

and Amendment No. 2 on August 27, 2002.<sup>4</sup> The proposed rule change, as amended, was noticed in the **Federal Register** on September 17, 2002.<sup>5</sup> On October 3, 2002, Amex filed Amendment No. 3 to the proposed rule change.<sup>6</sup> The Commission is publishing this notice to approve the proposed rule change, as amended, and solicit comments on Amendment No. 3 from interested persons.<sup>7</sup>

### I. Description

The Amex proposes to adopt transaction fees for non-member trades in The Nasdaq Stock Market, Inc. ("Nasdaq") securities admitted to dealings on an unlisted basis. Accordingly, the Exchange is implementing a separate fee schedule for transactions in Nasdaq securities admitted to dealings so that the Amex can be competitive with other market centers that trade Nasdaq securities. According to the Exchange, the proposed fees are in line with similar fees charged by other market centers for transactions in Nasdaq securities.

### II. Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)<sup>9</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The Amex will assess the same fees to both members and non-members equally. The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date for publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 will permit the Amex to begin to assess

the proposed non-member transaction fees as of the trade date October 1, 2002, so that these fees will begin to be assessed at the same time as the Exchange begins to assess its member transaction fees.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 of 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 Exchange. All submissions should refer to File No. SR-Amex-2002-47 and should be submitted by November 18, 2002.

### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2002-47), as amended, is hereby approved.

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46697; File No. SR-CHX-2002-15]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Automatic and Manual Execution Procedures

October 21, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 13, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") 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. The proposed rule change has been filed by the CHX as a "non-controversial" rule change under Rule 19b-4(f)(6)<sup>3</sup> under the Act. 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 Article XX, Rule 37 of the CHX Rules to clarify the provisions that govern the approval necessary to switch from manual to automatic execution of orders.

Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

#### Chicago Stock Exchange Rules

\* \* \* \* \*

#### Article XX

\* \* \* \* \*

#### Guaranteed Execution System and Midwest Automated Execution System

##### Rule 37

- (a) No change to text.
- (b) No change to text.
- (1)-(7) No change in text.

[(8) In unusual trading situations, specialists may switch from automatic execution to a manual execution mode at their respective posts. With respect to specialists trading Nasdaq issues, "manual execution mode" shall include any instance in which a specialist

Assistant Director, Office of Market Supervision ("Market Supervision"), Commission (June 10, 2002).

<sup>4</sup> See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (Aug. 26, 2002).

<sup>5</sup> See Securities and Exchange Act Release No. 46483 (Sept. 10, 2002), 67 FR 58658 (Sept. 17, 2002).

<sup>6</sup> Amex filed Amendment No. 3 to provide that the Amex will begin to assess the proposed non-member transaction fees as of the trade date October 1, 2002. See letter from William Floyd-Jones, Assistant General Counsel, Amex, to Katherine England, Esq., Assistant Director, Market Supervision, Commission (October 1, 2002) ("Amendment No. 3").

<sup>7</sup> SR-Amex-2002-59 implements these same fees for members. See Securities Exchange Act Release No. 46484 (Sept. 10, 2002), 67 FR 58659 (Sept. 17, 2002).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<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.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this subsection (8), "unusual trading situations" for NASDAQ/NM issues include the existence of large order imbalances and/or significant price volatility. If a specialist elects to switch to a manual execution mode based on the existence of unusual trading situations, such specialist (A) must document the basis for election of a manual execution mode; (B) must disclose to its customers the differences in procedures from normal market conditions and the circumstances under which the specialist generally may activate these procedures; and (C) must seek relief from the requirements of MAX from two (2) floor officials or a designated member of the Exchange staff who would have authority to set execution prices.]

[(9)](8) No change to text.

[(10)](9) No change to text.

[(11)](10) No change to text.

[(12)](11) No change to text.

\* \* \* \* \*

\* \* \* Interpretations and Policies:

.01—.03 No change to text.

.04 Ability to Switch MAX to Manual Execution.

Effective April 4, 1994. Specialists have the ability to switch their MAX terminals off automatic execution at their respective posts. [This new functionality is being implemented to allow specialists to timely switch to a manual execution mode when a certain analyst/reporter's report is broadcast on cable T.V., if market conditions in a particular stock warrant it. Specialists should switch to manual mode only when absolutely necessary and are required to return to the automatic execution functionality immediately when the primary market quotes accurately reflect market conditions. A specialist cannot remain in manual mode, under this paragraph, for more than five minutes without securing the permission of two (2) floor officials.]

*Reasons for moving to manual execution mode. Specialists trading listed securities may use the procedures described below to switch to manual execution mode when the primary market quotes are inaccurate due to market conditions. For example, this functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1-1). This functionality cannot be used merely because of a volatile market.*

*Specialists trading Nasdaq/NM securities may use the procedures described below to switch to manual*

*execution mode in unusual trading situations. With respect to specialists trading Nasdaq/NM securities, "manual execution mode" shall include any instance in which a specialist reduces the auto-execution threshold below the minimum set forth in Rule 37(b)(1) of this Article. For purposes of this paragraph, "unusual trading situations" include the existence of large order imbalances and/or significant price volatility.*

*Procedures for switching to manual execution mode. [In all other instances, w] When a specialist believes it is necessary to be in a manual execution mode, he or she must secure the permission of his/her firm's floor supervisor (who, under normal circumstances should be located on the trading floor) before switching to manual, and the firm supervisor must immediately (but in no event more than three minutes after switching to manual mode) notify and secure the permission of a floor official to remain in manual mode. [This new functionality cannot be used merely because of a volatile market, but shall only be permitted when the primary market quotes are inaccurate due to market conditions. For example, this new functionality might be used if it became apparent that the NYSE invoked its unusual market conditions rule (pursuant to SEC Rule 11Ac1-1).] The floor official must be satisfied that the conditions which permit putting an issue on manual mode are present before granting a specialist's request to switch to the manual mode and such permission shall only be in effect for five minutes. A firm's floor supervisor shall monitor the conditions which formed the basis for the decision to ensure that specialists return to the auto-execution feature when such conditions are no longer present. Both the firm's floor supervisor and the specialist have the responsibility, and are required, to immediately reinstate MAX's automatic execution functionality when [the primary market quotes accurately reflect market conditions] market conditions no longer support the decision to move to manual execution mode. If the specialist and the firm's floor supervisor believe it is necessary to continue in manual mode for longer than five minutes, then the firm 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. Reasons for going to manual mode, the time spent in manual mode, the name of the firm supervisor who permitted the specialist to switch to manual mode and the name*

of the floor official who granted permission to go to manual mode must be documented and filed with the market regulation department before the next business day's opening.

When operating in the manual mode. Specialists still have the responsibility to fill customer orders according to CHX Rules—including the BEST Rule. All pricing executions will be reviewed for accuracy. This capability should only be utilized on an infrequent basis and only in unusual circumstances.

\* \* \* \* \*

## **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 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 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**

In October, 2001, the Exchange's Board of Governors approved changes to the procedures that a specialist must follow when switching from automatic to manual execution mode, intending that the changes would apply to specialists trading both listed and OTC securities. Among other things, these changes required the floor supervisor of a specialist firm to approve any switch to manual execution mode before it occurred and to promptly seek floor official approval of that change. Additionally, the amended language made it clear that the firm's floor supervisor was responsible for filing documentation with the Market Regulation Department about each change. Finally, the modified text confirmed that floor official permission to operate in manual execution mode expired after a limited time period; after five minutes, the specialist firm and its floor supervisor were again required to seek permission to remain in manual execution mode. The CHX filed this proposed rule change with the Commission on November 14, 2001; the

Commission approved the proposed rule change on April 17, 2002.<sup>4</sup>

Because of a staff oversight, however, the changes made by the Exchange's earlier proposal only impacted listed specialists. This submission would extend the same requirements to specialists trading over-the-counter ("OTC") securities and consolidate the rule provisions relating to this issue for easier reference.<sup>5</sup>

As with the Exchange's earlier filing, the Exchange anticipates that these rule changes will promote greater accountability and preclude reliance on manual execution mode in a manner that is potentially violative of CHX rules. They also will assist the Market Regulation Department in determining more easily whether violations of the Exchange's rules regarding manual execution mode have occurred.

## 2. Statutory Basis

The Exchange believes that 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).<sup>6</sup> In particular, the Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>7</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.

<sup>4</sup> See Securities Exchange Act Release No. 45770 (April 17, 2002), 67 FR 19784 (April 23, 2002) (SR-CHX-2001-26).

<sup>5</sup> The proposal deletes language from the rule that allows a listed specialist to switch to manual execution mode when a "certain analyst/reporter's report is broadcast on cable TV." That rule provision has become obsolete and no longer provides a reason for which a specialist can switch to manual execution mode.

Additionally, the Exchange has not included, in its proposal, a requirement that a specialist firm that changes its auto-execution status must notify order-sending firms of that change. The Exchange reports that in recent months, order-sending firms appear, more and more, to base their order-routing decisions on the execution quality statistics of various market centers. The Exchange believes that, if orders are given quick executions at appropriate prices, order-sending firms may not be interested in whether the execution was automatically or manually given. Nevertheless, the Exchange plans to continue the practice of providing automated notices to order-sending firms that request them with respect to trading in OTC issues and will consider whether a similar practice is appropriate for firms that send orders in listed securities.

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

The CHX 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

Because the foregoing proposed rule change: (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 after 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 self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change<sup>8</sup> has become effective pursuant to section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The CHX seeks to have the proposed rule change become operative upon filing in order to more quickly implement these procedures and thus require all of its specialists—those trading both OTC and listed securities—to use identical procedures when changing from automatic execution mode to manual execution mode.

The Commission, consistent with the protection of investors and the public interest, designates the proposal to be

<sup>8</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission. See Prefiling Notice of Proposed Rule Change (SR-CHX-2002-15), dated May 22, 2002.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

operative as of September 13, 2002.<sup>11</sup> Acceleration of the operative date of the proposed rule change will allow the CHX to quickly harmonize the procedures the specialist follows when switching from automatic execution mode to manual execution mode for listed and Nasdaq securities.

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>12</sup>

## 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-2002-15 and should be submitted by November 18, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78b(3)(C).

<sup>13</sup> 17 CFR 200.30-3(a)(12).