

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50089; File No. SR-CHX-2004-04]

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving Proposed Rule Change To Revise CHX Article VI, Rule 5 To Correct a Reference to the Form Used for the Registration of New Branch Offices

July 26, 2004.

On January 7, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 update the reference to a form used by certain CHX member firms for the registration of new branch offices. The proposed rule change was published for comment in the *Federal Register* on April 13, 2004.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

The proposed rule change would conform the Exchange's rules to its practice. Under the Exchange's rules, a member firm for which the Exchange is the designated examining authority must notify the Exchange before opening a new branch office. The Exchange's rules require that a member firm provide this notice by completing and submitting a MW-B form. The Exchange represents, however, that it currently asks its member firms to submit Schedule E to Form BD for that purpose. The proposed rule change would correct the reference to the form in CHX Article VI, Rule 5.

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>4</sup> The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating 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. Specifically, the Commission believes that the Exchange's proposal will conform its rules to its practice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CHX-2004-04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50087; File No. SR-NASD-2004-090]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Nasdaq Closing Cross

July 26, 2004.

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 is hereby given that on June 9, 2004, 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") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On July 23, 2004, Nasdaq amended the proposed rule change.<sup>3</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 proposes an amendment to NASD Rule 4709 to establish auxiliary procedures for administering the Nasdaq Closing Cross on certain significant trading days. Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission.<sup>4</sup> The text of the proposed rule change is set forth below. Proposed new language is in *italics*; deletions are in [brackets].<sup>5</sup>

\* \* \* \* \*

#### 4709. Nasdaq Closing Cross

(a) No Change.

(b) No Change.

(c) Processing of Nasdaq Closing Cross.

(1)-(4) No Change.

(5) *Auxiliary Procedures. When significant trading volume is expected at the close of regular hours, Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market. The determination to implement auxiliary procedures for the Closing Cross shall be made by the President of Nasdaq or any Executive Vice President designated by the President. Nasdaq shall inform market participants of such auxiliary procedures as far in advance as practicable. Auxiliary procedures shall include:*

(i) *Setting an earlier time or times for the end of the order entry periods set forth in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order entry period as early as 3:40 p.m.*

(ii) *Setting an earlier time for the order modification and cancellation periods in paragraph (a) for IO, MOC, and LOC orders. Nasdaq may end the order modification and cancellation periods as early as 3:40 p.m.*

(iii) *Setting an earlier time for the dissemination times and frequencies set forth in paragraph (b) for the Order*

22, 2004 ("Amendment No. 1"). In Amendment No. 1, Nasdaq restated the proposed rule change in its entirety.

<sup>4</sup> The Commission revised this sentence to reflect the fact that Nasdaq intends to implement the proposed rule change immediately upon approval by the Commission. Telephone conversation between Jeffrey S. Davis, Associate Vice President and Associate General Counsel, Nasdaq, and Ann E. Leddy, Special Counsel, Division, Commission (July 23, 2004).

<sup>5</sup> The proposed rule change is marked to show changes from the rule text appearing in the NASD Manual available at [www.nasdaq.com](http://www.nasdaq.com). There are no other pending or approved rule filings that would affect NASD Rule 4709(c).

<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. 49529 (April 6, 2004), 69 FR 19583.

<sup>4</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>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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 letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July