

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-CBOE-2005-79 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-CBOE-2005-79. 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 Room. Copies of such filing also will be

available for inspection and copying at the principal office of the CBOE. 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-CBOE-2005-79 and should be submitted on or before November 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jonathan G. Katz,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52612; File No. SR-CHX-2005-25]

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

October 14, 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 September 16, 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. On October 3, 2005, CHX filed Amendment No. 1 to the proposed rule change.³ On October 12, 2005, CHX filed Amendment No. 2 to the proposed rule change.⁴ The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,⁵ and Rule 19b-4(f)(2) thereunder,⁶ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested parties.

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

The CHX proposes to amend its Participant Fee Schedule (the "Fee Schedule") to confirm the assignment fees that apply when the Exchange's CSAE assigns a group of securities to a specialist firm in competition with other specialist firms. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

Participant Fees and Credits

* * * * *

D. Specialist Assignment Fees.

Specialist Application Fee No change to text

Assignment of Dual Trading System Securities. Once the Committee on Specialist Assignment and Evaluation approves a Participant to act as specialist in a security (*or a group of securities*), that Participant must pay the following fee:

*	*	*	*	*	*
\$1,000	If the security (<i>or group of securities</i>) was assigned in competition with at least one other Participant and up to one-third of all Participants that trade Dual Trading System Securities				
\$4,000	If the security (<i>or group of securities</i>) was assigned in competition with more than one-third of all Participants that trade Dual Trading System Securities				
Assignment of Nasdaq/NM Securities.	Beginning on September 1, 2004, once the Committee on Specialist Assignment and Evaluation approves a Participant to act as specialist in a security (<i>or a group of securities</i>), that Participant must pay the following fee:				
*	*	*	*	*	*
\$1,000	If the security (<i>or group of securities</i>) was assigned in competition with one other Participant that trades Nasdaq/NM Securities				

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange: (1) made clarifying changes to the proposed rule text and the purpose section of the filing; and (2) noted that the proposed rule change is submitted in conjunction with the filing (SR-CHX-2005-23), which established a special allocation process available to the Committee on Specialist Assignment and

Evaluation ("CSAE") in special circumstances involving the allocation of more than 100 stocks at a time.

⁴ In Amendment No. 2, which superseded Amendment No. 1 in its entirety, the Exchange made a minor change to the proposed rule text and made a corresponding change to the purpose section of the proposed rule change.

The effective date of the original proposed rule change is September 16, 2005, the effective date of Amendment No. 1 is October 3, 2005 and the

effective date of Amendment No. 2 is October 12, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 12, 2005, the date on which the CHX filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

⁶ 17 CFR 240.19b-4(f)(2).

\$4,000 If the security (or group of securities) was assigned in competition with two or more [member firms] *Participants* that trade Nasdaq/NM Securities

* * * * *

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, as amended, and discussed any comments it received regarding the proposal, as amended. 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's CSAE is responsible for assigning securities to be traded by specialist firms.⁷ Although the CSAE ordinarily assigns securities on a one-by-one basis, the CSAE could choose to assign securities in groups consisting of more than one security.

Through this submission, the Exchange proposes to modify its Fee Schedule to confirm the assignment fees that apply when the CSAE assigns a group of securities to a specialist firm in competition with other specialist firms. Specifically, the Exchange proposes to charge, for the assignment of a group of listed securities: (a) a fee of \$1,000 per group, if the group was assigned in competition with at least one other participant and up to one-third of all participants trading Dual Trading System Securities; and (b) a fee of \$4,000 per group, if the group was assigned in competition with more than one-third of the participants trading Dual Trading System Securities.⁸ Similarly, the Exchange proposes to charge, for the assignment of a group of Nasdaq/NM securities: (x) a fee of \$1,000 per group if the group of securities was assigned in competition with at least one other participant that trades Nasdaq/NM securities; and (y) a fee of \$4,000 per group, if the group of securities was assigned in competition

with two or more participants that trades Nasdaq/NM securities.

These changes to the Fee Schedule are submitted in connection with SR-CHX-2005-23, which proposed a change to Rule 1 of CHX Article XXX that established an allocation process available to the CSAE, in special circumstances involving the allocation of more than 100 stocks at a time.⁹ If the CSAE determines that it will allocate a large number of stocks by posting groups of stocks at the beginning of the application and assignment process, then these changes to the Fee Schedule would govern the applicable assignment fees.¹⁰

The Exchange represents that the fees associated with the assignment of securities in competition would be the same for a single security and for a group of securities. The Exchange believes that these charges are appropriate because, among other things, the Exchange's work associated with the assignment of securities in competition is not measurably different based on the number of securities that are being assigned at a particular time. In each instance, Exchange staff gathers data relating to each applicant's demonstrated ability, experience and financial responsibility and the CSAE meets to review the data, to hear presentations from applicants and to determine the appropriate assignment decision.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act¹¹ in that it provides for the equitable allocation of reasonable dues, fees and other charges among CHX's members.

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

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

⁹ The Commission notes that the Exchange uses the terms "security(ies), stock(s) and issue(s)" interchangeably. See Securities Exchange Act Release No. 52379 (September 2, 2005), 70 FR 53825 (September 12, 2005).

¹⁰ According to the Exchange, assignment fees are assessed upon permanent assignment of the subject issues.

¹¹ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has been designated as a fee change pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4 thereunder¹³ because it establishes or changes a due, fee or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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.¹⁴

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. 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-2005-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-9303. All submissions should refer to File Number SR-CHX-2005-25. 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

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ See *supra* note 4.

⁷ See Article XXX, Rule 1.

⁸ "Dual Trading System Securities" are securities listed on the New York Stock Exchange, the American Stock Exchange or any other stock exchange that are also listed or traded on the Chicago Stock Exchange.

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 Room. 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-2005-25 and should be submitted on or before November 14, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz,
Secretary.

[FR Doc. E5-5858 Filed 10-21-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52574; File No. SR-NASD-2005-099]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.

October 7, 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 August 19, 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, II, and

III below, which Items have been prepared by Nasdaq. On September 30, 2005, Nasdaq submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice, as amended, 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 to amend its Restated Certificate of Incorporation ("Certificate"). Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

RESTATED CERTIFICATE OF INCORPORATION OF THE NASDAQ STOCK MARKET, INC.

* * * * *

ARTICLE FOURTH

A. No change.

B. No change.

C. 1. (a) Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

(b) Except as may otherwise be provided in this Restated Certificate of Incorporation or by applicable law, the holders of the *3.75% Series A Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the "Series A Notes")* and the *3.75% Series B Convertible Notes due 2012 (as may be amended, supplemented or otherwise modified from time to time, the "Series B Notes")* and, together with the *Series A Notes, the "Notes")* [4.0% Convertible Subordinated Notes due 2006 (the "Notes")] which may be issued from time to time by Nasdaq shall be entitled to vote on all matters submitted to a vote of the stockholders of Nasdaq, voting together with the holders of the

³ Amendment No. 1 made minor edits to the originally filed proposed rule change and clarified the proposed definition of "Broker Affiliate" set forth in Paragraph C.6. of Nasdaq's Restated Certificate of Incorporation to include a broker or dealer or an affiliate thereof. In Amendment No. 1, Nasdaq also reflected approval of the proposal by the Board of Directors of Nasdaq and by its stockholders.

Common Stock (and of any other shares of capital stock of Nasdaq entitled to vote at a meeting of stockholders) as one class. Each principal amount of Notes shall be entitled to a number of votes equal to the number of votes represented by the Common Stock of Nasdaq that could then be acquired upon conversion of such principal amount of Notes into Common Stock, subject to adjustments as provided in the Notes and the Indenture dated as of April 22, 2005 between Nasdaq and Law Debenture Trust Company of New York, as trustee, as such Indenture may be amended, supplemented or otherwise modified from time to time. Holders of the Notes shall be deemed to be stockholders of Nasdaq, and the Notes shall be deemed to be shares of stock, solely for the purpose of any provision of the General Corporation Law of the State of Delaware or this Restated Certificate of Incorporation that requires the vote of stockholders as a prerequisite to any corporate action.

2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall (i) any record owner of any outstanding Common Stock or Preferred Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, or (ii) any holder of any Notes which are beneficially owned, directly or indirectly, as of any record date for the determination of stockholders and/or holders of Notes entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock, Preferred Stock and/or Notes ["Excess Shares and/or Notes"] in excess of five percent (5%) of the then-outstanding shares of stock generally entitled to vote as of the record date in respect of such matter ("Excess Shares and/or Notes"), be entitled or permitted to vote any Excess Shares and/or Notes on such matter. For all purposes hereof, any calculation of the number of shares of stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of filing this Restated Certificate of Incorporation.

¹⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.