

the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets.

The Commission also believes that any concerns that a broker-dealer, such as Wachovia, or a subsidiary providing a hedge for the issuer, will incur undue position exposure are minimized by the size of the Notes issuance in relation to the net worth of Wachovia.³⁸

Finally, the Commission notes that the value of the Index will be calculated and disseminated by the CBOE once every trading day after the close of trading. However, the Commission notes that the value of the S&P 500 will be widely disseminated at least once every fifteen seconds throughout the trading day and that investors are able to obtain real-time call option pricing on the S&P 500 during the trading day. Further, the Indicative Value, which will be calculated by the Amex after the close of trading and after the CBOE calculates the BXM Index for use by investors the next trading day, is designed to provide investors with a daily reference value of the adjusted Index. The Commission notes that Wachovia has agreed to arrange to have the BXM Index calculated and disseminated on a daily basis through a third party in the event that the CBOE discontinues calculating and disseminating the Index. In such event, the Exchange agrees to obtain Commission approval, pursuant to filing the appropriate Form 19b-4, prior to the substitution of the CBOE BXM Index. Further, the Commission notes that the Exchange has agreed to undertake to delist the Notes in the event that the CBOE ceases to calculate and disseminate the Index, and Wachovia is unable to arrange to have the BXM Index calculated and widely disseminated through a third party.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently

listed and traded on the Amex.³⁹ The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,⁴⁰ to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁴¹ that the proposed rule change (File No. SR-Amex-2005-036) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴²

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51639; File No. SR-CHX-2005-12]

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

April 29, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on April 21, 2005, 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,³ and Rule

19b-4(f)(2)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 its rules to amend its Participant Fee Schedule to allow the Exchange to extend the fixed fee exemption for CHXpress® securities to new securities during the course of a month. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

PARTICIPANT FEES AND CREDITS

* * * * *

E. Specialist Fixed Fees

Except in the case of Tape B Exemption Eligible Securities (as defined above in Section D), and Designated CHXpress Securities (as defined below), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

* * * * *

"Designated CHXpress Securities" are those issues which have been designated by the Exchange [on a monthly basis] as fixed-fee exempt *at the beginning of each month, or which have been added by the Exchange to the list of exempt securities during the month, with the consent of the specialist assigned to trade the issue.*

* * * * *

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.

⁴ 17 CFR 240.19b-4(f)(2).

³⁸ See Securities Exchange Act Release Nos. 44913 (Oct. 9, 2001), 66 FR 52469 (Oct. 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR-NASD-2001-73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR-Amex-2001-40); and 37744 (Sept. 27, 1996), 61 FR 52480 (Oct. 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR-Amex-96-27).

³⁹ See *supra* notes 16 (citing previous approvals of securities with structures similar to that of the proposed Notes); and 18 (citing previous approvals of securities linked to the performance of the S&P 500 as well as options on the S&P 500).

⁴⁰ 15 U.S.C. 78f(b)(5) and 78s(b)(2).

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 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)(ii).

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

1. Purpose

The Exchange stated that it is rolling out a new, automated functionality for the handling of particular orders, called CHXpress.TM According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.⁵ With a few exceptions, CHXpress orders will be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when that functionality is available).⁶ If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for instantaneous display or later execution.⁷ A CHX specialist may not cancel or place a CHXpress order on hold or otherwise prevent the order-sending firm from canceling the order.

The Exchange stated that this new functionality currently is available in select issues, and the Exchange plans to extend the use of this functionality to additional issues in upcoming weeks. Last month, the Exchange began exempting, from the specialist fixed fees, securities in which CHXpress orders are processed by the Exchange.⁸ The Exchange stated that it had planned to identify these securities, on a monthly basis, at the beginning of each

month, based on business factors including the interest demonstrated by order-sending firms in trading a particular security. The Exchange also stated that the CHXpress functionality was to have been enabled for these designated CHXpress securities throughout the month.

The Exchange, however, has determined that it is not efficient, from a business perspective, to try to designate the CHXpress securities on a monthly basis, unless the Exchange has the authority to add to the list when necessary. The Exchange believes that it is important to be able to respond to potential new order flow during a month by allowing the Exchange to extend CHXpress functionality to additional issues, so long as the specialist in the security agrees to the addition.⁹

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹¹ in particular, in that it provides for the 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,¹² and Rule 19b-4(f)(2)¹³ thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange.

⁹ The Exchange believes that it is appropriate to consult with the specialist firm assigned to an issue before extending CHXpress functionality to that issue because of the potential double liability associated with the handling of ITS commitments when CHXpress orders are automatically executing against displayed bids and offers and because of the specialist's inability to manually post bids and offers in CHXpress-eligible securities until the two system projects described in note 8, *supra*, have been completed.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78s(b)(3)(A)(ii).

¹³ 17 CFR 240.19b-4(f)(2).

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. Please include File Number SR-CHX-2005-12 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-2005-12. 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-

⁵ See Securities Exchange Act Release No. 50481 (Sept. 30, 2004), 69 FR 60197 (Oct. 7, 2004) (SR-CHX-2004-12).

⁶ CHXpress orders will not be executed if those executions would improperly trade-through another ITS market or if trading in the issue had been halted. CHXpress orders that would improperly trade through an ITS market or that are received during a trading halt will be cancelled. If trading in an issue has been halted, CHXpress orders in the book will be cancelled.

⁷ A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. See CHX Article XX, Rule 37(b)(11)(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross the NBBO. A CHXpress order that would improperly lock or cross the NBBO will be cancelled. CHXpress orders cannot be excluded from the CHX's quote.

⁸ See Securities Exchange Act Release No. 51430 (Mar. 24, 2005), 70 FR 16540 (Mar. 31, 2005) (SR-CHX-2005-03). According to the CHX, the fee exemption was designed to address concerns of CHX specialist firms, who have noted that they will be best able to handle issues associated with the automatic execution of CHXpress orders when two systems projects—to automatically execute inbound ITS commitments and to allow them to display (and have automatically executed) their manual proprietary quotes—have been completed.

2005-12 and should be submitted on or before May 27, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51630; File No. SR-NASD-2005-049]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. To Modify the Pricing for Non-NASD Members Using Nasdaq's Brut Facility

April 28, 2005.

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 April 8, 2005, 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 and II below, which Items have been prepared by Nasdaq. On April 12, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ On April 27, 2005, Nasdaq submitted Amendment No. 2 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

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

Nasdaq proposes to modify the pricing for non-NASD members using Nasdaq's Brut Facility ("Brut"). Nasdaq requests approval to implement the proposed rule change retroactively as of April 11, 2005. The text of the proposed

rule change, as amended, is available on the NASD's Web site (<http://www.nasd.com>), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

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, as amended, 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

1. Purpose

Nasdaq currently charges a fee of \$0.004 per share executed with respect to any order to buy or sell exchange-listed securities that is routed by Brut to an exchange using such exchange's proprietary order delivery system (such as the New York Stock Exchange's SuperDOT system). In SR-NASD-2005-048, which became effective immediately upon filing, Nasdaq reduced this fee for NASD members for some orders and eliminated it entirely for others effective April 11, 2005. In this filing, Nasdaq proposes to put in effect the same fee changes for non-members.

Under the proposal, the fee for orders to buy or sell exchange-listed securities (assuming such securities are subject to the Consolidated Quotations Service and Consolidated Tape Association Plans and are not Exchange Traded Funds listed on the American Stock Exchange) that are routed by Brut to an exchange using the exchange's proprietary order delivery system would be reduced to \$0.0004 per share executed. This fee would only be charged, however, if the orders to which it otherwise applies are routed outside Brut and the Nasdaq Market Center ("NMC") without first attempting to execute within Brut or the NMC. If an order to which this fee would otherwise apply first attempts to execute against the book maintained by Brut or the NMC, then this fee would no longer be applicable.

By lowering (and eliminating in many cases) the routing fees for certain orders

for exchange-listed securities received by Brut, Nasdaq states that it seeks to continue to improve Brut's competitiveness in attracting buy and sell orders for exchange-listed securities. Nasdaq believes that its participants would benefit from the increased liquidity in exchange-listed securities that the proposal is designed to stimulate. Furthermore, Nasdaq states that all investors would benefit from increased competition in this area. Finally, Nasdaq believes that the distinction for fee purposes between orders that check the Brut (or NMC) book before routing and those that are designated for routing regardless of available prices in such book would encourage orders to check the Brut book, which it believes would benefit both the particular investor (who, as a result, may find a better execution) and the market as a whole.

At the same time, the proposed rule change seeks to apply to non-members a new fee (which is being instituted for members) designed to recover the commissions billed by NYSE specialists to Brut for certain types of limit orders. According to Nasdaq, generally, NYSE specialists charge Brut for executions of limit orders that remained unexecuted on the specialists' books for more than 5 minutes. While the specialists' fee schedules vary, Nasdaq states that the proposed Brut fee of \$0.009 per share is generally designed to recover for Brut some of the associated cost.

The new fee would apply when a limit order is delivered to the NYSE via the NYSE's proprietary order delivery system and the time to execute such an order exceeds five minutes (measured as the difference between the time of the NYSE's electronic acknowledgment of the order and the time of execution). The new fee would not apply, however, to day orders executed in the specialists' opening and to good-till-cancelled orders if executed in the opening on the day when they were entered. The new fee would also not apply to any on-close orders or market orders.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,⁵ in general, and with Section 15A(b)(5) of the Act,⁶ in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 corrected a clerical error in the originally filed proposed rule change to clarify that the filing was submitted under Section 19(b)(2) of the Act.

⁴ Amendment No. 2 replaced and superseded the originally filed proposed rule change, as amended.

⁵ 15 U.S.C. 78o-3.

⁶ 15 U.S.C. 78o-3(b)(5).