Applicants seek to amend the Prior Order to permit the New Adviser to enter into and materially amend Sub-Advisory Agreements for the Funds without obtaining shareholder approval. Except for the identity of the parent company, the New Adviser and the Prior Adviser are substantially similar in all material respects. The entire management team of the Prior Adviser has continued in their same capacities with the New Adviser. All key employees of the Prior Adviser have continued their employment with the New Adviser. Applicants also seek to modify condition 6 to the Prior Order to conform with recent precedent.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of section 6(c) of the Act. The New Adviser employs the same manager-of-managers investment management approach as did the Prior Adviser and similarly holds itself out to the public as an investment adviser whose strength, experience and expertise lies in its ability to evaluate, select and oversee those Portfolio Managers who can add the most value to a shareholder's investment in a Fund. While the New Adviser is a new legal entity, its experience in operating as a manager-of-managers comes from the experience of its management and staff, all of whom were previously employed by the Prior Adviser.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities of the Fund as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of the Fund to the public.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the New Adviser has the ultimate responsibility to oversee Portfolio Managers and recommend their hiring, termination and replacement.

3. At all times, a majority of the Board will be persons each of whom is not an ''interested person'' (as defined in section 2(a)(19) of the Act) (the ''Disinterested Trustees''), and the nomination of new or additional Disinterested Trustees will be at the discretion of the then-existing Disinterested Trustees.

4. The New Adviser will not enter into a Sub-Advisory Agreement with any Portfolio Manager that is an affiliated person (as defined in section 2(a)(3) of the Act) of the Trust, the New Adviser or the Funds, other than by reason of serving as a Portfolio Manager to one or more of the Funds (the ''Affiliated Portfolio Manager'') without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Board, including a majority of the Disinterested Trustees, will make a separate finding, reflected in the Fund's Board minutes, that the change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the New Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Portfolio Manager, the New Adviser will furnish the shareholders of the affected Fund with all information about a new Portfolio Manager that would be contained in a proxy statement. This information will include any change in such disclosure caused by the addition of a new Portfolio Manager. The New Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a Portfolio Manager, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

7. The New Adviser will provide general management services to each Fund, including overall oversight responsibility for the general management and investment of each Fund's securities portfolio, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies; (b) evaluate, select and recommend Portfolio Managers; (c) when appropriate, recommend to the Board the allocation and reallocation of a Fund's assets among multiple Portfolio Managers; (d) monitor and evaluate the performance of Portfolio Managers, including their compliance with the Fund's investment objectives, policies and restrictions; and (e) implement procedures to ensure that the Portfolio Managers comply with the Fund's investment objectives, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of the New Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer) any interest in a Portfolio Manager except for: (a) Ownership of interests in the New Adviser or any entity that controls, is controlled by, or is under common control with the New Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1698 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45282; File No. SR–CHX–2001–30]

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

January 15, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on December 21, 2001, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The Commission is publishing this notice to solicit comments on the

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

[2] 17 CFR 240.19b–4.

proposed rule change from interested persons.

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

The CHX proposes to amend its membership dues and fees schedule, effective through June 30, 2002, to provide for continued assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the CHX and at the Commission.

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 and discussed any comments it received regarding the proposed rule change. 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 CHX proposes to change its fee schedule to provide for assessment of a marketing fee of $.01 per share applicable to ''Subject Transactions''[3] in ''Subject Issues'' [4] occurring on or before June 30, 2002. The marketing fee would not be assessed if the specialist trading the Subject Issue elected to forego collection of the marketing fee.

The CHX currently imposes a marketing fee under a provision of the CHX fee schedule that, by its term, would expire on December 31, 2001.[5] Under the system in place until December 31, 2001, the CHX calculates, bills, and collects the marketing fee and then remits the proceeds to the specialist firm that trades the Subject issue. The specialist firm then distributes the funds to order-sending firms in accordance with its payment for order flow arrangements relating to the Subject Issue, or in certain instances, to market makers who have contributed to market share growth. The CHX has also issued quarterly refunds of unspent marketing fee proceeds to market makers, floor brokers, and specialists, on a *pro rata* basis, for amounts in excess of $1,000.

The CHX is currently proposing to: (a) Extend the marketing fee provision until June 30, 2002; (b) modify the definition of Subject Issue to exclude issues other than ETFs' (c) revise the definition of Subject Transaction to include any trade with a customer where the order is delivered to the CHX via the MAX system; and (d) revise procedures to preclude assessment of the marketing fee against specialists in the case of transactions where market makers are exercising their entitlement rights under CHX rules.

The CHX states that the continued imposition of the marketing fee is intended to allocate equitably the financial burden of seeking order flow for Subject Issues. Prior to the establishment of the current fees program, according to the CHX, a CHX specialist trading a particular Subject Issue was the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as any licensing fees that the licensor of the product imposes.[6] The CHX also notes that, prior to the implementation of the current program, CHX market makers that participated in transactions in Subject Issues did not share any of these costs.

By extending the current payment for order flow program, the proposed rule change would continue to allow a specialist trading a Subject Issue to impose the marketing fee in instances where the specialist believes that it would be appropriate to allocate the financial burden of trading the Subject Issue among all those who trade it, including the specialist and market makers. The CHX believes that the proposed rule change will continue to provide specialist trading Subject Issues with sufficient incentive to continued their efforts to attract additional order flow and increase market share.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with section 6(b)(4) of the Act[7] in that it would provide for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

The CHX neither solicited nor received written comments with respect to the proposed rule change.

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the proposed 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 purpose 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. 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 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

[3] ''Subject Transaction'' means (a) any trade with a customer, whether the contra party is a specialist or a market maker, where the order is delivered to the CHX via the MAX system or where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] ''Subject Issue'' means any issue which constitutes an exchange-traded fund (''ETF'') and meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period; and (9b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] *See* Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001) (SR–CHX–2001–10).

[6] Under the proposed rule change, the marketing fee would be assessed only against ETF products, which almost always have an associated licensing fee.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Room. Copies of the 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–2001–30 and should be submitted by February 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–1702 Filed 1–23–02; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45300; File No. SR–NASD–2002–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc.; To Amend NASD Code of Procedure Rule 9522

January 17, 2002.

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 January 4, 2002, 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'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD Regulation. On January 11, 2002, NASD Regulation amended the proposal.[3] NASD Regulation filed the proposal pursuant to section 19(b)(3)(A) of the act,[4] and Rule 19b–4(f)(6) thereunder,[5] 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 persons.

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

NASD Regulation proposes to amend NASD Code of Procedure Rule 9522, Initiation of Eligibility Proceeding; Member Regulation Consideration, to describe in the Rule the cases in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(2)(A) No change.

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h–1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; [or]

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed[.]*;or*

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed.

* * * * *

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

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation 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

NASD Regulation proposes to amend Rule 9522 to expressly describe in the Rule those instances in which the Department of Member Regulation may approve an MC–400 application for relief from NASD eligibility requirements. In August 2000, the SEC approved amendments to Rule 9522 to, among other things, provide the Department of Member Regulation with the discretion to approve an MC–400 application in those cases in which the disqualifying event is excepted from the ''full'' notice requirements of Rule 19h–1 under the Act,[6] but where a ''short form'' notification to the SEC under Rule 19h–1 is still required.[7] The proposed rule change provides a complete description, within Rule 9522, of those cases in which the disqualifying event permits ''short form'' notification to the SEC under Rule 19h–1.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest.

---

[10] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* January 11, 2002 letter from Sarah J. Williams, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC (''Amendment No. 1''). In Amendment No. 1, NASD Regulation provided its rationale for waiver of the 30-day operative delay. *See* Rule 19b–4(f)(6). 17 CFR 240.19b–(f)(6). The 60-day abrogation period runs from January 11, 2002, the date that NASD Regulation filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). NASD Regulation asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay.

[6] 17 CFR 240.19h–1.

[7] *See* Securities Exchange Act Release No. 43102 (August 1, 2000), 65 FR 48266 (August 7, 2000) (SR–NASD–99–76) at 48269.

[8] 15 U.S.C. 78o–3(b)(6).