

from Southern, and Southern to sell to the holders, a specified number of shares of common stock of Southern at a future date or dates. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as a part of units ("Stock Purchase Units") consisting of a Stock Purchase Contract and Debt Securities, Preferred Securities or other debt obligations of third parties, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of Southern under the Stock Purchase Contracts. The Stock Purchase Contracts may require Southern or the Financing Subsidiary to make periodic payments to the holders of the Stock Purchase Units or vice versa, and the payments may be unsecured or prefunded on some basis.

Southern also proposes that the proceeds of the Preferred Securities, Debt Securities, Preferred Stock, Stock Purchase Contracts and Stock Purchase Units may be utilized to pay dividends to Southern to the extent that may be permitted under the Act and applicable state law, to acquire the securities of associate companies in transactions that are exempt from section 9(a)(1) of the Act under rule 52(d), to make capital contributions or open account advances to subsidiaries in transactions that are exempt from section 12(b) of the Act under rule 45(b)(4), to acquire the securities of one or more "exempt wholesale generators" ("EWGs"), "foreign utility companies" ("FUCOs") or "exempt telecommunications companies," and as authorized by Commission orders or as permitted under other rules of general applicability (including general corporate purposes such as repayment of indebtedness).

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

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-28423 Filed 10-22-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40545; File No. SR-CHX-98-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Addition of an Interpretation to the Minimum Variation Rule

October 13, 1998.

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 29, 1998,³ 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 CHX. 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

CHX is proposing to add Interpretation and Policy .06 to Article XX, Rule 22 relating to the trading by members in increments smaller than the minimum variation in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System ("ITS") trade-throughs. Proposed new language is in *italics*.

Article XX—Minimum Variation

Rule 22 No text change.

* * * Interpretations and Policies

.01 through .05 No text change.

.06 *Notwithstanding the foregoing and any other rule regarding adherence to the minimum variation, a member may execute orders on the Floor in increments smaller than the minimum variation in order to match bids and offers displayed by other markets for the purpose of preventing Intermarket Trading System trade-throughs, provided, however, a limit order executed on the Exchange must continue to be priced at an increment no less than the current minimum variation for such security, and*

specialists must continue to reflect their principal bids and offers in such increments.

* * * * *

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

In its filing with the Commission, 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Over the past 18 months, a number of self regulatory organizations ("SROs"), including the Exchange, the Pacific Exchange, Inc. ("PCX"), the American Stock Exchange ("Amex"), the Nasdaq Stock Market ("Nasdaq"), the New York Stock Exchange ("NYSE") and the Chicago Board Options Exchange ("CBOE"), have reduced the minimum trading and quotation increments of most equity securities to as little as $\frac{1}{16}$ of one dollar.⁴ Subsequent to the reduction to sixteenths, several third market makers have commenced quoting securities in increments smaller than those approved for trading on the exchanges on which the securities are listed or traded.⁵ Several exchanges have responded by permitting their members to execute trades in these finer

⁴ See Exchange Act Release Nos. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (approving a PCX rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for stocks); 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to $\frac{1}{16}$ for certain Amex-listed equity securities); 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for certain Nasdaq-listed securities); 38897 (August 1, 1997), 62 FR 42827 (August 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for certain NYSE-listed securities); and 39159 (September 30, 1997), 62 FR 52365 (October 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to $\frac{1}{16}$ for stocks).

⁵ For example, Nasdaq systems are capable of trading securities priced under \$10 in increments as fine as $\frac{1}{16}$ of one dollar. Securities priced over \$10 may be traded in increments as fine as $\frac{1}{32}$ of one dollar. As a result, the Nasdaq third market makers may trade Amex listed securities that are traded on CHX and priced at less than \$10 in increments finer than sixteenths.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 was filed on October 13, 1998, the substance of which is incorporated into this notice. Letter from Patricia L. Levy, General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 9, 1998.

increments under certain circumstances.⁶ Like these other exchanges, the CHX believes that it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than is set forth in its existing interpretations and policies. (i.e., $\frac{1}{8}$ for most securities) for the purpose of matching a displayed bid or offer in another market at such smaller increment (i.e., $\frac{1}{8}$, $\frac{1}{16}$ or smaller) for the purpose of preventing ITS trade-throughs. For example, if the best bid on the Exchange is 8 and a bid of $8\frac{1}{8}$ is displayed through ITS in another market center, the Exchange specialist or floor broker may execute a market or marketable limit order at $8\frac{1}{8}$ in order to match the other market's bid. Limit orders entered on the Exchange, however, will continue to be priced at the current minimum trading increments (i.e., usually $\frac{1}{8}$), and orders priced in smaller increments will not be accepted. In addition, specialists will not be permitted to quote in these finer increments.

The proposed amendment will allow CHX traders to match prices disseminated by market makers that may better the CHX quote by an increment finer than the current minimum increment (usually $\frac{1}{8}$). Further, the proposal will enable the Exchange to match prices disseminated by another exchange in the event that another exchange were to reduce its minimum trading increment. Thus, the proposed amendment will assist Exchange members in fulfilling their obligation to obtain the best price for their customers.

While the new interpretation would give members the extra flexibility that they need, the Exchange believes that a member would violate the spirit and intent of this new interpretation and would, most likely, be considered to have engaged in manipulative activity, in the event that the member enters an order in another market in a smaller variation for the express purpose of enabling such member to execute trades on the Exchange at such small increment. For example, if floor broker sent to a third market maker a 100 share limit order to buy that is priced $\frac{1}{8}$ or $\frac{1}{16}$ better than the current quote solely to enable the floor broker to cross a large

block of stock on the Exchange at such better price without a specialist intervention, the Exchange would probably consider the floor broker to have engaged in manipulative activity.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act⁸ in that it is designed to promote just and equitable principles of trade, to remove impediments to 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

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

Written comments were neither solicited nor received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such longer 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 proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

450 Fifth Street, N.W., Washington, D.C. 20549. 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 at 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-98-25 and should be submitted by November 13, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-28199 Filed 10-22-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40556; File No. SR-NASD-98-64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Extending the Arbitrator List Selection Method to Disputes Involving Members and Associated Persons

October 14, 1998.

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 25, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission"), and amended on September 30, 1998 and October 2, 1998,³ the proposed rule change as

⁶ See Exchange Act Release Nos. 40199 (July 14, 1998), 63 FR 39336 (July 22, 1998) (approving PCX rule permitting members to trade in increments smaller than $\frac{1}{8}$, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade-throughs); 40189 (July 10, 1998), 63 FR 38439 (July 16, 1998) (approving Amex rule permitting members to trade in increments smaller than $\frac{1}{8}$, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade-throughs).

⁷ The Exchange believes this is consistent with a recent SEC enforcement action brought against two brothers who used the SEC's Limit Order Display Rule to manipulative the quote to their advantage. See *In re Ian Fishman and Lawrence Fishman*, Admin. Proc. File No. 3-9629 (June 24, 1998). In that case, the Commission stated that the brothers used a limit order "to move the public bid or offer quote, in order to permit [Fishman] to buy or sell a security at a price that otherwise would not have been available in the market," and found that such activity violated Exchange Act Rule 10b-5.

⁸ 15 U.S.C. 78f(b)(5).

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment Nos. 1 and 2 made technical changes to the original rule filing which are incorporated into this notice and order granting accelerated approval. See letters from John M. Ramsay, Vice President and General Counsel, NASD Regulation ("Ramsay") to Katherine A. England, Assistant Director, Division of Market Regulation ("England"), dated September 29, 1998.