

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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2004-49 and should be submitted on or before November 9, 2004.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50521; File No. SR-CHX-2004-32]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees Applicable to Orders Sent for Execution Through the Exchange's CHXpress Functionality

October 13, 2004.

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 28, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") 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 CHX. The proposed rule change has been filed by the CHX as establishing or changing a due, fee, or other charge, pursuant to

Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> 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 CHX proposes to amend its membership dues and fees schedule, to establish fees for orders sent for execution through its CHXpress<sup>tm</sup> functionality. Below is the text of the proposed rule change. Proposed new language is in *italics*.

\* \* \* \* \*

#### MEMBERSHIP DUES AND FEES

A.-E. No change to text.

F. Transaction and Order Processing Fees

\* \* \* \* \*

4. Transaction Fees

a.-k. No change to text.

*1. CHXpress orders \$.0005 per share, if sent by an order-sending firm. CHXpress orders sent to the Exchange by an order-sending firm are not subject to any other order processing fees, transaction fees, fee caps or fee reductions set forth above in Sections F(3) and F(4).*

*CHXpress orders entered by a CHX market maker or by a CHX floor broker on behalf of a customer shall be exempt from any CHXpress transaction fee but shall remain subject to transaction fees that are applicable to market maker or floor broker executions.*

\* \* \* \* \*

#### 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

The Exchange is developing a new automated functionality for handling particular orders, called CHXpress. The CHXpress functionality, built into the Exchange's MAX<sup>®</sup> system, is designed to provide additional opportunities for the Exchange's members and their customers to seek and receive liquidity through automated executions of orders at the Exchange.<sup>5</sup>

Through this submission, the Exchange proposes to establish a transaction fee that would apply to executions of CHXpress orders. Specifically, CHXpress orders sent by the Exchange's off-floor order-sending firms through the Exchange's MAX system would be assessed a fee of \$.0005 per share. CHXpress orders entered by a CHX market maker, or by CHX floor broker on behalf of a customer, would not be assessed a specific CHXpress order transaction fee, but would remain subject to the existing transaction fees (and fee reductions and caps) that are currently applicable to market maker and floor broker executions.<sup>6</sup> The CHXpress transaction fee would apply to eligible orders sent through the CHXpress functionality when it is rolled out later this year.

##### 3. Statutory Basis

The CHX believes that its proposal to amend its schedule of dues, fees, and charges is consistent with Section 6(b)

<sup>5</sup> See Securities Exchange Act Release Nos. 34-50481 (September 30, 2004); 69 FR 60197 (October 7, 2004) (approval of File No. SR-CHX-2004-12) and 34-49567 (April 15, 2004); 69 FR 21591 (April 21, 2004) (notice of File No. SR-CHX-2004-12).

<sup>6</sup> Agency executions through a floor broker currently are \$.0035 per share (for executions in "dual trading system" issues) and \$.0025 per share (for executions in Nasdaq/NM securities), up to a maximum of \$100 per side and subject to certain fee reductions and caps. Executions by market makers currently are set at \$.0050 per share (up to a maximum of \$100 per side) and also are subject to certain fee reductions and caps. According to the CHX, these fees charged to market makers are set at these higher per share rates for a variety of reasons, including the need to help defray the costs associated with the Exchange's regulatory activities with respect to its market makers and the costs associated with any license fees that the Exchange pays in connection with the trading of certain products. See Securities Exchange Act Release No. 34-49357 (March 3, 2004), 69 FR 11681 (March 11, 2004) (regarding the market maker transaction fees). Moreover, although specialists pay a fixed fee associated with the trading of their assigned issues, floor brokers do not currently do so; according to the Exchange, transaction fees assessed on floor broker executions help to cover the Exchange's costs of providing regulatory and technology services to its floor broker community.

<sup>13</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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

of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act<sup>8</sup> in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members.

#### *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**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>9</sup> and Rule 19b-4(f)(2)<sup>10</sup> thereunder, because it establishes or changes a due, fee, or other charge. 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2004-32 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CHX-2004-32. This file number should be included on the

subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2004-32 and should be submitted on or before November 9, 2004.

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. 34-50501; File No. SR-NASD-2004-138]

#### **Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Based on the Value of the Dow Jones Euro Stoxx 50 Index**

October 7, 2004.

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> notice is hereby given that on September 14, 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" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

#### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to list and trade Performance Leveraged Upside Securities<sup>SM</sup> Based ("PLUS") on the Value of the Dow Jones Euro Stoxx 50 Index ("Notes") issued by Morgan Stanley ("Morgan Stanley").

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq 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 III below. Nasdaq 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*

##### **2. Purpose**

Nasdaq proposes to list and trade PLUS, the return on which is based upon the Dow Jones Euro Stoxx 50 Index ("Index").

Under NASD Rule 4420(f), Nasdaq may approve for listing and trading innovative securities that cannot be readily categorized under traditional listing guidelines.<sup>3</sup> Nasdaq proposes to list and trade notes based on the Index under NASD Rule 4420(f).

The Notes, which will be registered under Section 12 of the Act, will initially be subject to Nasdaq's listing criteria for other securities under NASD Rule 4420(f). Specifically, under NASD Rule 4420(f)(1):

(A) The issuer shall have assets in excess of \$100 million and stockholders'

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

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

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

<sup>11</sup> 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 Securities Exchange Act Release No. 34-32988 (September 29, 1993), 58 FR 52124 (October 6, 1993).