

Requirements").<sup>5</sup> 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 Act<sup>6</sup> 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.

<sup>5</sup> 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.

<sup>6</sup> 15 U.S.C. 78f(b)(5) (1988).

**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.<sup>7</sup>

**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.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-12518 Filed 5-22-95; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>7</sup> *Supra* note 3 and accompanying text.

<sup>8</sup> 17 CFR 200.30-3(a)(12) (1994).

[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,<sup>1</sup> 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 orders<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> The

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

comparison will be made against the primary market quotation size. The Auto-Ex system will keep track of all prints in the primary market and will automatically execute the limit order once sufficient size prints in the primary market.<sup>5</sup> As additional limit orders at the same price are received by the specialist, comparisons will be made and entered based upon the shares ahead of those limit orders at the time of receipt, including shares ahead on the CHX. The Auto-Ex feature will not permit a limit order to be filled out of sequence. Limit orders will not be compared for Auto-Ex purposes until such time as the limit price equals the bid or offer, as the case may be, quoted in the primary market for the first time.<sup>6</sup>

The Auto-Ex feature will execute limit orders in accordance with existing CHX rules.<sup>7</sup> Auto-Ex will be available for all dually traded issues; however, specialists will be permitted to choose Auto-Ex on an issue by issue basis.<sup>8</sup> Generally, the Exchange believes that specialists will choose to use Auto-Ex for issues that, based on experience, have demonstrated reliable and accurate quotes in the primary market.<sup>9</sup> Limit orders not subject to Auto-Ex will be "flagged" with a prompt to alert the

order against the amount of stock ahead of that order in the "consolidated market" rather than in the primary market. This change is the one modification made by the Exchange to the original pilot program. Telephone conversation with Craig Long, Foley & Lardner, and Jennifer Choi, SEC, on April 17, 1995.

<sup>5</sup> For example, assume a CHX specialist receives an agency limit order to buy 2,000 shares of ABC at  $\frac{1}{2}$ . The primary market quotation is  $\frac{1}{2}$  bid,  $\frac{3}{4}$  offered, 5,000 shares bid and 5,000 shares offered, meaning there are 5,000 shares ahead of the CHX order. The Auto-Ex system will automatically execute the entire CHX limit order after 7,000 shares print at  $\frac{1}{2}$  in the primary market. However, when more than 5,000 but less than 7,000 shares print at  $\frac{1}{2}$  in the primary market, the order will be flagged with a flashing prompt to alert the specialist that the order may be due at least a partial fill. See CHX Article XX, Rule 37(a) governing primary market protection of certain limit orders.

<sup>6</sup> For example, if the primary market quotation is  $\frac{1}{4}$  bid,  $\frac{1}{2}$  offered, 4,000 shares bid and 4,000 shares offered, and a CHX specialist receives a limit order to buy 2,000 shares for  $\frac{1}{8}$ , that limit order will not be compared against the amount of stock ahead of the order in the primary market until such time as the  $\frac{1}{4}$  bid is exhausted and the  $\frac{1}{8}$  bid becomes the best bid. At that time, the size that is disseminated with the  $\frac{1}{8}$  bid is the size against which the limit order is compared for Auto-Ex purposes.

<sup>7</sup> The CHX specialist will be the contra-side of all Auto-Ex trades. See Securities Exchange Act Release No. 32124 (Apr. 13, 1993), 58 FR 21325 (approving File No. SR-MSE-92-03).

<sup>8</sup> The CHX will limit a specialist's ability to activate and then deactivate Auto-Ex regularly by: (1) Only permitting a specialist to deactivate Auto-Ex on a certain day each month and (2) requiring that issues remain on Auto-Ex for a minimum of five trading days.

<sup>9</sup> Telephone conversation between Craig Long, Foley & Lardner, and Glen Barrentine and Jennifer Choi, SEC, on May 3, 1995.

specialist that a fill may be due. The proposal to establish an Auto-Ex feature applies only to non-marketable limit orders.<sup>10</sup> It is not applicable to marketable limit orders or to market orders.<sup>11</sup> The text of the proposed rule change is as follows [new text is italicized]:

#### Article XX

##### Rule 37(b)

###### (12) Automatic Execution of Limit Orders.

*A Specialist may voluntarily choose to activate a feature of MAX that automatically executes limit orders on a specialist's book at the limit price after both of the following conditions are met: (1) the issue is trading at the limit price in the primary market, and (2) enough transactions in the issue are executed in the primary market at prices which are equal to the limit price of the order such that the size associated with such transactions are, in aggregate, equal to or greater than the sum of (a) the size displayed at the limit price in the primary market when the limit order was entered on the specialist's book, plus (b) the size of the limit order. This feature can be activated on a stock-by-stock basis only. Once activated, it must remain activated for a minimum of five trading days and can only be deactivated on a certain day (to be determined by the Exchange from time to time) each month.*

## 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 self-regulatory organization 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.

<sup>10</sup> Under CHX Rule 37(b)(7), specialists generally are required to automatically execute nonmarketable agency limit orders at the limit price when there is a price penetration of the limit price in the primary market.

<sup>11</sup> A limit order is called "marketable" when the prevailing best offer (bid) is equal to or less (greater) than the limit buy (sell) order price. CHX Rule 37(b)(7) provides for the automatic execution at the BBO or better of all limit orders that are marketable when entered into the Exchange's automated execution system ("MAX") provided that such orders are of a certain size and are eligible for execution under CHX rule 37(a).

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

#### 1. Purpose

The purpose of the proposed rule change is to reactivate the CHX's Auto-Ex feature for limit orders in order to further automate the CHX's trading floor functions and in order to improve the CHX's performance in filling limit orders.

By providing for automatic execution of limit orders in accordance with existing Exchange rules, the CHX is eliminating the need for the manual operation required of specialists in determining when and to what extent limit orders are due fills based on primary market prints. The manual effort expended by specialists in filling limit orders that are entitled to primary market protection is often time-consuming and can result in errors, particularly when there is heavy trading volume. The present proposal will, therefore, directly benefit customers because it will result in more timely fills while eliminating errors resulting from manual execution.

The Auto-Ex feature will not change or amend any CHX trading rules, nor will it cause or allow limit orders to be filled under different parameters than under existing rules. Auto-Ex will only automate the manner in which limit orders are filled. The CHX will continue to monitor specialist execution of limit orders through the Market Regulation/Surveillance Department. In addition, CHX specialists will continue to be responsible for their books to the same degree as they are now under the manual execution system for limit orders.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

### 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.

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

No written comments were either solicited or received.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 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 the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

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

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-92-11 and should be submitted by June 13, 1995.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35720; File No. SR-DTC-95-06]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Modifying the Same-Day Funds Settlement System to Accommodate the Overall Conversion to Same-Day Funds Settlement for Securities Transactions

May 16, 1995.

On March 22, 1995, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-DTC-95-06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on April 21, 1995.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Description of the Proposal

DTC currently processes the money settlements related to different types of securities transactions in either the next-day funds<sup>3</sup> settlement ("NDFS") system or the same-day funds<sup>4</sup> settlement ("SDFS") system. The NDFS system is used primarily for the money settlement of equity, corporate debt, and municipal debt issue transactions. The SDFS system began operation in 1987 and is used primarily for the money settlement of transactions in commercial paper and other money market instruments ("MMIs").<sup>5</sup>

DTC and the National Securities Clearing Corporation ("NSCC") jointly have issued three memoranda which describe DTC's and NSCC's respective plans for converting their payment

systems to SDFS.<sup>6</sup> DTC's sections of the memoranda describe its plan to combine its NDFS and SDFS systems into a single system which will be based on the design of the current SDFS system with some modifications. DTC's and NSCC's plans are in accord with the 1989 recommendation of the international Group of Thirty<sup>7</sup> that all securities transactions should settle in same-day funds.<sup>8</sup>

Under the conversion plan, all issues currently settling in DTC's NDFS system will be transferred to the SDFS system on a single day, which DTC anticipates will occur in the fourth quarter of 1995 or the first quarter of 1996.<sup>9</sup> In order to assure an efficient conversion, certain modifications to the current SDFS system will be implemented at various times during 1995 prior to the overall conversion date. The purpose of the current rule change is to convert DTC's current SDFS system Participants Fund to an all cash fund and to modify certain risk management controls and other features of the SDFS system. The Participants Fund for the NDFS system will not be affected by this rule change. The rule change implements a number of the modifications described in the 1994 Memorandum.<sup>10</sup>

Currently, the SDFS system Participants Fund consists of cash and securities and has separate components for money market instruments and for other SDFS system securities.<sup>11</sup> The rule change converts DTC's SDFS system Participants Fund to an all-cash fund with no separate component for the MMI Program.<sup>12</sup> The rule change also

<sup>6</sup> The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 1, 1992) ("1992 Memorandum"); The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 26, 1993) ("1993 Memorandum"); The Depository Trust Company and National Securities Clearing Corporation, Memorandum (July 29, 1994) ("1994 Memorandum").

<sup>7</sup> The Group of Thirty was established in 1978 as an independent, nonpartisan, nonprofit organization composed of international financial leaders whose focus is on international economic and financial issues.

<sup>8</sup> Group of Thirty, Clearance and Settlement Systems in the World's Securities Markets (March 1989) ("Group of Thirty Report").

<sup>9</sup> Only one DTC Participants Fund will be needed when the NDFS system and the SDFS system are combined into a new SDFS system.

<sup>10</sup> *Supra* note 6 and accompanying text.

<sup>11</sup> Currently, the SDFS system Participants Fund consists of approximately \$253 million in cash and \$567 million in pledged securities.

<sup>12</sup> Under the conversion plan, the SDFS system Participants Fund will consist of \$400 million in cash. Based on current activity levels, DTC believes that a \$400 million cash-only Participants Fund will provide sufficient protection against present liquidity and credit risks. Pursuant to its rules, DTC may change the formulas used to determine a participant's required deposit or require a

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Securities Exchange Act Release No. 35613 (April 17, 1995), 60 FR 19971.

<sup>3</sup> The term "next-day funds" refers to payment by means of certified checks that are for value on the following day.

<sup>4</sup> The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

<sup>5</sup> For a description of the SDFS system, refer to Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 [File No. SR-DTC-87-04] (order granting temporary approval to DTC's SDFS settlement service); 26051 (August 31, 1988), 53 FR 34853 [File No. SR-DTC-88-06] (order granting permanent approval to DTC's SDFS settlement service); 33958 (April 22, 1994), 59 FR 22878 [SR-DTC-93-12] (order temporarily approving DTC's MMI settlement program through April 1, 1994); and 35655 (April 30, 1995), 60 FR 22423 [File No. SR-DTC-95-05] (order temporarily approving DTC's MMI settlement program through April 30, 1996).