

securities is appropriate to enhance the competitiveness of Amex executions.<sup>3</sup>

## 2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act<sup>4</sup> in general and furthers the objectives of Section 6(b)<sup>5</sup> in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its member, issuers and other persons using its facilities.

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

The proposed fee change will impose no 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

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 has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing date, 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.

## 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 20549-0609. 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 will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Amex-2002-67 and should be submitted by September 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46321; File No. SR-CHX-2001-32]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange, Inc., To Amend CHX Article XX, Rule 37 Governing Automatic Execution of Market and Marketable Limit Orders

August 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 26, 2001, 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 June 19, 2002, the CHX amended the proposal.<sup>3</sup> The CHX again amended the proposed rule change on July 26, 2002.<sup>4</sup>

<sup>8</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> See June 18, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 1"). Amendment No. 1 completely replaced and superseded the original filing.

<sup>4</sup> See July 25, 2002 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1. Thus, the CHX is soliciting comment on Amendment No. 2.

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 CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The text of the proposed rule change is available at the Commission and at the CHX.

### 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 proposes to amend CHX Article XX, Rule 37, which governs, among other things, automatic execution of market and marketable limit orders. The proposed rule change is intended to provide CHX order-sending firms with greater flexibility relating to automatic execution of orders by CHX specialists. The principal components of the proposed rule change are: (a) In the case of Dual Trading System issues, commonly referred to as listed issues, permitting immediate execution (or execution in 15 seconds or less) of orders if there is no expression of market interest by a person physically present at the specialist's post; and (b) refinement of existing CHX algorithms relating to automatic execution of partial orders and price improvement of such orders.

*Addition of Variable AutoEx to MAX Trading System for Dual Trading System Issues.* The CHX proposes to amend CHX Article XX, Rule 37(b)(6), which governs automatic execution of orders for Dual Trading System issues. The CHX filed the proposed rule change to respond to the needs of order-sending firms that have guaranteed their

<sup>3</sup> Amex issued a circular (02-0610 dated August 6, 2002) stating that these fees will be waived through September 30, 2002.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

customers that customer orders will be filled within 10 seconds or less. These customers represent a significant portion of the orders that are routed to the CHX, and their respective business models dictate such execution time guarantees.

Under the existing Rule, an order for a Dual Trading System issue generally is not eligible for immediate automatic execution given the requirement that 15 seconds elapse before execution, in order to permit exposure of the order to the market. Under the proposed rule, specialists trading Dual Trading System issues would be permitted to reduce this 15-second period to zero seconds (*i.e.*, permit an immediate execution), so long as there was no person physically present at the specialist's post expressing market interest.

It is anticipated that the proposed rule change would satisfy the concerns of order-sending firms that require immediate executions, while still preserving the fundamental protections of an auction market environment.

*Refinement of Automatic Execution Sequences and Price Improvement Algorithms for Partial Orders.* Following implementation of a proposed rule change previously approved by the Commission relating to automatic execution of partial orders and price improvement of portions of orders,<sup>5</sup> Exchange staff has worked extensively with specialist firm management and order-sending firm representatives to further refine applicable automatic execution sequences and price improvement algorithms.

Simply stated, the proposed refinements would continue to provide for automatic execution of partial orders if an order-sending firm elects partial executions, with potentially varying price improvement consequences based on the size of the order. An order-sending firm that declines partial executions would remain eligible for price improvement if its order is automatically executed, and the specialist would be precluded from providing multiple price improvement treatments for portions of the order.

Finally, the proposed rule change corrects previous typographical errors and notations, and deletes rule provisions that have been rendered obsolete by subsequent rule changes and interpretations.

## 2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the

requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and with the requirements of section 6(b).<sup>6</sup> In particular, the Exchange believes the proposed rule is consistent with section 6(b)(5) of the Act<sup>7</sup> in that 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.

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

The Exchange 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*

No written comments were either solicited or received.

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

Within 35 days of the date of 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 CHX consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

## 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 20549-0609. 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 will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2001-32 and should be submitted by August 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46324; File No. SR-MSRB-2002-08]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Electronic Mail Contacts, Operative on September 8, 2002

August 8, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2002-08). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 Board is filing herewith a proposed rule change relating to a technical amendment to its Rule G-40 and Form G-40, on electronic mail contacts. The proposed rule change will become operative on September 8, 2002. Below is the text of the proposed rule

<sup>5</sup> See Securities Exchange Act Release No. 44778 (September 7, 2001), 66 FR 48075 (September 17, 2001) (SR-CHX-2001-11).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</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.