rule change without delay and thereby provide an incentive to parties on the Exchange to quote more aggressively as soon as possible. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such 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.[16]

## 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–CBOE–2005–85 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–85. 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 the 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–2005–85 and should be submitted on or before November 18, 2005.

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

**Jonathan G. Katz,**

*Secretary.*

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[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 52652; File No. SR–CHX–2004–17]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend Article XX, Rule 37(a)(3) To Eliminate its Requirement That Specialists Guarantee Execution of Limit Orders When Certain Conditions Occur in Another Market

October 21, 2005.

## I. Introduction

On June 21, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37(a)(3) of its rules to permit, rather than require, CHX specialists to guarantee execution of limit orders when certain conditions occur in another market. On July 5, 2005, the CHX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

## II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37(a)(3), which provides for execution of resting limit orders based on activity in other markets, to eliminate the requirement that CHX specialists guarantee execution of such limit orders when certain conditions occur in another market. For listed issues, the current rule generally obligates a CHX specialist to guarantee execution of limit orders resting in the specialist's book when the issue is being traded in the primary market at a price equal to or better than the limit price. [For Nasdaq securities, the rule permits, but does not require, a CHX specialist to guarantee execution of limit orders resting in the specialist's book, when another market center's quotation locks or crosses the limit price.] The CHX represents that the guarantees set forth in Article XX, Rule 37(a)(3), commonly referred to as ''limit order protection'' or ''primary market protection,'' were voluntarily adopted by the Exchange over 15 years ago to attract order flow.

Under the proposed revision to Article XX, Rule 37(a)(3), the mandate that CHX specialists guarantee execution of resting limit orders for listed issues, based on triggering activity in other markets, would be deleted. Instead, the amended rule would permit CHX specialists to continue to provide such limit order protection guarantees solely on an issue-by-issue basis, on non-discriminatory terms approved by the Exchange. The Exchange's existing functionality providing for automated execution of resting limit orders would remain available for CHX specialists who elect to continue to guarantee limit order protection.[5]

The CHX provided the following rationale for the proposed rule change. First, as the industry has evolved, the Exchange's principal competitors for order flow, namely ''third market'' execution venues and alternative trading systems, do not provide comparable limit order protection guarantees. In addition, CHX order-sending firms now have free access to comprehensive monthly order execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Securities Exchange Act Release No. 51997 (July 8, 2005), 70 FR 40760.

[5] The CHX anticipates that for the foreseeable future, CHX specialists would continue to provide limit order protection voluntarily using the criteria for limit order protection previously set forth in Article XX, Rule 37(a)(3). Should the CHX receive a request from a specialist to alter the voluntary limit order protection criteria and agree to alter the functionality, the Exchange will notify all CHX participants of the change. The Commission believes any such change would need to be filed pursuant to Section 19(b) of the Act.

quality statistics; thus, the CHX believes that ''front-end'' execution guarantees are no longer necessary to attract order flow. Accordingly, the Exchange believes that the guarantee no longer serves a clear competitive purpose. Secondly, since the securities industry converted to decimal trading, the availability of liquidity at a best bid or offer price has declined, making it difficult for the CHX specialist, who chooses to offset his positions in another market, to access liquidity at the price the rule requires him to provide. Consequently, the Exchange believes it is no longer appropriate to mandate that specialists guarantee execution of resting limit orders for listed issues based on activity in other market centers.

## III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of Section 6(b)(5) of the Act [7] because it is designed 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. The Commission agrees that the environment has changed significantly since the Exchange voluntarily enacted its rule-based execution guarantees, and that consequently, the guarantees may no longer serve to foster competition between the markets.

However, the Commission emphasizes that the deletion of the rule-based mandate regarding limit order protection does not in any way affect a CHX specialist's obligation to provide best execution, nor would it modify any other specialist obligations set forth in Article XXX of the CHX Rules. The Exchange must continue its surveillance of order executions to ensure that CHX specialists meet all of their obligations to each order. The Commission further emphasizes that, to the extent limit order protection guarantees are provided on a voluntary, issue-by-issue basis, such guarantees would have to be provided on a non-discriminatory basis.

[6] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–2004–17), as amended, be, and it hereby is, approved.

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

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. E5–5972 Filed 10–27–05; 8:45 am]

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[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–52647; File No. SR–CHX–2005–01]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to the Exchange's Order Priority Rule and the Mandatory Use of Order Match Functionalities

October 21, 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 February 3, 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 Exchange. On September 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On October 6, the Exchange filed 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.

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

The Exchange proposes to amend Exchange Article XXX, Rule 2, Precedence to Orders in Book, to clarify the requirements of the Exchange's priority rule and to require specialists to make use of Exchange-provided order match functionalities. The text of the proposed rule change is available on the Exchange's Web site (*http://www.chx.com/rules/proposed_rules.htm*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated September 16, 2005 (''Amendment No. 1). Amendment No. 1 replaced the original filing in its entirety.

[4] Amendment No. 2 was a partial amendment in which the Exchange corrected errors in the previously filed Exhibit 4. The Exhibit 4 included in Amendment No. 2 replaced the previously filed Exhibit 4 in its entirety.

## 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.

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

1. Purpose

The Exchange's rules generally require Exchange specialists to give precedence to orders in their books for the purchase or sale of securities over orders that originate with the specialists as dealers.[5] Although specialists are not required to yield precedence to professional orders in certain circumstances, specialists are not permitted to trade ahead of customer orders.[6]

The Exchange's systems incorporate several different order match functionalities that are designed to replace proposed specialist executions on a principal basis with executions of eligible customer orders in the specialist's book. These functionalities, among other things, prevent a specialist from manually executing an order on a principal basis when there is a customer

[5] *See* Exchange Article XXX, Rule 2, Precedence to Orders in Book.

[6] If a specialist accepts a professional order for the book that the specialist is not required to accept under the rules and policies of the Exchange, the specialist is not required to yield precedence to that order over the specialist's principal interest if the orders that originate from the specialist and its customer are limit orders at the same price and the specialist is displaying its interest through the quotation system. *See* Exchange Article XXX, Rule 2. Under the Exchange's rules, a ''professional'' order is an order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* Exchange Article XXX, Rule 2, Interpretations and Policy .04.