

Agreement”), among CL&P and WMECO on the one hand and several banks with Citibank, N.A. as Administrative Agent on the other. The Regulated Credit Agreement provides a credit facility of up to \$500 million comprised of borrowing commitments. The Regulated Credit Agreement has a termination date of November 16, 2001.

On November 9, 2000, NAEC entered into an unsecured \$200 million 364-day Term Credit Agreement with four banks, which was approved by the NHPUC.

Yankee Gas currently has a revolving line of credit of \$60 million, which terminates November 16, 2001.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of February 26, 2001.

A closed meeting will be held on Thursday, March 1, 2001, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A), and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will be:

institution and settlement of injunctive actions; and

institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: February 22, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-4747 Filed 2-22-01; 12:17 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43974; File No. SR-CHX-01-03]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Stock Exchange, Incorporated Extending Pilot Rules Relating to the Securities Industry Transition to Decimal Pricing

February 16, 2001.

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 19, 2001, the Chicago Stock Exchange, Incorporated (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change, as described in Items I and II below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

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

The Exchange proposes to extend, through July 9, 2001, pilot rule changes amending certain CHX rules that have been impacted by the securities industry transition to decimal pricing. Specifically, the pilot rule changes amend portions of Article XX, Rule 37. The pilot currently is due to expire on February 28, 2001. The text of the proposed rule change is available at the Commission and 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 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

On August 24, 2000, the Commission approved, on a pilot basis through February 28, 2001, rule changes amending certain CHX rules that were impacted by the securities industry transition to decimal pricing. ³ The Exchange proposes to extend the current pilot through July 9, 2001. ⁴

The Exchange proposes continued pilot approval of three groups of changes to Article XX, Rule 37, which would: (1) Allow specialists to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the “pending auto-stop” functionality in the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer (“ITS BBO”) or National Best Bid or Offer (“NBBO”) size. The Exchange believes that decimal pricing is likely to continue to affect the CHX trading environment, and the interaction between the CHX and the national market system, in a manner that necessitates extension of these pilot rule amendments, which are designed to minimize any adverse impacts of decimalization on trading operations. ⁵

Manual or automatic execution of limit orders when a trade-through

³ See Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000) (SR-CHX-00-22).

⁴ The Exchange notes that following approval of the pilot rule changes, which included changes to the Exchange's then-current price improvement programs, the Commission approved the Exchange's proposed new price improvement program, called SuperMAX 2000, which is a voluntary price improvement program that will govern price improvement of all orders for issues trading in decimal price increments. See Securities Exchange Act Release No. 43742 (December 19, 2000) 65 FR 83119 (December 29, 2000) (SR-CHX-00-37). Because SuperMAX 2000 is intended to replace the Exchange's previous price improvement programs, the Exchange is not requesting an extension of the pilot rule changes that dealt with price improvement.

⁵ This proposal does not concern “typographical” amendments to CHX rules, where the sole change that was proposed by the Exchange was the substitution of a decimal price increment for the fractional price increment set forth in certain CHX rules. Those amendments were the subject of a separate submission previously approved by the Commission on a permanent basis. See Securities Exchange Act Release No. 43256 (September 6, 2000), 65 FR 55659 (September 14, 2000) (SR-CHX-00-25).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

occurs. The existing pilot amended Article XX, Rule 37(b)(6) to allow a specialist to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market. The rule previously provided that agency limit orders (that are not marketable when entered into the Exchange's MAX automatic execution system) would automatically be filled at the limit price when there was a price penetration of the limit price in the primary market for the subject security. Under the pilot, automatic execution of these limit orders would no longer be mandated. A CHX specialist may elect to provide automatic execution of agency limit orders at the limit price when there is a price penetration of the limit price in the primary market for the subject security. The obligation to fill the order at the limit price remains the same under either election. The Exchange believes that this pilot amendment reasonably anticipates the impact that the decimal pricing environment will have on the national market system, where the number of small orders executed at multiple price levels may increase the number of inadvertent trade-throughs that could lead to unwarranted automated executions of large orders in a CHX specialist's limit order book, exposing the specialist to substantially increased liability.

Removal of the pending auto-stop functionality. For similar reasons, the pilot amends Article XX, Rule 37(b)(10) to eliminate the Exchange's "pending auto-stop" function. Under the rule prior to the pilot, all agency market orders from 100 to 599 shares that were not automatically executed, because, among other things, the order size exceeded the quantity at the ITS BBO, were designated as "pending auto-stop orders." These orders were stopped, and due an execution at the ITS BBO thirty seconds after entry into the Exchange's MAX system, unless the order has been canceled, executed, manually stopped, or put on hold during the thirty second period. Once an order was stopped, a text message to that effect was automatically sent to the order-sending firm.

The Exchange believes that this feature is not practicable in the decimal pricing environment, giving the anticipated dramatic increases in quote traffic and the systems issues associated with generating administrative notifications regarding pending auto-stop. Additionally, trading in decimals will significantly increase stock price points and, as a result, will likely decrease the quantities associated with

the ITS BBO price point and increase the rate of change in the ITS BBO price point. Both of these factors will reduce a specialist's ability to offset the pending auto-stop guarantee to a degree that the Exchange is not now able to quantify. Under these circumstances, the Exchange believes that it would be imprudent to continue to provide such a guarantee.

Changes relating to relationship between automatic execution guarantee and BBO size. The Exchange believes that the rationale set forth above relating to the likely decrease in the quantities associated with the BBO price point also supports the Exchange's pilot rule change permitting CHX specialists to designate automatic execution guarantee levels that are not dependent on the BBO. Under the previous versions of the CHX rule,⁶ an order was not eligible for automatic execution on the Exchange if the order was larger than the then-current BBO size. If decimalization results in decreased quantities at each price point, this decrease would effect a corresponding decrease in the number of orders eligible for automatic execution on the Exchange. To accommodate customer demand for automatic execution, the Exchange believes that an extension of the pilot rule is necessary. The pilot rule permits a CHX specialist to designate, on an issue-by-issue basis, automatic execution guarantees that could exceed the BBO size. This election would be strictly voluntary and thus would not operate to increase the exposure of any specialist who desired to maintain the protections of the existing rule.

2. Statutory Basis

The CHX 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. In particular, the CHX believes that the proposed rule is consistent with Section 6(b)(5)⁷ of the Act 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

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

⁶ Art. XX, Rule 37(b)(11).

⁷ 15 U.S.C. 78f(b)(5).

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

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.¹⁰

The Commission believes that the proposed rule change should continue to facilitate a smooth transition to decimal pricing. For example, proposed Rules 37(b)(10) and (11) should help to ensure that customer demand for automatic execution will continue to be satisfied in a decimals environment. Specifically, proposed Rule 37(b)(11) permits specialists to guarantee, on an issue-by-issue basis, automatic executions of orders that exceed the ITS BBO and NBBO size at the specified price. The Commission believes that decimal pricing could result in decreased quantities at each price, which would result in a corresponding decrease in the number of orders eligible for automatic execution on the Exchange. Thus, the proposed rule change benefits investors by providing specialists the flexibility to automatically execute orders larger than the current ITS BBO or NBBO size.

In addition, prior to the pilot, Rule 37(b)(10) required all agency market orders from 100 to 599 shares that were not automatically executed because, among other things, the order exceeded the ITS BBO quantity, to be designated as "pending auto-stop orders." These orders were stopped and due an execution at the ITS BBO thirty seconds after entry into the Exchange's MAX system. As stated above, the Commission believes that decimal pricing may result in decreased

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

quantities at each price, which in turn would result in fewer automatic executions. The Commission believes that the proposed rule change may help to alleviate this concern by eliminating the pending auto-stop function. The Commission believes that the removal of this provision will help to ensure that demand for automatic execution continues to be satisfied.

The Commission believes that the proposal is consistent with the protection of investors and the public interest and therefore 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**. The proposed rule change is designed to permit the Exchange to continue, with a minimum of disruption to trading operations, its transition to quoting in decimals, which began in all Exchange listed securities on January 29, 2001, and is scheduled to begin in certain Nasdaq securities on March 12, 2001. In addition, the Commission notes that the proposed rule change is being approved on a pilot basis only, through July 9, 2001. In light of these factors, the Commission finds good cause to approve the proposed rule change on an accelerated basis.

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 submissions, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-CHX-01-03 and should be submitted by March 19, 2001.

V. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-CHX-01-03) is approved through July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-4596 Filed 2-23-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43973; File No. SR-NASD-99-42]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Performance Fee Arrangements

February 15, 2001.

I. Introduction

On September 2, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), submitted to 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 relating to performance fee arrangements.

The **Federal Register** published the proposed rule change for comment on July 21, 2000.³ The Commission received no comments on the proposed rule change. On January 31, 2001, the Association submitted an amendment to the proposed rule change.⁴ This order approves the proposed rule change and grants accelerated approval to Amendment No. 1. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 43030 (July 12, 2000), 65 FR 45414.

⁴ Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 30, 2001 ("Amendment No. 1"). Amendment No. 1 amends NASD Rule 2330(f)(2) to clarify that the rule applies to members or persons associated with members that act as investment advisers, whether or not registered as such, and to add a cross-reference to Rule 205-3 of the Investment Advisers Act of 1940 ("Advisers Act"). Amendment No. 1 also states that NASD Regulation will notify its members of amendments to Rule 205-3 within 90 days through a Notice to Members.

II. Description of the Proposed Rule Change

NASD Rule 2330(f) prohibits members and persons associated with members from sharing in customer account profits and gains except under certain conditions. Subparagraph (f)(1)(A) permits sharing in customer account profits and gains where the firm has authorized it and the sharing is proportionate to the member's or associated person's contributions to the account. Subparagraph (f)(2) permits, under certain conditions, members or registered representatives to charge a performance fee (an advisory fee based on a percentage of the capital gains or capital appreciation of an account). Currently, NASD Rule 2330(f)(2) permits the receipts of a performance fee only if: (i) The member or associated person reasonably believes that the customer account meets certain minimum net worth (\$1,000,000) or amount invested (\$500,000) requirements; (ii) the member or associated person obtains the prior written authorization of the arrangement from the member carrying the account; (iii) the member or associated person reasonably believes that the customer is able to understand the compensation arrangement and its risks; (iv) the compensation agreement is in writing; (v) the member or associated person reasonably believes that the agreement is an arm's length agreement; (vi) the compensation formula takes into account realized and accrued gains and losses over a period of at least one year; and (vii) the member discloses all material information relating to the agreement, including method of compensation and potential conflicts of interest.

According to NASD Regulation, the requirements of NASD Rule 2330(f)(2) have always closely tracked the requirements of Rule 205-3 under the Advisers Act. However, effective August 20, 1998, the Commission amended Rule 205-3 to provide greater flexibility in structuring performance fee arrangements with clients who are financially sophisticated or have the resources to obtain sophisticated financial advice regarding these arrangements.⁵ Because the NASD had incorporated the requirements of Rule 205-3 into NASD Rule 2330(f)(2), when the Commission amended Rule 205-3, NASD Rule 2330(f)(2) was no longer consistent with Rule 205-3.

In order to restore consistency, the proposed rule change would permit members and their associated persons

⁵ See Investment Advisers Act Release No. 1731 (July 15, 1998), 63 FR 39022 (July 21, 1998).