

## V. Commission Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change for a Pilot Period

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>11</sup> and, in particular, Section 6(b)(5) of the Act.<sup>12</sup>

Simultaneous with the filing of this proposal, the Commission received a request for exemptive relief submitted by the Exchange that would allow the Exchange, Exchange members, and vendors that disseminate Exchange quote information, to display and disseminate their quotes for Nasdaq/NM securities in penny increments, while trading in sub-penny increments.<sup>13</sup> By letter dated April 6, 2001, the Division of Market Regulation ("Division"), pursuant to delegated authority under Rules 11Ac1-1(e),<sup>14</sup> 11Ac1-2(g)<sup>15</sup> and 11Ac1-4(d)<sup>16</sup> under the Act, granted a conditional temporary exemption to CHX, CHX members, and vendors that disseminate CHX quote information to permit them to display and disseminate their quotes for Nasdaq/NM securities in rounded, penny increments without a rounding identifier.<sup>17</sup> The exemption expires on July 9, 2001. The Commission notes that the completion of Nasdaq's decimal transition will enable Nasdaq market makers and ECNs to accept and execute subpenny orders on April 9, 2001 and that the Exchange

anticipates implementing subpenny trading in Nasdaq/NM securities at that time. The Commission believes that the proposed rule change should provide protection to customer limit orders in a subpenny trading environment by ensuring that such orders will continue to have access to market liquidity ahead of Exchange specialists in appropriate circumstances.

The Commission finds good cause for granting the Exchange's request for approval of the proposed rule change on a pilot basis prior to the thirtieth day after the day of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Exchange anticipates that it will begin to accept and execute orders in subpenny increments for Nasdaq/NM securities on April 9, 2001, when the Nasdaq Stock Market fully converts to decimals. The Commission believes that granting accelerated approval to the proposed rule change will allow the Exchange to continue to provide protection to customer limit orders in subpenny increments for Nasdaq/NM securities.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (File No. SR-CHX-2001-07) is approved on a pilot basis until July 9, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-441677; File No. SR-CHX-2001-05]

### Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to the Exchange's SuperMAX 2000 Price Improvement Algorithm

April 9, 2001.

#### I. Introduction

On March 16, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or filed with the Securities and Exchange Commission ("Commissin" or "SEC"), 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> a proposed rule change that would amend CHX Article XX, Rule 37(h) to reduce the determinative spread from \$.03 to \$.02 as part of the Exchange's SuperMAX 2000 price improvement program. Notice of the proposed rule change was published for comment in the **Federal Register** on March 23, 2001.<sup>3</sup> This order approves the proposed rule change on an accelerated basis.

#### II. Description of the Proposal

According to the CHX, the primary purpose of the proposed rule change is to increase the number of orders that are eligible for automated price improvement.

On December 19, 2000, the Commission approved SR-CHX-00-37,<sup>4</sup> implementing SuperMAX 2000, the CHX's new price improvement program, which will govern price improvement of all order for issues quoting in decimal price increments. SuperMAX 2000 was designed to afford specialists the flexibility to provide a wide variety of price improvement alternatives, all of which will be equal to or more favorable than alternatives that existed previously at the CHX. SuperMAX 2000 originally provided for price improvement of at least \$.01 on orders of 100 shares where the spread between the national best bid and offer ("NBBO") was \$.03 or greater.

To remain competitive, the CHX proposes that its specialists be permitted (but not obligated) to offer price improvement of \$.01 or better where the NBBO spread is \$.02 or greater. The current determinative spread is \$.03. The proposal would not impact orders for more than 100 shares, in which case the specialist's price improvement options are not contingent on a determinative NBBO spread.

#### III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).<sup>5</sup> Specifically, the

<sup>11</sup> In granting accelerated approval of the proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See Exemptive Request, *supra* note 6.

<sup>14</sup> 17 CFR 240.11Ac1-1(e).

<sup>15</sup> 17 CFR 240.11Ac1-2(g).

<sup>16</sup> 17 CFR 240.11Ac1-4(d).

<sup>17</sup> See letter from Annette L. Nazareth, Director, Division, Commission, to Paul O'Kelly, CHX, dated April 6, 2001. The letter outlines several other conditions to trading in subpenny increments. The Commission will examine data provided by the CHX as specified in this letter, and information provided by all self-regulatory organizations ("SROs") as required by the Commission's order, dated June 8, 2000, concerning decimals implementation. See Securities Exchange Act Release No. 42914 (June 8, 2000). The Commission intends to reconsider the position expressed in its letter dated April 6, 2001 before the expiration of the exemption.

In the June, 2000 order relating to decimals, the Commission directed the SROs to submit (individually or jointly) a study to the Commission regarding the impact of decimal pricing on systems capacity, liquidity, and trading behavior, including an analysis of whether there should be a uniform minimum increment for a security. The order stated that, if an SRO wishes to move to quoting in an increment of less than one cent, the SRO should include a full analysis of the potential impact of such trading on the SRO's market and the markets as a whole.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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> Securities Exchange Act Release No. 44085 (March 19, 2001), 66 FR 16304. In the notice, the Commission stated it would consider granting accelerated approval of the proposed rule change after a 15-day comment period.

<sup>4</sup> Securities Exchange Act Release No. 43742 (December 19, 2000), 65 FR 83119 (December 29, 2000).

<sup>5</sup> 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's

Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)<sup>6</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. The Commission believes that a reduction in the determinative spread from \$.03 to \$.02 may increase the opportunities for price improvement, resulting in a benefit to investors. Additionally, the Commission believes the proposal is reasonable because it contemplates equality among order-sending firms and their customers by mandating that additional price improvement be provided by CHX specialists on an issue-by-issue basis, rather than allowing specialists to distinguish among order-sending firms when designating price improvement levels.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,<sup>7</sup> the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, in view of the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

#### IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)<sup>8</sup> in particular.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-2001-05), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

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

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impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> See footnote 3, *supra*.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44151; File No. SR-ISE-01-09]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC, Relating to Fees Related to Options on the Nasdaq-100 Index Tracking Stock<sup>sm</sup>

April 4, 2001.

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 March 6, 2001, the International Securities Exchange LLC ("ISE" 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. 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 ISE proposes to amend its fee schedule to impose a charge of \$.10 per contract, per side, for transactions in options on the Nasdaq-100 Index Tracking Stock<sup>sm</sup> (excluding transactions by public customers).

#### 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 ISE 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 ISE 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 has entered into a license agreement to use various trademarks regarding the Nasdaq-100 Index<sup>®</sup> in connection with its trading of options on the Nasdaq-100 Index

Tracking Stock<sup>sm</sup>. The purpose of this proposed rule change is to adopt a fee for trading in these options to defray the licensing costs. The ISE believes that charging the participants that trade in the options on the Nasdaq-100 Index Tracking Stock<sup>sm</sup> is the most equitable means of recovering the costs of the license. However, because competitive pressures in the industry have resulted in a waiver of all transaction fees for customer transactions, the ISE does not propose to charge this additional fee with respect to customer transactions. The fee will be charged only with respect to non-customer transactions.

###### 2. Statutory Basis

The Exchange believes that its proposal to amend its fee schedule to impose a charge of \$.10 per contract, per side, for transactions in options on the Nasdaq-100 Index Tracking Stock<sup>sm</sup> (excluding transactions by public customers) is consistent with section 6(b)<sup>3</sup> of the Act, in general, and section 6(b)(4) of the Act,<sup>4</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

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

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

##### C. Self-Regulatory Organization's Statement on Comments on 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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder. 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 purposes of the Act.

<sup>3</sup> 15 U.S.C. 78f(b).

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

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

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

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