

("P/A") Orders,<sup>3</sup> as defined in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the "Linkage Plan"). On March 31, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> The **Federal Register** published the proposed rule change, as amended, for comment on April 23, 2004.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approved the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.<sup>6</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>7</sup> which requires, among other things, that the rules of the Exchange provide for the equitable allocation of reasonable dues fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that the proposed rule change, which would apply retroactively to July 1, 2003 an existing program that rebates transaction and trade match fees that DPMs incur when they trade against a customer order that underlies a P/A Order the DPM sent through the Intermarket Option Linkage ("Linkage"), and that credits the DPMs up to an additional 50% of such transaction and trade match fees (the "50% rebate"),<sup>8</sup> will offset some of the fees that the DPMs have incurred for submitting P/A Orders through the Linkage since shortly after the full implementation of the Linkage. Moreover, the Commission notes that the proposed rule change clarifies that the DPM is eligible for the 50% rebate only when a DPM that sends a P/A Order incurs additional fees from

another Participant for the execution of such a P/A Order, and clarifies that the aggregate amount of the 50% rebate for all DPMs will be limited to no more than the total amount of fees that the Exchange earns from fees generated by inbound Linkage transaction and trade match fees.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CBOE-2004-13), as amended, be, and it 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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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49774; File No. SR-CHX-2003-24]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Inc. Relating to the Definition of Primary Market

May 26, 2004.

#### I. Introduction

On August 14, 2003, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission"), 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 to permit the Exchange's Rules Subcommittee to designate the primary market in each listed issue for purposes of determining limit order execution guarantees to be offered on the CHX. On January 29, 2004, the CHX amended the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on March 24, 2003.<sup>4</sup> The Commission received no comment letters with respect to the proposal.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

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

<sup>5</sup> See Letter from Kathleen Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 28, 2004 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the CHX's original 19b-4 filing in its entirety.

<sup>6</sup> See Securities Exchange Act Release No. 49437 (March 17, 2003), 69 FR 13924.

On May 12, 2004, the CHX again amended the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended by Amendment Nos 1 and 2. Because there was a mistake in the language of the proposed rule change as previously published, the Commission is publishing the language in this order.

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

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## CHICAGO STOCK EXCHANGE RULES

### Article XX—Guaranteed Execution System and Midwest Automated Execution System

\* \* \* \* \*

#### Rule 37

(a) Guaranteed Executions

\* \* \* \* \*

(1)–(2) No change to text.

(3) Execution of Agency Limit Orders. Subject to Interpretation and Policy .10 ("Exempted Trade-throughs"), all agency limit orders in Dual Trading System issues will be filled under the following circumstances:

(a) Exhaustion of primary market bid or offer. When the bid or offering at the limit price has been exhausted in the primary market (as *designated by the Rules Subcommittee pursuant to Interpretation and Policy .07* [defined in the CTA Plan]), agency limit orders will be executed in whole or in part, based on the rules of priority and precedence, on a share for share basis with trades executed at the limit price in the primary market.

\* \* \* \* \*

#### Interpretations and Policies

\* \* \* \* \*

.07 [[Reserved for future use]]  
*Unless otherwise authorized by the Exchange's Board of Governors, in designating the "primary market" for purposes of Rule 37(a)(3) of this Article XX, the Rules Subcommittee shall designate the initial listing market for a security as the primary market, unless that security is traded by either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("Amex"), in which case the primary market shall be the NYSE (for the securities it trades) or*

<sup>5</sup> See Letter from Kathleen Boege, Associate General Counsel, CHX, to Nancy Sanow, Assistant Director, Division, Commission, dated May 11, 2004 ("Amendment No. 2"). Amendment No. 2 replaces and supersedes the CHX's original 19b-4 filing and Amendment No. 1 in their entirety. Amendment No. 2 only makes a technical correction to the proposed rule text; therefore, it is not subject to notice and comment.

<sup>3</sup> A "P/A Order" is defined as an order for the principal account of a Market Maker that is authorized to represent Customer orders, reflecting the terms of a related unexecuted Customer order for which the Market Maker is acting as agent. See Section 2(16) of the Linkage Plan.

<sup>4</sup> See Letter from Chris Hill, Attorney, CBOE, to Nancy Sanow, Assistant Director, Commission, dated March 26, 2004 ("Amendment No. 1"). In Amendment No. 1, the CBOE submitted a new Form 19b-4, which replaced and superseded the original filing in its entirety.

<sup>5</sup> See Securities Exchange Act Release No. 49575 (April 16, 2004), 69 FR 22110.

<sup>6</sup> In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>8</sup> See Securities Exchange Act Release No. 49341 (March 1, 2004), 69 FR 10492 (March 5, 2004) (Notice of Filing and Immediate Effectiveness of SR-CBOE-2004-08).

*the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever exchange is the initial listing market shall be designated as the primary market. If the initial listing market is a market other than the NYSE or the AMEX, but the subject security is traded by both the NYSE and the AMEX, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.*

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## II. Description of the Proposal and Amendment Nos. 1 and 2 Thereto

The CHX submitted a proposed rule change and Amendment Nos. 1 and 2 thereto to amend CHX Article XX, Rule 37(a)(3)(a), which governs execution of resting limit orders based on certain conditions in the primary market and to add proposed *Interpretation and Policy* .07. Specifically, the proposed rule change would permit the Exchange's Rules Subcommittee to designate the primary market in each listed issue for purposes of determining limit order execution guarantees to be offered on the CHX instead of using the current CTA Plan definition of a primary market.

Under the proposed change, as amended, the Exchange's Rules Subcommittee would be given the authority to define the primary market for listed securities, for purposes of determining the limit order execution guarantees offered on the Exchange. As an initial matter, the Rules Subcommittee intends to designate the initial listing market for a security as the primary market, unless that security is traded by either the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange LLC ("Amex"); if the security is traded by one of those markets, then the primary market would be the NYSE (for the securities it trades) and the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever of the two is the initial listing market would be designated as the primary market.<sup>6</sup> If the initial listing

market is a market other than the NYSE or the Amex, but the subject security is traded by both the NYSE and the Amex, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, 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 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 allowing the CHX's Rules Subcommittee to define the primary market for listed securities instead of using the current CTA Plan definition of primary market for purposes of determining limit order execution guarantees on the CHX should help to limit the continual redesignation of what the primary market is for a particular security. The Commission further believes that the proposed rule change, as amended, should help to alleviate any confusion for CHX order-sending firms and their customers as to what constitutes the primary market in a particular security. Finally, the Commission believes that the proposed rule change, as amended, should assist the CHX's Rules Subcommittee in consistently designating a market that is a significant source of liquidity, to the benefit of customers whose orders are routed to the CHX.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulation thereunder applicable to a national securities exchange, and, in particular, section 6(b)(5) of the Act.<sup>8</sup>

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-2003-24) and Amendment Nos. 1 and 2 are approved.

voluntary functionality, but will not list all of those different designations.

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

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

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

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. 34-49772; File No. SR-CHX-2004-08]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Amend the CHX Membership Dues and Fees Schedule To Provide a Tape Credit of 50% to Specialists Trading Tape A and Tape B Securities

May 26, 2004.

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 January 30, 2004, 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, II and III below, which Items have been prepared by the Exchange. On May 18, 2004, the CHX filed 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, as amended, 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 (the "Fee Schedule"), effective February 1, 2004, to provide a tape credit of 50% to specialists trading Tape A and Tape B securities. 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 Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements

<sup>10</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> Amendment No. 1 completely replaced and superseded the original proposed rule change.

<sup>6</sup> If the Rules Subcommittee identifies a different designation for all listed securities traded on the Exchange, the Exchange will notify its order-sending firms of those Exchange-wide changes and file those changes with the Commission as an interpretation of an existing rule pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1). If, however, the Rules Subcommittee responds to the fragmentation in the market by identifying different designated markets for different securities, the Exchange will file, pursuant to Rule 19-4(f)(1), a new interpretation confirming that the Rules Subcommittee has identified different designated markets in different securities for purposes of this