

order execution algorithms of the exchange's automated execution system are virtually identical to SOES or its successor system.

In addition, in early 1998 the CHX intends to replace its existing system and begin using a system commonly known as BRASS, developed by Automated Securities Clearance, Limited ("ASC"), in order to access securities subject to the Plan. BRASS is a trade support and order routing system which offers subscribers, generally broker-dealers, software and hardware to enable them to perform various functions. ASC grants its subscribers a license to operate the BRASS software through a customized computer terminal purchased from ASC or by running the BRASS software on their own terminals. In the case of the CHX, ASC has specifically customized BRASS to meet the special needs of the CHX. Among other things, Nasdaq market makers that already subscribe to BRASS will be able to route OTC/UTP orders to specialists on the CHX floor through a SelectNet linkage with BRASS workstations on the CHX floor. Conversely, CHX specialists will be able to route orders into SelectNet through their BRASS workstations.<sup>14</sup> The Commission notes that ASC will be subject to the Commission's inspection and examination procedures with regards to the specific customized BRASS system that ASC will provide to the CHX because ASC will be operating a facility of an exchange.

With respect to the need for a trade through rule, the NASD continues to maintain in the December 1997 Extension Request that it would be more appropriate to address this issue once the issue of electronic access to Nasdaq market makers' quotes has been resolved. The CHX, however, believes that a trade through rule is currently necessary.<sup>15</sup>

The Commission continues to solicit comment regarding the BBO calculation and the trade through rule and also solicits comment on the CHX's use of the BRASS system.

## VI. Discussion

The Commission finds that an extension of temporary approval of the operation of the Plan, as amended, through June 30, 1998, is appropriate and in furtherance of Section 11A of the Act. The Commission believes that such extension will provide the Participants

with additional time to seek Commission approval of pending proposals concerning the BBO calculation<sup>16</sup> and to begin to make reasonable proposals concerning a trade through rule to facilitate the trading of OTC securities pursuant to UTP. While the Commission continues to solicit comment on these matters, the Commission believes that these matters should be addressed directly by the Participants on or before March 31, 1998 so that the Commission may have ample time to determine whether to approve the Plan on a permanent basis by June 30, 1998.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2 under the Act until the earlier of June 30, 1998 or until such time as the calculation methodology for the BBO is based on a price/size/time algorithm pursuant to a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1 under the Act, that requires transaction reporting plans to include market identifiers for transaction reports and last sale data, to the BSE through June 30, 1998. The Commission believes that the extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the Rules thereunder, and specifically with the objectives set forth in Sections 12(f) and 11A of the Act and in Rules 11Aa3-1 and 11Aa3-2 thereunder.

## VII. 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 plan amendment that are filed with the Commission and all written communications relating to the proposed plan amendment 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. All submissions should refer to File No. S7-24-89 and should be submitted by January 30, 1998.

## VIII. Conclusion

*It is therefore ordered*, pursuant to Sections 12(f) and 11A of the Act and paragraph (c)(2) of Rule 11Aa3-2 thereunder, that the Participants' request to extend the effectiveness of the Joint Transaction Reporting Plan, as amended, for Nasdaq/National Market securities traded on an exchange on an unlisted or listed basis through June 30, 1998, and certain exemptive relief until June 30, 1998, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-39512; File No. SR-CHX-97-34)

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

December 31, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 11, 1997, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests a three month extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange that is currently due to expire at the end of December, 1997. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's Rules and the Exchange proposes that the amendments remain in effect on a pilot basis through March 31, 1998.

<sup>14</sup> See December 1997 Extension Request and Letter from George T. Simon, Foley & Lardner to Howard L. Kramer, Senior Associate Director, Division, SEC, dated December 12, 1997 ("CHX Letter").

<sup>15</sup> See CHX Letter *id.*

<sup>16</sup> See e.g., SR-NASD-97-93, *supra* note 12.

<sup>17</sup> 17 CFR 200.30-3(a)(29).

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

## 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 statutory 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 III 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

On May 4, 1987, the Commission approved certain CHX rules and procedures relating to the trading of Nasdaq/NM securities on the CHX.<sup>2</sup> Among other things, these rules made the Exchange's Article XX, Rule 37(a) ("BEST Rule") applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System ("MAX system").<sup>3</sup>

On January 3, 1997, the Commission approved,<sup>4</sup> on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders in Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer ("NBBO").<sup>5</sup>

Under the pilot program, specialists must continue to accept agency<sup>6</sup> market

orders or marketable limit orders in Nasdaq/NM securities, but only for orders of 100 to 1,000 shares rather than the 2,099 share limit previously in place.<sup>7</sup> Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The current pilot program requires the specialist to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities. Orders for a number of shares less than or equal to the auto-execution threshold will be automatically executed (in an amount up to the size of the specialist's quote) if the CHX specialist is quoting at the NBBO. Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO,<sup>8</sup> as determined by the specialist from time to time, for either 100 or 1,000 shares, depending on the Nasdaq/NM security.<sup>9</sup>

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO in MAX after a twenty second delay.<sup>10</sup>

Under the current pilot program, if the specialist elects manual execution, the specialist must either manually

in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

<sup>7</sup>The 100 to 2,099 share auto-acceptance threshold previously in place continues to apply to Dually Listed securities (those issues that are traded on the CHX and are listed on either the New York Stock Exchange or American Stock Exchange).

<sup>8</sup>Such increment is determined by the specialist from time to time. See Securities Exchange Act Release No. 38989 (August 28, 1977).

<sup>9</sup>Specifically, the autoquote will be for one normal unit of trading (usually 100 shares) in Nasdaq/NM securities that became subject to mandatory compliance with SEC Rule 11Ac1-4 on to January 20, 1997, and for 1,000 shares in other issues.

<sup>10</sup>The twenty second delay is designed, in part, to provide an opportunity for the order to receive price improvement from the specialist's displayed quote.

execute the order at the NBBO price or better, or act as an agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the current pilot requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold ("oversized") are not subject to these requirements, and may be canceled within three minutes of being entered into MAX or designated as an open order.<sup>11</sup>

When the Commission approved the current program on a pilot basis, the Commission requested that, prior to requesting permanent approval, the Exchange submit a report to the Commission describing the Exchange's experience with the program. The Commission stated that the report should include at least six months worth of trading data. Due to programming issues, the pilot program was not implemented until April, 1997, and, consequently, six months of trading data did not become available until November, 1997. As a result, the Exchange is still processing the data necessary to compile the requested report. The Exchange believes that the data and report will be ready for submission to the Commission no later than January 31, 1998. In order to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis, the Exchange is requesting the pilot be extended until March 31, 1998. The Exchange expects to submit a request for permanent approval simultaneously with the submission of the report to the Commission.

#### 2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are 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.

<sup>11</sup>If an oversized market or limit order is received by the specialist, he either rejects the order immediately or displays it. If the order is displayed, the specialist checks with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution. The Exchange has proposed to reduce the acceptance time frame from three minutes to one minute for oversized orders. See File No. SR-CHX-97-32.

<sup>2</sup>See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR-MSR-87-2). See also Securities Exchange Act Release Nos. 28146 (June 26, 1990) (order expanding the number of eligible Nasdaq/NM securities to 100); and 36102 (August 14, 1995) (order expanding the number of eligible Nasdaq/NM securities to 500).

<sup>3</sup>The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX, Article XX, Rule 37(b). A MAX order that fits under the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST Rule does not apply, but MAX system handling rules do apply.

<sup>4</sup>See Securities Exchange Act Release No. 38119.

<sup>5</sup>The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1-1.

<sup>6</sup>The term "agency order" means an order for the account of a customer, but shall not include professional orders as defined in CHX, Article XXX, Rule 2, interpretation and policy .04. A

"professional order" is defined as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account

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

The Exchange does not believe that the proposed rule change will impose a burden on competition.

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

No comments were solicited or received.

### III. 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 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 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the Exchange. All submissions should refer to file number SR-CHX-97-34 and should be submitted by January 30, 1998.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> which requires that an exchange have rules designed to prevent fraudulent and manipulative acts and practices, 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. The Commission also believes that the proposal is consistent

with Section 11A(1)(D) and 11A(a)(1)(C) of the Act.

The CHX rules establish execution procedures and guarantees that attempt to provide an execution reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors. The Commission believes the pilot to not require automatic execution for Nasdaq/NM securities when the specialist is not quoting at the NBBO, and to allow the specialist to execute the order as agent, is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The Commission finds that the pilot should continue until March 31, 1998, to provide the Commission adequate time to assess the requisite data from the Exchange and determine if approval on a permanent basis is warranted. In addition, the Commission is extending, until March 27, 1998, the pilot permitting CHX specialists to maintain a minimum quotation size of 100 shares for fifty Nasdaq/NM securities.<sup>13</sup> The Commission believes that extending these pilots preserves conformity between that which is required of a CHX specialist in a Nasdaq/NM security and that which is required of a Nasdaq market maker in the same security.

The Commission therefore finds good cause for approving the proposed rule change (SR-CHX-97-34) prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to Section 19(b)(2),<sup>14</sup> that the proposed rule change be, and hereby is, approved.

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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<sup>13</sup> See Securities Exchange Act Release No. 38156 (January 10, 1998), 62 FR 2415 (January 16, 1997), order approving reduction in the minimum quotation size for Nasdaq market makers in fifty Nasdaq/NM securities. A list of the 50 Nasdaq/NM securities is located on the Nasdaq website ([www.nasdaq.com](http://www.nasdaq.com)).

<sup>14</sup> 15 U.S.C. § 78s(b)(2).

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

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39502; File No. SR-MSRB-97-13]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board To Revise the Effective Date of the Revised Study Outline for the Board's Municipal Securities Principal Qualification Examination (Test Series 53)

December 30, 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 December 18, 1997, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-97-13). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. 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 MSRB is filing herewith a proposed rule change to delay the effective date of the revised study outline for the Board's Municipal Securities Principal Qualification Examination (Test Series 53). The effective date of the revised study outline is being changed from January 1, 1998, to March 1, 1998.

#### 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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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

On October 16, 1997, the Board filed with the Commission a proposed rule

<sup>12</sup> 15 U.S.C. 78f(b)(5).