

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47468; File No. SR-CHX-2003-03]

### 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

March 7, 2003.

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 hereby is given that on February 26, 2003, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange 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 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 March 1, 2003, to change the criteria under which its existing marketing fee would be assessed. 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 had 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 currently assesses a marketing fee under a provision of the CHX fee schedule that, by its terms, expires on December 31, 2003.<sup>3</sup> The

proposed change to the CHX fee schedule would modify, effective March 1, 2003, the criteria that govern the assessment of the CHX's marketing fee.

The CHX's marketing fee currently is assessed, in an amount equal to \$.01 per share, when "Subject Transactions"<sup>4</sup> in "Subject Issues" occur on the CHX's trading floor. A "Subject Issue" is any exchange-traded fund where (a) the average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two month period and (b) market maker share participation in the issue exceeds 5% for each month during the same two-month period.

The CHX proposes to change the definition of Subject Issue by reducing the required market maker share participation from 5% to 1% of the shares traded in an issue. According to the CHX, when the marketing fee was initially adopted, the 5% market-maker participation threshold was included to minimize the administrative burden on the CHX by reducing the likelihood of issues sporadically and temporarily qualifying for the program.<sup>5</sup> The CHX now believes, however, that the 5% threshold may soon have the unintended consequence of sporadically and temporarily excluding from the program an exchange-traded fund ("ETF") that has qualified for the program every month since the program began. While the CHX continues to believe that some minimum thresholds are needed, it proposes to reduce the

(SR-CHX-2001-10) (announcing immediate effectiveness of the new marketing fee provision to the CHX fee schedule through December 31, 2001); Securities Exchange Act Release No. 45282 (January 15, 2002), 67 FR 3517 (January 24, 2002) (SR-CHX-2001-30) (extending program through June 30, 2002); Securities Exchange Act Release No. 46233 (July 19, 2002), 67 FR 48960 (July 26, 2002) (SR-CHX-2002-19) (extending program through July 31, 2002); Securities Exchange Act Release No. 46297 (August 1, 2002) 67 FR 51612 (August 8, 2002) (SR-CHX-2002-25) (extending program through December 31, 2002); and Securities Exchange Act Release No. 47163 (January 10, 2003), 68 FR 2597 (January 17, 2003) (CHX-2002-39) (extending program through December 31, 2003).

<sup>4</sup> "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 Exchange via the MAX system or where compensation is paid to induce the routing of the order to the Exchange; 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.

<sup>5</sup> In administering the program, the CHX must identify the issues and transactions covered by the fee, assess and collect the fee from CHX members, distribute the fee to the appropriate specialist firms and, where necessary, refund undistributed fees to the firms that have paid them. When issues move into and out of the program, the CHX is required to re-tool its systems that identify Subject Transactions and make other changes in its administrative procedures.

monthly market-maker participation threshold to 1%. The CHX believes that this change will reduce the possibility that an ETF that consistently qualifies for the program might on occasion become temporarily disqualified and thereby increase an administrative burden that the threshold was designed to mitigate.

It is the CHX's intention that the marketing fee will equitably allocate the financial burden of seeking order flow for Subject Issues. According to the CHX, without the marketing fee, the CHX specialist trading a Subject Issue would be the sole bearer of the often-substantial costs associated with attracting order flow to the CHX, as well as licensing fees assessed by the licensor of the product.<sup>6</sup> Conversely, according to the CHX, market makers participating in transactions in Subject Issues do not currently share any of these costs. The proposed rule change would allow a specialist trading a Subject Issue to elect (or decline) assessment of the marketing fee in instances where the specialist believes that it is appropriate for at least a part of the financial burden of trading the Subject Issue to be allocated among those trading the Subject Issue. The CHX believes that the proposed rule change will provide specialists trading Subject Issues with sufficient incentive to continue 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<sup>7</sup> because it provides 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 Received From Members, Participants or Others

The CHX has not received any written comments with respect to this change to the marketing fee.

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

The foregoing rule change has become effective pursuant to section 19(B)(3)(A)

<sup>6</sup> The marketing fee is assessed only against ETF products, which often have an associated licensing fee.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 44646 (August 2, 2001), 66 FR 41641 (August 8, 2001)

of the Act<sup>8</sup> and rule 19b-4(f)(2) thereunder<sup>9</sup> because it establishes or changes a due, fee or other charge imposed by the CHX. At any time within 60 days after the filing of the rule change, the Commission may summarily abrogate the 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 20549-0609. 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 CHX. All submissions should refer to File No. SR-CHX-2003-03 and should be submitted by April 4, 2003.

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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47470; File No. SR-NASD-2003-31]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot With Respect to Amendments to NASD Rule 2520, Margin Requirements for Security Futures Contracts

March 7, 2003.

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 5, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Exchange Act,<sup>3</sup> and paragraph (f)(6) of rule 19b-4 under the Act,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission.<sup>5</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 proposed rule change extends until March 20, 2003, the effectiveness of the pilot program ("Pilot") amending NASD rule 2520 ("Margin Requirements") to establish margin requirements for security futures contracts. On January 24, 2003, the Commission approved the amendments to NASD rule 2520 on a pilot basis ending March 6, 2003.<sup>6</sup>

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

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

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

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

<sup>5</sup> The NASD has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

<sup>6</sup> See Securities and Exchange Act Release No. 47244, 68 FR 5317 (February 3, 2003). Specifically, the Pilot allows NASD to facilitate the trading in security futures in securities accounts for those NASD members that are not also members of the NYSE while, at the same time, considering any comments it receives on the amendments to rule 2520 relating to margin requirements for security futures contracts.

#### 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 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. NASD 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 November 15, 2002, NASD filed with the Commission a proposed rule change to amend NASD rule 2520 to establish margin rules for security futures contracts.<sup>7</sup> On January 15, 2003, NASD filed Amendment No. 2 to the proposed rule change requesting that the Commission approve the proposed rule change on a pilot basis under the same terms as the Commission approval on a pilot basis of the amendments to New York Stock Exchange, Inc. ("NYSE") rule 431.<sup>8</sup> The SEC approved the proposed rule change, as amended, on a pilot basis until March 6, 2003.<sup>9</sup>

NASD proposes to extend this Pilot from March 6, 2003 until March 20, 2003, to allow NASD additional time to review comments it has received regarding the amendments<sup>10</sup> and also to ensure consistency with the amendments to NYSE rule 431 relating

<sup>7</sup> See Securities and Exchange Act Release No. 46995 (December 13, 2002), 67 FR 78543 (December 24, 2002) (Notice of Filing of a Proposed Rule Change and Amendment No. 1 to NASD Rule 2520 Relating to Margin Rule Amendments for Security Futures Contracts (SR-NASD-2002-166)). See also letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, ("Division"), Commission, dated November 22, 2002 ("Amendment No. 1"). Amendment No. 1 made non-substantive technical changes to the proposed rule text.

<sup>8</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated January 15, 2003 ("Amendment No. 2"). See also Securities and Exchange Act Release Nos. 46782 (November 7, 2002), 67 FR 69052 (November 14, 2002) (SR-NYSE-2002-53) and 47129 (January 3, 2003), 68 FR 2094 (January 15, 2003) (SR-NYSE-2003-01).

<sup>9</sup> See *supra* note 6.

<sup>10</sup> The Commission received one comment letter on NASD's proposed rule change. See letter from Edward J. Joyce, President and Chief Operating Officer, Chicago Board Options Exchange, Inc. ("CBOE"), to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

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