

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 CBOE. All submissions should refer to File No. SR-CBOE-00-35 and should be submitted by November 13, 2000.

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

After careful review, the Commission finds that the proposal is consistent with Section 6 of the Act.<sup>10</sup> In particular, the Commission finds the proposal consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission finds that it is in the public interest to encourage the Exchange to expand its implementation of ABP. The broader the implementation of ABP, the more likely customer limit orders will, where appropriate, be given priority over other interest on the Exchange. On the other hand, implementation of ABP may also expose market makers to an unfair risk of financial loss where the market in an underlying stock moves significantly and quickly in a direction that makes a price established by a booked order substantially better than the price calculated by CBOE's Autoquote formula.<sup>12</sup> The Commission approves this extension of the Pilot in order to permit the mitigation of these risks while encouraging the Exchange to more broadly implement ABP. At the same time, this extension will provide the Commission an opportunity to evaluate, while the Pilot is still in effect, the Trigger and ABP Split price proposals

designed to reduce the number of RAES rejects pursuant to the Pilot.

Finally, the Commission plans to evaluate the continued impact of the Pilot on ABP executions, as well as the impact of any related rule proposals approved and implemented during the Pilot, based on statistical data provided by the Exchange. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (SR-CBOE-00-35) is hereby approved through February 21, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,  
Deputy Secretary.

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43444; File No. SR-CHX-00-32]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Partial Automatic Execution of Orders for NASDAQ/NM Issues

October 13, 2000.

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 hereby is given that on October 10, 2000, the Chicago Stock Exchange, Incorporated ("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 the Exchange. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>4</sup> 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 the CHX rule governing automatic execution of orders for NASDAQ/NM issues. Specifically, the Exchange proposes to amend CHX Article XX, Rule 37(b)(7)(ii), to provide order-sending firms with the option to select partial automatic execution of orders that are larger than the specialist's auto-execution threshold in instances where a specialist's quote is away from the national best bid or offer ("NBBO"). The text of the proposed rule change is available at the Commission or 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 regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange prepared summaries, set forth in Section 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 the CHX rules governing the execution of NASDAQ/NM Securities. Specifically, the Exchange proposes to amend CHX Article XX, Rule 37(b)(7)(ii) to give order-sending firms the option to receive partial automatic executions if their orders are larger than the specialist's auto-execution threshold when the specialist's quote is away from the NBBO, or have these orders manually executed in their entirety as they are handled under the current rule. The proposed amendments are intended to bring the Exchange's rules in line with the practices that currently exist in other markets with respect to the trading of NASDAQ/NM Securities.

will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b-4(f)(6) under the Act. *Id.*

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> Original Notice at 63 FR 66952.

<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> The Exchange has represented that the proposed rule change: (i) Will not significantly affect the protection of investors or the public interest; (ii)

CHX Article XX, Rule 37, commonly referred to as the "BEST Rule," among other things, guarantees automatic executions if an order falls within certain size parameters, *i.e.*, the auto-acceptance threshold and the auto-execution threshold. The auto-execution threshold is an order size designated by the specialist for each issue, up to which size orders will be executed automatically at the NBBO.<sup>5</sup>

CHX Article XX, Rule 37(b)(7)(ii) currently provides that in instances where a NASDAQ/NM specialist's quote is not at the NBBO, an order that is of a size greater than the auto-execution threshold for the security will not be automatically executed, but will be filled manually in accordance with the specialist's obligations under the BEST Rule, and the manual handling requirements of CHX Rule 43(d) of Article XX.

Some of the Exchange's order-sending firms believe that prompt execution of "partial fills" may be advantageous for their customers in many instances. Therefore, the Exchange proposes this rule change to provide an alternative to these firms that would permit partial automatic executions of orders larger than the specialist's auto-execution threshold, upon the election of an order-sending firm. Amended CHX Rule 37(b)(7) would provide that in instances where a NASDAQ/NM specialist's quote is not at the NBBO, an order that is of a size greater than the auto-execution threshold for the security will be designated as an open order and filled manually in accordance with the specialist's obligations under the BEST Rule and the manual handling requirements of Rule 43(d) of Article XX, unless the customer sending the order previously has indicated its election to have such orders filled on a partial basis, *i.e.*, filled automatically up to the auto-execution threshold, with the balance of the order to be designated as an open order.

The Exchange believes that the proposed rule change is to the advantage of those order-sending firms and their customers that have a strong preference for quick executions even in circumstances where less than the entire order is confirmed as filled. As set forth above, the foregoing rule change is intended to place the Exchange's rules in line with existing market practice relating to the trading of NASDAQ/NM Securities. The proposed rule change thus necessarily contemplates certain distinctions between transactions in

Dual Trading System issues and NASDAQ/NM issues. The Exchange's Rules Committee and its Committee on Floor Procedure, both of which are populated by specialists in both issues, approve all such distinctions. Both committees concur that the proposed rule change does not place specialists on unequal footing based on the type of issue traded, but merely reflects the distinctions between the markets for Dual Trading System issues and NASDAQ/NM issues.

## 2. Statutory Basis

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

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>8</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>9</sup> The proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative until thirty days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the Exchange has

given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become operative today.<sup>10</sup> The Commission finds that it is appropriate to accelerate the operative date of the proposed rule change because the change will provide investors who have a preference for quick executions the efficiency of automatic execution, even in circumstances where less than the entire order is confirmed as filled. For this reason, and because use of the partial execution feature is completely voluntary on the part of investors, the Commission finds that designation of the proposal to become operative today is consistent with the protection of investors and the public interest. Further, the Commission expects that with the advent of this proposed rule, more investors will receive executions at the NBBO because they will be able to elect to receive automatic executions that are guaranteed to be at the NBBO, instead of relying entirely on less certain manual executions.

At any time within 60 days of the filing of the 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 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

<sup>10</sup> 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).

<sup>5</sup> If the specialist's quote is at the NBBO, the execution size is subject to the specialist's firm quote obligations.

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

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

<sup>8</sup> 15 USC 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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 at the Commission's Public Reference Room. Copies of the 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-00-32 and should be submitted by November 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43441; File No. SR-NASD-00-55]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delivery Requirement of a Margin Disclosure Statement to Non-Institutional Customers

October 12, 2000.

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 September 5, 2000, 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 ("SEC" or "Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On September 26, 2000, the NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> 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

NASD Regulation is proposing to add a new NASD Rule 2341 to require its members to deliver to their non-institutional customers, prior to or at the opening of a margin account, a specified disclosure statement that discusses the operation of margin accounts and the risk associated with trading on margin. NASD Regulation also proposes to require NASD members to deliver the specified disclosure statement to their non-institutional customers with margin accounts on an annual basis. Below is the test of the proposed rule change. Proposed new language is in *italics*.

#### Rule 2341. Margin Disclosure Statement

(a) *No member shall open a margin account, as specified in Regulation T of the Board of Governors of the Federal Reserve System, for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, the following margin disclosure statement:*

*Your brokerage firm is furnishing this document to you to provide some basic facts about purchasing securities on margin, and to alert you to the risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by your firm. Consult your firm regarding any questions or concerns you may have with your margin accounts.*

*When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from your brokerage firm. If you choose to borrow funds from your firm, you will open a margin account with the firm. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan and, as a result the firm can take action, such as issue a*

applicable requirements, an NASD member firm can force the sale of any of the securities in any of the customer's accounts held at the firm and such liquidations are not limited to the customer's margin account. Additionally, NASD Regulation deletes the phrase "under the law" from its original filing to clarify that maintenance margin requirements are requirements of self-regulatory organizations. See Letter from Alden S. Adkins, General Counsel and Senior Vice President, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 25, 2000.

*margin call and/or sell securities in any of your accounts held with the member, in order to maintain the required equity in the account.*

*It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:*

- You can lose more funds than you deposit in the margin account. A decline in the value of securities that are purchased on margin may require you to provide additional funds to the firm that has made the loan to avoid the forced sale of those securities or other securities in your account(s).*

- The firm can force the sale of securities in your account(s). If the equity in your account falls below the maintenance margin requirements of the firm's higher "house" requirements, the firm can sell the securities in any of your accounts held at the firm to cover the margin deficiency. You also will be responsible for any short fall in the account after such a sale.*

- The firm can sell your securities without contacting you. Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if a firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.*

- You are not entitled to choose which securities in your account(s) are liquidated or sold to meet a margin call. Because the securities are collateral for the margin loan, the firm has the right to decide which security to sell in order to protect its interests.*

- The firm can increase its "house" maintenance margin requirements at any time and is not required to provide you advance written notice. These changes in firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account(s).*

- You are not entitled to an extension of time on a margin call. While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.*

<sup>11</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> In Amendment No. 1, NASD Regulation proposes to amend the proposed rule language. Specifically, Amendment No. 1 clarifies that if the equity in a customer's margin account falls below