

not regular members or regular member lessors as of June 10, 1993 from participation in the Fund. With regard to these participants, the Commission notes that, before they become lessors, the Exchange gave them written notice that they would no longer be participants in the Fund if this proposal were approved. Further, the Commission previously published this rule change for comment and received no adverse comments regarding this disparate treatment.²⁷ Additionally, the Commission believes that it is reasonable for the Exchange to make a distinction in treatment between participants who became inactive members of the Exchange with the expectation that they would be participants in the Fund and members who had no such expectation.²⁸ Similarly, the Commission is unaware of any reason why the Exchange's proposal to phase-in the full death benefit over a four year period for all new members should not be approved.²⁹

Finally, the Commission believes that the changes in the Fund assessment are consistent with Section 6(b)(4) of the Act, which requires the equitable allocation of reasonable dues and fees among members and persons using exchange facilities.³⁰ The Commission notes that, with one exception, the assessment applies equally to all members³¹ and that there is always at least one individual connected to each

membership who has the right to participate in the Fund.

IV. Conclusion

In summary, the Commission believes that the changes relating to the Exchange's membership structure will provide the Exchange and its members with increased flexibility without causing any substantive changes in the operation of the Exchange. Further, the Commission believes that the changes relating to the Exchange's Gratuity Fund should provide enhanced benefits to a wider range of members.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³² that the proposed rule change (SR-Amex-95-08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³³

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35711; File No. SR-CHX-95-12]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding Depository Eligibility Requirements

May 12, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 26, 1995, the Chicago Stock Exchange, Incorporated ("CHX") 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 primarily by CHX. The Commission is publishing this notice to solicit comments from interested persons.

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

CHX proposes to amend Rule 7 of Article XXVIII of its rules relating to the depository eligibility requirements for issuers that desire to list their securities on 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, CHX 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, CHX will adopt a uniform depository eligibility rule for issuers that desire to list their securities on the CHX. The uniform rule has been developed by the Legal and Regulatory Subgroup of the U.S. Working Committee of the Group of Thirty in coordination with each of the national securities exchange and the National Association of Securities Dealers ("NASD"). It is anticipated that each national securities exchange and the NASD will file rule changes proposing adoption of depository eligibility standards substantially similar to CHX's proposed rule and will seek to make such changes effective contemporaneously with the effective date of the transition from a five-day ("T+5") to a three-day ("T+3") settlement cycle. The transition is set to occur June 7, 1995.³

The proposed rule change will require issuers to ensure that securities to be listed on CHX have been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.⁴ This requirement will not apply to a security if the terms of such security cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

The proposed rule change sets forth additional requirements that must be met before a security will be deemed to be "depository eligible," as such term is used in Article XXII, Rule 37 of the CHX rules ("Book-Entry Settlement

²⁷ See Securities Exchange Act Release No. 35411 (Feb. 22, 1995), 60 FR 11153 (March 1, 1995).

²⁸ In approving this provision, the Commission does not mean to dismiss the comment of S.G. Marx and Associates Inc. regarding the Exchange's alleged delay in the approval of the membership of one of the company's nominees until after June 10, 1993 so that, under the proposal, such member would not be able to participate in the Gratuity Fund. The Commission believes that such allegation speaks to whether the Exchange applied its rules in a fair and impartial manner, rather than the advisability of the provision in question and on that basis is approving this order. The Commission emphasizes that such approval should not be interpreted as addressing the merits of the above allegation in any manner.

²⁹ As discussed *supra* at note 17 and the accompanying text, the phase-in schedule does not apply to persons who are already participants or who become participants by virtue of these amendments.

³⁰ The Commission notes that the proposed change, when combined with the provision that allows current lessees to "opt-out" of participation in the Fund, could result in a membership being required to pay an assessment to the Fund, notwithstanding that no one connected with such membership would be a participant in the Fund. The comment letter of S.G. Marx & Associates Inc. discussed this situation. See Marx Letter, *supra*, note 3.

³¹ See note 20, *supra*, for a discussion of the exception regarding certain options principal memberships.

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² The Commission has modified the language in these sections.

³ Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (adoption of Rule 15c6-1) and 34952 (November 9, 1994), 59 FR 59137 (change of effective date of Rule 15c6-1 from June 1, 1995 to June 7, 1995).

⁴ 15 U.S.C. 78q-1 (1988).

Requirements").⁵ The proposed rule specifies different requirements for depository eligibility depending upon whether a new issue is distributed by an underwriting syndicate before or after the date a securities depository system is available for monitoring repurchases of the distributed shares by syndicate members ("flipping tracking system").

Currently, a flipping tracking system is being developed that will include a securities depository service that (i) can be activated upon the request of the managing underwriter for a period of time that the managing underwriter specifies, (ii) in certain circumstances, will require the delivering participant to provide to the depository information sufficient to identify the seller of such shares as a precondition to the processing of book-entry delivery instructions for distributed shares, and (iii) will report to the managing underwriter the identity of any other syndicate member or selling group member whose customer(s) sold distributed shares (but will not report to the managing underwriter the identity of such customer[s]) and, in certain circumstances, will report to such syndicate member or selling group member the identity of such customer(s). Prior to the availability of a flipping tracking system, the managing underwriter may delay the date a security is deemed "depository eligible" for up to three months after trading has commenced in the security. After the availability of a flipping tracking system, a new issue will be deemed to be depository eligible upon commencement of trading on CHX.

The proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it is designed to promote just and equitable principals of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CHX believes that no burden will be placed on competition as a result of the proposed rule change.

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

No written comments have been solicited or received. CHX will notify the Commission of any written comments received by CHX.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which CHX consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

CHX has requested accelerated effectiveness of the proposed rule change in order that the rule can become effective on June 7, 1995.⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 in the Commission's Public Reference Section, 450 5th Street, N.W., Washington, D.C. 20549. Copies of such filings will also be available for inspection and copying at the principal office of CHX. All submissions should refer to the file number SR-CHX-95-12 and should be submitted by June 13, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35722; File No. SR-CHX-95-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Automatic Execution of Limit Orders

May 16, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 31, 1995, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on May 5, 1995, filed Amendment No. 1 to the proposed rule change,¹ as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 reactivate its system enhancement relating to the automatic execution of limit orders² with one modification. This system enhancement was originally approved by the Commission as a one-year pilot program. See Securities Exchange Act Release No. 32124 (Apr. 13, 1993), 58 FR 21325 (approving File No. SR-MSE-92-03) ("Pilot Approval Order"). The original one-year pilot program lapsed on April 15, 1994 without the Exchange filing for an extension or permanent approval.³

The proposed automatic execution feature ("Auto-Ex") will operate by comparing the size of the CHX-entered limit order against the amount of stock ahead of that order in the primary market when the issue is trading in the primary market at the limit price.⁴ The

¹ See letter from Craig Long, Foley & Lardner, to Glen Barrentine, Senior Counsel, SEC, dated May 4, 1995. In Amendment No. 1, the Exchange requests that the rule filing be approved on a one-year pilot basis and makes certain clarifying changes to the text of Item I.

² A limit order is an order to buy or sell a stated amount of a security at a specified price or at a better price.

³ In the Pilot Approval Order, the Commission described its concerns with the program and requested that the Exchange submit a report detailing the use of the pilot. The Exchange, however, did not submit the report because specialists on the Exchange made little or no use of the pilot program. Telephone conversation between Craig Long, Foley & Lardner, and Jennifer Choi, SEC, on April 17, 1995.

⁴ In the original pilot program, the Auto-Ex was to operate by comparing the size of CHX-entered limit

⁵ Pursuant to Article XXII, Rule 37 of the CHX rules, trades by a member in depository eligible securities generally must be settled by book-entry through a securities depository.

⁶ 15 U.S.C. 78f(b)(5) (1988).

⁷ *Supra* note 3 and accompanying text.

⁸ 17 CFR 200.30-3(a)(12) (1994).