

one to the shareholders of the Funds, and that it would be in no one's interests for the relationship to be impaired because the Advisers cannot receive fees for the services they provide during the Interim Period. In addition, the fees to be paid during the Interim Period will be unchanged from the fees paid under the Existing Advisory Agreements.

### Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. Each New Advisory Agreement will have the same terms and conditions as the respective Existing Advisory Agreements, except for the effective date, termination date, and escrow provisions.

2. Advisory fees payable by a Fund to an Adviser during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such amounts) will be paid: (a) to the Adviser in accordance with the relevant New Advisory Agreement, after the requisite approval is obtained; or (b) to the Fund, in the absence of such approval.

3. The Trust will hold a meeting of shareholders to vote on approval of the New Advisory Agreements for the Funds on September 30, 1997, or within the 60-day period thereafter.

4. None of the Funds will bear the costs of preparing and filing the application, or any costs relating to the solicitation of the shareholder approval of the Funds' shareholders necessitated by the consummation of the Merger.

5. The Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the New Advisory Agreements caused by the Merger, the Advisers will apprise and consult with the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided will not be diminished in scope or quality.

6. The Board, including a majority of the Independent Trustees, will have approved the escrow provisions of the New Advisory Agreements in accordance with the requirements of section 15(c) of the Act prior to the termination of the Existing Advisory Agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,  
Secretary.

[FR Doc. 97-23600 Filed 9-4-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38989; File No. SR-CHX-97-3]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, Amendments Nos. 1, 2 and 3 by The Chicago Stock Exchange, Inc., and Order Granting Accelerated Partial Approval to the Proposed Rule Change Relating to the Trading of Nasdaq National Market Securities on the Chicago Stock Exchange

August 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 17, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to quotes in the Midwest Automated Execution System ("Max system") for Nasdaq National Market ("Nasdaq/NM") securities. On May 14, 1997, the Exchange submitted Amendment No. 1 to the rule filing to limit the application of the proposed rule change to 150 Nasdaq/NM securities. On July 7, 1997, the Exchange submitted Amendments Nos. 2 and 3 to the rule filing clarifying which 150 Nasdaq/NM securities would be subject to a reduced minimum quotation size. The proposed is described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 relating to the generation of an autoquote when a specialist's quote in a Nasdaq/NM security is exhausted due to an automatic execution. Below is the text of the proposed rule change. Proposed new text is in italics; deleted text is in brackets.

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

## Article XX

### Rule 37. Guaranteed Execution System and Midwest Automated Execution System

(a) Guarantee Executions. The Exchange's Guaranteed Execution System (the BEST System) shall be available to Exchange member firms and, where applicable, to members of a participating exchange who send orders to the Floor through a linkage pursuant to Rule 39 of this Article, in all issues in the specialist system which are traded in the Dual Trading System and NASDAQ/NM Securities. System orders shall be executed pursuant to the following requirements:

1. Eligible Orders. Specialists must accept and guarantee execution on all agency orders in Dual Trading System Issues from 100 up to and including 2099 shares in accordance with this rule. Specialists must accept and execute all agency market orders or marketable limit orders in NASDAQ/NM [s]Securities from 100 up to and including 1000 shares in accordance with this rule. Specialists must accept all agency limit orders in NASDAQ/NM Securities from 100 up to and including 10,000 shares for placement in the limit order book.

2.-7. No change in text.

(b) Automated Executions. The Exchange's Midwest Automated Execution System (the Max System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1)-(6). No change in text.

(7) Execution of NASDAQ/NM [issues] *Securities*. In NASDAQ/NM [Issues] *Securities*, if the specialist is quoting at the NBBO at the time a MAX market or marketable limit order is received, that order shall automatically be filled at such NBBO (after the same time delays specified in paragraph 6 above for Dual Trading System issues) up to the size of the specialist's bid or offer (as the case may be). In such case, the specialist's bid or offer will be decremented by the size of the execution. In the event the specialist's bid or offer is exhausted, the system will generate a quote [ $\frac{1}{8}$  point] *an increment* away from the NBBO *as determined by*

the specialist from time to time, for 1000 shares; provided, however, if the Nasdaq/NM Security became subject to mandatory compliance with SEC Rule 11Ac1-4 on or prior to February 24, 1997, the size of the quote that is generated will be one normal unit of trading (usually 100 shares). If the specialist is not quoting at the NBBO at the time a MAX market or marketable limit agency order is received, such order shall be automatically filled at the NBBO up to the size of the auto-execution threshold if the specialist has not, within 20 seconds after receipt of the order, complied with the manual execution requirement of Rule 43(d) of this Article.

(8)–(13) No change in text.

## 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 statutory 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. The self-regulatory organization 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

On January 3, 1997, the Commission approved certain Exchange rules relating to the trading of Nasdaq/NM securities on the Exchange on a one-year pilot basis, ending in December, 1997.<sup>2</sup> Among other things, the January Order set the auto-execution threshold at 1000 shares or greater for Nasdaq/NM securities. Orders for a size less than or equal to the auto-execution threshold set by the specialist are automatically executed if the CHX specialist is quoting at the National Best Bid or Offer ("NBBO") for the lesser of the size of the order or the specialist's quote. The orders are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is automatically decremented by the size of the execution and, when the specialist's quote is exhausted, the system then generates an autoquote 1/8th

point away from the NBBO for 1000 shares.

The purpose of the proposed rule change is to permit a specialist to autoquote for 100 shares for certain Nasdaq/NM securities<sup>3</sup> and to change the increment by which a specialist can quote away from the NBBO from 1/8th point away to an increment that will be determined by the specialist from time to time. This proposed rule change will conform the CHX rules for Nasdaq/NM securities to the CHX rules on minimum quote size for listed securities.

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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 at the Commission's Public Reference Room, 450 Fifth Street NW.,

Washington, DC 20549. 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-CHX-97-3 and should be submitted by September 26, 1997.

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

With in 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the remainder of the proposed rule change, or

(B) Institute proceedings to determine whether the remainder of the proposed rule change should be disapproved.

### V. Commission's Findings and Order Granting Accelerated Partial Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>4</sup> which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A of the Act, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market.

The Commission believes that the Exchange's rule permitting a specialist to determine the increment at which its quotation is automatically updated may lead to improved price competition. In addition, the constraint that the increment be set at 1/8 is inconsistent with current initiatives to reduce the minimum quotation increment and migrate to decimal pricing in the future.

<sup>2</sup> See Securities Exchange Act Release No. 38119 (January 3, 1997), File No. SR-CHX-96-16 (the "January Order").

<sup>3</sup> The securities are the 150 Nasdaq/NM securities that became subject to the mandatory obligations of SEC Rule 11Ac1-4 on or prior to February 24, 1997.

<sup>4</sup> 15 U.S.C. § 78f(b)(5).

The Commission, therefore, has determined to permanently approve, on an accelerated basis, the proposed rule change permitting a CHX specialist to autoquote in increments as determined by the specialist from time to time.<sup>5</sup>

The Commission believes it is reasonable for the CHX to determine that for competitive reasons it will not continue to require its specialists to maintain a minimum quotation size of 1000 shares in certain Nasdaq/NM securities when Nasdaq market makers' in those securities are permitted a minimum quotation size, for proprietary quotes, of 100 shares.<sup>6</sup> The Commission notes, however, that it has not approved the NASD Pilot on a permanent basis nor has it determined that it should continue past December 31, 1997.<sup>7</sup> The Commission is, therefore, approving the CHX proposal on a pilot basis equal to the limitations of the Nasdaq market makers; 50 securities and until December 31, 1997. Because Nasdaq market makers have been quoting a minimum of 100 shares for the 50 Nasdaq/NM securities in the NASD Pilot since January, 1997, the Commission is approving this part of the proposal on an accelerated basis to allow CHX specialists to also reduce the minimum quotation size in those 50 Nasdaq/NM securities.

The Commission is deferring approval of the proposal to permit CHX specialists to reduce the quotation minimum in an additional 100 Nasdaq/NM securities until comments on the proposal are received and the Commission takes action on the NASD's proposal to expand the NASD Pilot by 100 securities.<sup>8</sup>

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, in part, prior to the thirtieth day after date of publication of notice of filing thereof in the **Federal Register**.

<sup>5</sup> The increment used by the specialists for autoquoting, however, must be an increment that is available for quotation on the exchange by all members.

<sup>6</sup> See Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997), order approving reduction in the minimum quotation size for Nasdaq market makers in fifty Nasdaq/NM securities ("NASD Pilot"). A list of the 50 Nasdaq/NM securities is located on the Nasdaq web site ([www.nasdaq.com](http://www.nasdaq.com)).

<sup>7</sup> See Securities Exchange Act Release No. 38851 (July 18, 1997), 62 FR 39565 (July 23, 1997), approving the extension of the NASD Pilot for a minimum quotation size of 100 shares in 50 Nasdaq/NM securities until December 31, 1997.

<sup>8</sup> See Securities Exchange Act Release Nos. 38513 (April 15, 1997), 62 FR 19369 (April 21, 1997); 38872 (July 24, 1997), 62 FR 40879 (July 30, 1997), (notices of request to expand the number of Nasdaq/NM securities to 150).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-97-3) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97-23601 Filed 9-4-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38993; File No. SR-NASD-97-35]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Regulation of Non-Cash Compensation in Connection With the Sale of Investment Company Securities and Variable Contracts

August 29, 1997.

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 May 7, 1997,<sup>3</sup> the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>9</sup> 15 U.S.C. § 78s(b)(12).

<sup>10</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> On July 15, 1997, the NASD filed Amendment No. 1 to the proposed rule change. On July 23, 1997, the NASD filed Amendment No. 2 to the proposed rule change. On August 28, 1997, the NASD filed Amendment No. 3 to the proposed rule change. Amendment No. 1 made several changes to the proposed rule language and the rule filing. See letter from John Ramsay, Deputy General Counsel, NASD Regulation, Inc. ("NASD Regulation") to Katherine A. England, Assistant Director, Commission, dated July 11, 1997. The changes made by Amendment No. 1 are incorporated into and published in this notice. Amendment No. 2 makes a technical change to Amendment No. 1. See letter from John Ramsay, NASD Regulation to Katherine A. England, Commission, dated July 22, 1997. Amendment No. 3 states that the NASD Board of Governors has reviewed the proposed rule change and that no other action by the NASD is necessary for Commission consideration of the rule proposal. See letter from John Ramsay, NASD Regulation to Katherine A. England, Commission, dated August 27, 1997.

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

The NASD is filing a proposed rule change to NASD Conduct Rules 2820 and 2830 relating to the regulation of non-cash compensation in connection with the sale of investment company securities and variable contracts. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

#### Conduct Rules

##### 2820. Variable Contracts of an Insurance Company

- (a) Application. Unchanged.
- (b) Definitions. (1)-(2) Unchanged.
- (3) *The terms "affiliated member," "compensation," "cash compensation," "non-cash compensation" and "offeror" as used in paragraph (h) of this Section shall have the following meanings:*
  - "Affiliated Member" shall mean a member which, directly or indirectly, controls, is controlled by, or is under common control with a non-member company.
  - "Compensation" shall mean cash compensation and non-cash compensation.
  - "Cash compensation" shall mean any discount, concession, fee, service fee, commission, asset-based sales charge, loan, override, or cash employee benefit received in connection with the sale and distribution of variable contracts.
  - "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of variable contracts that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.
  - "Offeror" shall mean an insurance company, a separate account of an insurance company, an investment company that funds a separate account, any adviser to a separate account of an insurance company or an investment company that funds a separate account, a fund administrator, an underwriter and any affiliated person (as defined in Section 2(a)(3) of the Investment Company Act of 1940) of such entities.
- (c)-(g). Unchanged.
- (h) *Member Compensation.* In connection with the sale and distribution of variable contracts:
  - (1) *Except as described below, no associated person of a member shall accept any compensation from anyone other than the member with which the person is associated. This requirement*