

("Commission") the proposed rule change 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 amend Rule 37 of Article XX of the Exchange's Rules.

### **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.

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

##### **1. Purpose**

As described below, the purpose of the proposed rule change is to amend Rule 37 of Article XX (the BEST Rule and the MAX Rule) to correct the definitions of best bid or offer found throughout this Rule so as to reflect existing Exchange practice.

#### **Definition of Best Bid and Offer**

The Exchange's BEST Rule (Art. XX, Rule 37(a)) currently states that, subject to certain exceptions, all agency market orders are guaranteed an execution on the basis of the best bid disseminated pursuant to SEC Rule 11Ac1-1<sup>3</sup> on a sell order or the best offer disseminated pursuant to SEC Rule 11Ac1-1 on a buy order (collectively, the national best bid or offer ("NBBO")). While the NBBO is utilized for NASDAQ/NM Securities traded on the Exchange, the Exchange has always utilized the Intermarket Trading System best bid or offer ("ITS BBO")<sup>4</sup> for Dual Trading System Securities (i.e., securities also traded on

the NYSE or the Amex). As a result, instead of using the NBBO definition in the BEST Rule and MAX Rule,<sup>5</sup> the Exchange believes that it is more accurate to describe the BEST Rule guarantee and the MAX Rule executions in terms of the ITS BBO for Dual Trading System issues.

This definitional change merely reflects an inadvertent error in the drafting of the BEST Rule and the MAX Rule and will not result in any systems changes.

##### **2. Statutory Basis**

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5)<sup>6</sup> of the Act, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes that the proposed rule change will not 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**

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange pursuant to Section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (e) of Rule 19b-4 thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change,<sup>9</sup> 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.

### **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, NW., Washington, DC 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Chicago Stock Exchange. All submissions should refer to File No. SR-CHX-97-09 and should be submitted by July 23, 1997.

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. 34-38777; File No. SR-CHX-97-6]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Listing and Trading Standards for Portfolio Depository Receipts**

June 26, 1997.

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 17, 1997,<sup>1</sup>

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

<sup>1</sup> On June 4, 1997, the Exchange filed Amendment No. 1 to this rule filing. Amendment No. 1 serves to supersede entirely the Exchange's rule filing. Therefore, this notice incorporates Amendment No. 1 in its entirety. On June 17, 1997 and June 24, 1997, the Exchange filed Amendment Nos. 2 and 3 respectively; Amendment No. 3 replaces Amendment No. 2 in its entirety and the substance of Amendment No. 3 is incorporated into this

<sup>3</sup> 17 CFR 240.11Ac1-1.

<sup>4</sup> The ITS BBO is defined as the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia or the Intermarket Trading System/Computer Assisted Execution System quote, as appropriate.

<sup>5</sup> The MAX Rule (Art. XX, Rule 37(b)) sets forth the procedures applicable to the automated execution of orders entered into the MAX System.

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

<sup>7</sup> U.S.C. 78s(b)(3)(a).

<sup>8</sup> CFR 240.19b-4.

<sup>9</sup> The 60 day abrogation period commences from June 24, 1997, the date of the submission of the substantive amendment.

the Chicago Stock Exchange, Inc. ("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 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 add Rule 25 to Article XXVIII of CHX's rules relating to the listing and trading of Portfolio Depositary Receipts ("PDRs").

### **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.

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

##### **1. Purpose**

The Exchange proposes to adopt new Rule 25 under Article XXVIII to accommodate the trading of PDRs, securities which are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (i) closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).

Under the proposal, the Exchange may list and trade, or trade pursuant to

unlisted trading privileges, PDRs based on one or more stock indexes or securities portfolios. PDRs based on each particular stock index or portfolio shall be designated as a separate series and identified by a unique symbol. The stocks that are included in an index or portfolio on which PDRs are based shall be selected by the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised as deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

In connection with an initial listing, the Exchange proposes that, for each Trust of PDRs, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b-4 for each Trust. If the Exchange trades a particular PDR pursuant to unlisted trading privileges, the Exchange will follow the listing exchange's determination of the appropriate minimum number.

Because the Trust operates on an open-end type basis, and because the number of PDR holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, twelve months after the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs will be redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in

the trust prospectus. For example, the sponsor of the trust ("Sponsor"), following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount.

*Trading of PDRs.* Dealings in PDRs on the Exchange will be conducted pursuant to the Exchange's general agency-auction trading rules. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of specialists.

With respect to trading halts, the trading of PDRs will be halted, along with the trading of all other listed or traded stocks, in the event the "circuit breaker" thresholds of CHX Article IX, Rule 10A are reached. In addition, for PDRs tied to an index, the triggering of futures price limits for the S&P 500 Composite Price Index ("S&P 500 Index"), S&P 100 Composite Price Stock Index ("S&P 100 Index"), or Major Market Index ("MMI") futures contracts will not, in itself, result in a halt in PDR trading or a delayed opening. However, the Exchange could consider such an event, along with other factors, such as a halt in trading in S&P 100 Index Options ("OEX"), S&P 500 Index Options ("SPX"), or MMI Options ("XMI"), in deciding whether to halt trading in PDRs.

Under the proposed rule change, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Article XXXVI, Rule 19, the Exchange's rule governing trading halts for Basket trading (except that the term "Basket" shall be replaced by "stock index") in exercising its discretion to halt or suspend trading. For a PDR based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

*Disclosure.* Proposed Rule 25 of Article XXVIII requires that members and member organizations provide to all

notice. See letter from J. Craig Long, Attorney, Foley & Lardner, to Ivette Lopez, Assistant Director, Market Regulation, Commission, dated May 27, 1997 ("Amendment No. 1") and letters from David T. Rusoff, Attorney, Foley & Lardner, to Sharon Lawson, Senior Special Counsel, Market Regulation, Commission, dated June 13, 1997 ("Amendment No. 2") and June 18, 1997 ("Amendment No. 3") respectively.

purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series of PDRs is delivered to such purchaser. In this regard, a member or member organization carrying an omnibus account for a non-member broker-dealer will be required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations. The written description must be included with any sales material on that series of PDRs that a member provides to customers or the public. Moreover, other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." Additionally, as noted above, the Exchange requires that members and member organizations provide customers with a copy of the prospectus for a series of PDRs upon request.

Two existing PDRs, Standard & Poor's Depository Receipts ("SPDRs") and Standard & Poor's MidCap 400 Depository Receipts ("MidCap SPDRs"), are traded on the American Stock Exchange ("Amex").<sup>2</sup> CHX is not asking for permission to list SPDRs or MidCap SPDRs at this time, but rather will trade SPDRs and MidCap SPDRs pursuant to unlisted trading privileges once the generic listing standards set forth herein are approved. Pursuant to SEC Rule 12f-5, in order to trade a particular class or type of security pursuant to unlisted trading privileges, CHX must have rules providing for transactions in such class or type of security. The Amex has enacted listing standards for PDRs, and CHX's proposed rule change is designed to create similar standards for PDR listing and/or trading on CHX. As stated above, CHX proposes to trade SPDRs and MidCap SPDRs pursuant to unlisted

trading privileges upon approval of this rule filing.

If at a later time CHX and the issuer of the product desire to list SPDRs and MidCap SPDRs or any other PDRs on the Exchange, the Exchange will request SEC approval for that listing in a separate proposed rule change filed pursuant to Section 19(b) of the Act. Additionally, in the event a new PDR is listed on another exchange using listing standards that are different than current CHX listing standards or the CHX listing standards proposed in this filing, the CHX will file a proposed rule change pursuant to Section 19(b) of the Act to adopt the listing standard before it trades that PDR pursuant to unlisted trading privileges.

Notwithstanding the foregoing discussion concerning the applicability of the Exchange's equity trading rules to PDRs generally, the Intermarket Trading System ("ITS") rules will not be applicable to SPDRs and MidCap SPDRs traded on the CHX pursuant to unlisted trading privileges until SPDRs and MidCap SPDRs are designated as ITS Securities. Currently, ITS cannot accommodate trading in a minimum variation of  $\frac{1}{64}$  and ITS has not made a determination that ITS is applicable to securities trading in  $\frac{1}{64}$ ths. When such changes are made, the CHX intends to request that SPDRs and MidCap SPDRs be designated as ITS Securities. At such time, the ITS rules will apply to trading in SPDRs and MidCap SPDRs.

The current inapplicability of the ITS rules means, among other things, that the ITS trade-through rule will not apply. However, the CHX's BEST Rule, Article XX, Rule 37(a), will still be applicable to SPDRs and MidCap SPDRs, thereby guaranteeing the execution of certain agency orders on the basis of the size and price associated with the best bid (for a sell order) or best offer (for a buy order) among the American, Boston, Cincinnati, Chicago, New York, Pacific, Philadelphia and the Intermarket Trading System/Computer Assisted Execution System quote, which quote is defined in SR-CHX-97-9 as the "ITS BBO."<sup>3</sup> Because SPDRs and MidCap SPDRs are not trade in all of these market centers, for purposes of this filing only, the ITS BBO is limited

to those market centers listed above that trade SPDRs and MidCap SPDRs.<sup>4</sup> For example, if a CHX specialist receives an agency limit order for a SPDR, so long as all of the eligibility requirements of the BEST Rule are met, the specialist will be required to execute that order if there has been a price penetration in the primary market. In addition, if the Amex specialist is disseminating the best quote for SPDRs, the CHX specialist will be required to execute eligible agency market orders for SPDRs at the price quoted on the Amex, even if the CHX specialist is not, himself, quoting at that price. The CHX SPDR and MidCap SPDR specialist will have the ability to monitor the current quotations being disseminated by the Amex specialist on a real-time basis. The quotations for SPDRs and MidCap SPDRs are disseminated through the Consolidated Quotation System and are available for viewing by the CHX specialist at his or her post. Finally, the CHX specialist will have access to the Amex through the Amex's PER System (albeit through a correspondent firm). This will enable the CHX specialist to place limit orders on the Amex specialist's book or send market orders to the Amex specialist for execution against the Amex specialist's quote. These factors should minimize the possibility that a CHX originated trade-through will occur.

With respect to the above discussion concerning disclosure issues, because SPDRs and MidCap SPDRs will be traded pursuant to unlisted trading privileges and will not be listed on the CHX at this time, the CHX does not intend to create its own product description to satisfy the requirements of proposed Rule 25(c) of Article XXVIII, which requires members to provide to purchasers, a written description of the terms and characteristics of SPDRs and MidCap SPDRs in a form approved by the Exchange. Instead, the CHX will deem a member or member organization to be

<sup>4</sup> Under the BEST Rule, Exchange specialists are required to guarantee executions of all agency market and limit orders for Dual Trading System issues from 100 up to and including 2099 shares. Subject to the requirements of the short sale rule, the specialist must fill all agency market orders at a price equal to or better than the ITS BBO. For all agency limit orders in Dual Trading System issues, the specialist must fill the order if: (1) the ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring a fill.

<sup>2</sup> SPDRs and MidCap SPDRs are defined and discussed more fully below.

<sup>3</sup> The Commission notes that SR-CHX-97-9, as amended to remove the phrase "size and price associated with the" from the filing, has become effective. See Securities Exchange Act Release No. 38772 (June 25, 1997). In addition, CHX represents that it will submit a separate rule filing pursuant to Section 19(b)(2) of the Act further amending the BEST Rule to add size and price to the definition of the ITS/BBO. Phone conversation between David Rusoff, Attorney, Foley & Lardner, and David Sieradzki, Attorney, Market Regulation, Commission, on June 17, 1997.

in compliance with this requirement if the member delivers either (i) the current product description produced by the Amex from time to time, or (ii) the current prospectus for the SPDR or MidCap SPDR, as the case may be. It will be the member's responsibility to obtain these materials directly from the Amex and/or the distributor of the SPDR and MidCap SPDR for forwarding to purchasers in the time frames prescribed by CHX and SEC rules. The CHX will notify members and member organizations of this requirement in a notice to members.

The remainder of this section of the filing merely provides background information on SPDRs and MidCap SPDRs. The information, taken mostly from SR-AMEX-94-52 and SR-AMEX-92-18, describes the structure and mechanics of SPDRs and MidCap SPDRs, but is not critical for the SEC's approval of the generic listing standards.

*SPDRs and MidCap SPDRs Generally.* On December 11, 1992, the Commission approved Amex Rules 1000 et seq.<sup>5</sup> to accommodate trading on the Amex of PDRs generally. The Sponsor of each series of PDRs traded on the Amex is PDR Services Corporation, a wholly-owned subsidiary of the Amex. The PDRs are issued by a Trust in a specified minimum aggregate quantity ("Creation Unit") in return for a deposit consisting of specific numbers of shares of stock plus a cash amount.

The first Trust to be formed in connection with the issuance of PDRs was based on the S&P 500 Index, known as Standard & Poor's Depository Receipts ("SPDRs"). SPDRs have been trading on the Amex since January 29, 1993. The second Trust to be formed in connection with the issuance of PDRs was based on the S&P MidCap 400 Index,<sup>6</sup> known as Standard & Poor's Midcap 400 Depository Receipts ("Midcap SPDRs").<sup>7</sup> The Sponsor of the two Trusts has entered into trust agreements with a trustee in accordance with Section 26 of the Investment Company Act of 1940. PDR Distributors, Inc. ("Distributor") acts as underwriter of both SPDRs and MidCap SPDRs on an agency basis. The Distributor is a

registered broker-dealer, a member of the National Association of Securities Dealers, Inc., and a wholly-owned subsidiary of Signature Financial Group, Inc.

*SPDRs.* The Trustee of the SPDR Trust will have the right to vote any of the voting stocks held by the Trust, and will vote such stocks of each issuer in the same proportion as well other voting shares of that issuer voted.<sup>8</sup> Therefore, SPDR holders will not be able to directly vote the shares of the issuers underlying the SPDRs.

The Trust will issue SPDRs in exchange for "Portfolio Deposits" of all of the S&P 500 Index securities, weighted according to their representation in the Index.<sup>9</sup> An investor making a Portfolio Deposit into the Trust will receive a "Creation Unit" composed of 50,000 SPDRs.<sup>10</sup> The price of SPDRs will be based on a current bid/offer market. Amex has designated  $\frac{1}{64}$ ths as the minimum fraction for trading in SPDRs. The CHX has proposed this same minimum variation for the trading of SPDRs on the CHX. SPDRs will not be redeemable individually, but may be redeemed in Creation Unit size (i.e., 50,000 SPDRs). Specifically, a Creation Unit may be redeemed for an in-kind distribution of securities identical to a Portfolio Deposit.<sup>11</sup> PDR Distribution Services, Inc., a registered broker-dealer, will act as underwriter of SPDRs on an agency basis.

*MidCap SPDRs.* All orders to create MidCap SPDRs in Creation Unit size aggregations, which has been set at 25,000, must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee.

<sup>8</sup>The Trustees will abstain from voting if the stocks held by the Trust cannot be voted in proportion as all other shares of the securities are voted.

<sup>9</sup>A Portfolio Deposit also will include a cash payment equal to a pro rata portion of the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, plus or minus an amount designed to compensate for any difference between the net asset value of the Portfolio Deposit and the S&P 500 Index caused by, among other things, the fact that a Portfolio Deposit cannot contain fractional shares.

<sup>10</sup>The Trust is structured so that the net asset value of an individual SPDR should equal one-tenth of the value of the S&P 500 Index.

<sup>11</sup>An investor redeeming a Creation Unit will receive Index securities and cash identical to the Portfolio Deposit required of an investor wishing to purchase a Creation Unit on that particular day. Since the Trust will redeem in kind rather than for cash, the Trustee will not be forced to maintain cash reserves for redemptions. This should allow the Trust's resources to be committed as fully as possible to tracking the S&P 500 Index, enabling the Trust to track the Index more closely than other basket products that must allocate a portion of their assets for cash redemptions.

To be eligible to place orders to create MidCap SPDRs as described below, an entity or person either must be a participant in the Continuous Net Settlement ("CNS") system of the National Securities Clearing Corporation ("NSCC") or a Depository Trust Company ("DTC") participant. Upon acceptance of an order to create MidCap SPDRs, the Distributor will instruct the Trustee to initiate the book-entry movement of the appropriate number of MidCap SPDRs to the account of the entity placing the order. MidCap SPDRs will be maintained in book-entry form at DTC.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to certain specified adjustments. The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit." The Exchange anticipates that the term of the MidCap SPDR Trust will be 25 years.

*Issuance of MidCap SPDRs.* Upon receipt of a Portfolio Deposit in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of MidCap SPDRs, which aggregate number is referred to as a "Creation Unit." The Exchange anticipates that a Creation Unit will be made up of 25,000 MidCap SPDRs.<sup>12</sup> Individual MidCap SPDRs can then be traded in the secondary market like other equity securities. Portfolio Deposits are expected to be made primarily by institutional investors, arbitrageurs, and the Exchange specialist.

The Trustee or Sponsor will make available (1) on a daily basis, a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (2) on a minute-by-minute basis throughout the day, a number representing the value (on a per MidCap SPDR basis) of the securities portion of a Portfolio Deposit in effect on such day; and (3) on a daily basis, the accumulated dividends, less

<sup>12</sup>PDRs may be created in other than Creation Unit size aggregations in connection with the DTC Dividend Reinvestment Service ("DRS").

<sup>5</sup>See Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

<sup>6</sup>The S&P MidCap 400 Index is a capitalization-weighted index of 400 actively traded securities that includes issues selected from a population of 1,700 securities, each with a year-end market-value capitalization of between \$200 million and \$5 billion. The issues included in the Index cover a broad range of major industry groups, including industrials, transportation, utilities, and financials.

<sup>7</sup>See Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995).

expenses, per outstanding MidCap SPDR.

The Amex has set the minimum fractional trading variation for MidCap SPDRs at  $\frac{1}{64}$  of \$1.00. The CHX has proposed this same minimum variation for MidCap SPDRs.

*Redemption of MidCap SPDRs.* MidCap SPDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell MidCap SPDRs in the secondary market at any time, they must accumulate at least 25,000 (or multiples thereof) to redeem them through the Trust. MidCap SPDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date a request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day a redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees may be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

*Distributions for MidCap SPDRs.* The MidCap SPDR Trust will pay dividends quarterly. The regular quarterly ex-dividend date for MidCap SPDRs will be the third Friday in March, June, September, and December, unless that day is a New York Stock Exchange holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of MidCap SPDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date will be distributed. The Trustee will compute on a daily basis the dividends

accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee.

The MidCap SPDR Trust intends to make the DTC DRS available for use by MidCap SPDR holders through DTC participant brokers for reinvestment of their cash proceeds. The DTC DRS is also available to holders of SPDRs. Because some brokers may choose not to offer the DTC DRS, an interested investor would have to consult his or her broker to ascertain the availability of dividend reinvestment through that broker. The Trustee will use the cash proceeds of MidCap SPDR holders participating in the reinvestment to obtain the Index securities necessary to create the requisite number of SPDRs.<sup>13</sup> Any cash remaining will be distributed pro rata to participants in the dividend reinvestment.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>14</sup> in that the proposal fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system and protects investors and the public interest.

### *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 longer 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

<sup>13</sup> The creation of PDRs in connection with the DTC DRS represents the only circumstances under which PDRs can be created in other than Creation Unit size aggregations.

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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 Room. 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-97-6 and should be submitted by July 23, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38781; File No. SR-NASD-97-41]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Definition of Branch Office in Rule 3010

June 26, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 17, 1997, 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, II, and III below, which Items

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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