporaneous Commitments

The terms "Exchange trade-through" and "third market participating market center trade-through" do not include the situation where a member who initiates the purchase (sale) of an ITS security at a price which is higher (lower) than the price at which the security is being offered (bid) is another ITS participating market, sends contemporaneously

through ITS to such ITS participating market a commitment to trade at such offer (bid) price or better and for at least the number of shares displayed with that market center's better-priced offer (bid). A trade-through complaint sent in these circumstances is not valid, even if the commitment sent in satisfaction cancels or expires, and even if there is more stock behind the quote in the other market.

* * * * *

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant in the ITS Plan.⁶ Exhibit B to the ITS Plan is a model ITS Trade-Through Rule (the "Trade-Through Rule"), which provides that a member in one market should avoid initiating a trade if the trade would be executed at a price inferior to a price quoted by another ITS market center.⁷

As a remedy following a trade-through, the ITS Plan provides that (upon receipt of a valid trade-through complaint) the party that initiated the trade-through must send a commitment to trade, at the price and for the number of shares in the disseminated quotation, to satisfy the market that was traded through.

⁶ The ITS Plan was approved on a permanent basis on January 27, 1983. See Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938. Signatories to the ITS Plan include the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the CHX, the Cincinnati Stock Exchange, Inc. (now known as the National Securities Exchange), the NASD, the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

⁷ Section 8(d)(ii) of the ITS Plan requires each Participant to adopt a rule substantially the same as the Trade-Through Rule. CHX Article XX, Rule 40 is the Exchange's version of the Trade-Through Rule.

The ITS Operating Committee believes that a member should be able to avoid any trade-through liability when a member sends a commitment at the same time that it trades through the bid or offer in another market. Accordingly, based on the Commission's request for express clarification, the ITS Operating Committee has encouraged each ITS Participant, including the CHX, to expressly recognize that a trade will not be considered an inappropriate trade-through if an ITS commitment is sent contemporaneously with the execution of a trade through the bid or offer of another market center. Accordingly, the CHX is submitting proposed CHX Article XX, Rule 40, Interpretation and Policy .06.

As stated above, the Exchange believes that each ITS participant will propose a similar interpretation. As of the date of submission of this proposed rule change, the Exchange is only aware of a submission by the NYSE, containing proposed rule language identical to that proposed in this submission.

2. Statutory Basis

The CHX believes the proposal 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) of the Act.⁸ The CHX believes the proposal is consistent with section 6(b)(5) of the Act,⁹ 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 Exchange does not believe that the proposed rule change will result in any burden on competition.

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

Because the foregoing proposed rule change constitutes a stated policy,

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

rule change. Telephone conversation between Kathleen M. Boege, Vice President and Associate General Counsel, CHX, and Ian K. Patel, Attorney, Division of Market Regulation, Commission, dated December 23, 2003.

practice or interpretation 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 Act¹⁰ and Rule 19b-4(f)(1) thereunder.¹¹ 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, 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-CHX-2003-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 CHX. All submissions should refer to the File No. SR-CHX-2003-37 and should be submitted by January 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-32178 Filed 12-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48991; File No. SR-NASD-2003-44]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto by the National Association of Securities Dealers, Inc. To Modify an Existing Pilot Program Relating to the Bid Price Test of the Nasdaq Maintenance Listing Standards

December 23, 2003.

I. Introduction

On March 18, 2003, 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") a proposed rule change to modify an existing pilot program relating to the bid price test of Nasdaq's maintenance listing standards. Nasdaq submitted amendments to the proposed rule change on March 24, 2003,¹ and September 26, 2003.² On October 10, 2003, the Commission published notice of the proposal in the **Federal Register**.³ No comments were received on the proposed rule change. On November 26, 2003, Nasdaq submitted Amendment No. 3 to the proposed rule change.⁴ This notice and order solicits comment on Amendment No. 3 and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposal

To obtain a listing on the Nasdaq Stock Market, an issuer must meet the initial listing standards; to keep a listing on Nasdaq, an issuer must meet the maintenance listing standards on an

ongoing basis.⁵ One of these standards relates to the bid price of the issuer's security. On either the Nasdaq National Market or the SmallCap Market, the security must maintain a bid price of at least \$1.00 or face delisting.⁶ Nasdaq's listing rules provide that a failure to meet the bid price standard exists if the bid price remains less than \$1.00 for 30 consecutive business days.⁷ After 30 consecutive business days of the security failing the bid price test, Nasdaq would notify the issuer of the deficiency.⁸ Nasdaq's listing rules would then provide for certain "grace periods" during which the issuer is expected to regain compliance with the bid price standard or be delisted.

On the Nasdaq SmallCap Market, an issuer that fails the bid price test automatically receives a 180-calendar-day grace period.⁹ An issuer need not meet any special requirements to qualify for this grace period. If the issuer still fails the bid price test at the end of the 180 days,¹⁰ it could be granted an additional 180-day grace period if it meets one of the quantitative initial listing standards (rather than the lesser maintenance standards) of the SmallCap Market.¹¹ If the issuer were still deficient at the end of the second 180-day grace period, it could be granted an additional 90-calendar-day grace period if the issuer again meets one of the quantitative initial listing standards of the SmallCap Market. At the end of the 90 days (or of any other grace period where the issuer does not qualify for an additional grace period), Nasdaq would delist the security, subject to the procedural requirements of the NASD Rule 4800 Series. Thus, Nasdaq's maintenance listing standards currently allow a SmallCap issuer a theoretical maximum of approximately 1.25 years of non-compliance with the bid price standard before facing delisting.

On the Nasdaq National Market, like on the SmallCap Market, an issuer that fails the bid price test would automatically receive a 180-calendar-day grace period without having to meet

¹ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated March 21, 2003 ("Amendment No. 1"). In Amendment No. 1, Nasdaq made minor revisions to the original proposal.

² See letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated September 25, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the length of the grace periods available to issuers not in compliance with the bid price test and added to the criteria that issuers would have to meet to avail themselves of such periods.

³ See Securities Exchange Act Release No. 48592 (October 3, 2003), 68 FR 58732.

⁴ See letter from Sara Nelson Bloom, Associate General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation, Commission, dated November 25, 2003. In Amendment No. 3, Nasdaq made minor revisions to the proposal.

⁵ See NASD Rules 4300 *et seq.* and 4400 *et seq.*

⁶ See NASD Rule 4310(c)(4) (for SmallCap); NASD Rules 4450(a)(5) and (b)(4) (for National Market).

⁷ See NASD Rule 4310(c)(8)(D) (for SmallCap); NASD Rule 4450(e)(2) (for National Market).

⁸ See *id.*

⁹ See NASD Rule 4310(c)(8)(D).

¹⁰ An issuer is deemed to be back in compliance with the bid price standard if it maintains a bid price of over \$1 for ten consecutive business days, see *id.*, although Nasdaq in its discretion may extend the ten-day requirement to as long as 20 consecutive business days, see *id.*

¹¹ See *id.* (requiring issuer to meet any of the three criteria for initial listing set forth in NASD Rule 4310(c)(2)(A)).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(1).

¹² 17 CFR 200.30-3(a)(12).