

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 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 Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and/or Phlx-98-36 and should be submitted by February 2, 1999.

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule changes (SR-CBOE-98-25; SR-AMEX-98-22; SR-PCX-98-33; and SR-Phlx-98-36) are approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

[FR Doc. 99-594 Filed 1-11-99; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40868; File No. SR-CHX-98-33]

### 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, 1998.

On December 21, 1998 the Chicago Stock Exchange Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> the proposed rule change as described in Items I and II 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 and to grant accelerated approval of the proposed rule change.

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

The Exchange hereby requests a six month extension of the pilot program relating to the trading of Nasdaq/NM Securities on the Exchange that is currently due to expire on December 31, 1998. 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 June 30, 1999.

### 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 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 Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.<sup>2</sup> Among other things, these

<sup>2</sup> See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR-MSE-87-2). See also Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); and 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500). The Commission notes that the CHX commented on the July 1998 extension order of the OTC-UTP Plan (Securities Exchange Act Release No. 40151 (July 1, 1998) 63 FR 36979 (July 8, 1998)) requesting an expansion of the number of Nasdaq/NM securities eligible to be traded on an unlisted basis on an exchange, from 500 to 1000, pursuant to the Plan. See Letter from George T. Simon, Foley & Lardner, to Robert L.D. Colby, Deputy Director, Division of Market Regulation ("Division"), SEC, dated November 6, 1998. The CHX believes that investors are directly benefited from trading Nasdaq/NM securities on the CHX floor because it provides investors with auction-based trading, including unified opening transactions, in Nasdaq/NM securities. In addition, the CHX represents that it has assigned virtually all of its current allocation of 500 Nasdaq/NM securities. The Commission solicited comments on

rules made the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) 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> When the Commission approved the program on a pilot basis, it stated that the arrangement in place for Exchange Specialists to access over-the-counter ("OTC") market makers was not an ideal linkage between the markets on a permanent basis and that the Exchange should work with Nasdaq to establish a more effective linkage. In addition, the Commission requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot 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.

Six months of trading data did not become available until November, 1997. As a result, the Exchange requested an additional three month extension to collect the data and prepare the report for the Commission. On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.<sup>6</sup> The Exchange submitted the report to the Commission on January 30, 1998.

The Exchange, prior to the pilot expiring, requested another three month extension. On March 31, 1998, the Commission approved the pilot for an

the CHX request in the December 1998 extension order of the OTC-UTP Plan (Securities Exchange Act Release No. 40869 (December 31, 1998)).

<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, Art. 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 (January 3, 1997) 62 FR 1788 (January 13, 1997) ("January 1997 Order").

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

<sup>6</sup> See Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

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

additional three month period, until June 30, 1998.<sup>7</sup> On July 1, 1998 the Commission approved the pilot for an additional six month period, until December 31, 1998.<sup>8</sup> The Exchange now requests another extension of the current pilot program, through June 30, 1999.

Under the pilot program, specialists must continue to accept agency<sup>9</sup> market orders or marketable limit orders, but only for orders of 100 to 1000 shares in Nasdaq/NM securities rather than the 2099 share limit previously in place.<sup>10</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 pilot program requires the specialist to set the MAX auto-execution threshold at 1000 shares or greater for Nasdaq/NM securities. When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold set by the specialist will be automatically executed (in an amount up to the size of the specialist's quote). 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, as determined by the specialist from time to time, for either 100 or 1000 shares, depending on the issue.<sup>11</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, MAX 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 after a twenty second delay, provided that the auto-execution threshold is less than or equal to the NBBO.<sup>12</sup> If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as 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 pilot program 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 are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

## 2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b). In particular, the proposal is consistent with the requirements of section 6(b)(5)<sup>13</sup> of the Act which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The proposal is also consistent with sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.

The CHX's proposal 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 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.

### a. 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.

### b. Self-Regulatory Organization's Statement on 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, including whether the proposed rule change is consistent with the Act. 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 in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 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-98-33 and should be submitted by February 2, 1999.

## 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, 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

<sup>7</sup> See Securities Exchange Act Release No. 39823 (March 31, 1998) 63 FR 17246 (April 8, 1998).

<sup>8</sup> See Securities Exchange Act Release No. 40150 (July 1, 1998) 63 FR 36983 (July 8, 1998).

<sup>9</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. The Rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

<sup>10</sup> The 100 to 2099 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 the American Stock Exchange).

<sup>11</sup> Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) in issues that became subject to mandatory compliance with Rule 11Ac1-4 under the Act on or prior to February 24, 1997, and for 1000 shares in other issues.

<sup>12</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.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest, The Commission also believes that the proposal is consistent with section 11A(a)(1)(C) and 11A(a)(1)(D) of the Act because the Exchange's proposal conforms CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while CHX provides a separate, competitive market for Nasdaq/NM securities.

The Commission notes, however, that while the Exchange has been working towards establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.<sup>14</sup> The Commission is approving the extension of the pilot so that the rules of the Exchange will operate without interruption.

The Commission, therefore, finds good cause for approving the proposed rule change prior to 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>15</sup> of the Act that the proposed rule change (SR-CHX-98-33)

be, and hereby is, approved through June 30, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 99-592 Filed 1-11-99; 8:45 am]

BILLING CODE 8010-01-M

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-40880; File No. SR-CHX-98-30]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes by the Chicago Stock Exchange, Inc. Relating to MAX Executions of S&P 500 Issues, Floor Telephone Booth and Post Space Fees, and a Fee Waiver**

January 4, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the CHX. 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 its Membership Dues and Fees Schedule to eliminate all transaction and order processing fees related to transactions in the stocks comprising the Standard & Poor's 500 Stock Price Index (the "S&P 500"), as determined and revised by Standard & Poor's from time to time, executed through the Exchange's Midwest Automated Execution System (the "MAX" System), effective January 1, 1999. Further, the Exchange proposes to amend its Membership Dues and Fees Schedule to change the floor telephone booth and post space fees charged to members from flat-rate fees to usage-based fees, effective July 1, 1999. In connection with the floor telephone booth and post space fee changes, the Exchange proposes to waive for six months, from January 1, 1999 to June 30, 1999, the existing floor telephone booth and post space charges applicable to floor members. The text of the proposed rule change is as follows (additions are *italicized*; deletions are [bracketed]):

**Membership Dues and Fees**

(c) Order Processing Fee Schedule:

Odd Lots .....	\$ .35 per trade.
	\$400.00 maximum monthly fee.
Open Limit Orders .....	\$ .25 per trade (assessed on execution).

The above order processing fees shall not apply to transactions in NASDAQ/NMS Securities, or to transactions in the stocks comprising the Standard & Poor's 500 Stock Price Index executed through MAX.

(d) Transaction Fee Schedule:

(1) Market orders sent via MAX .....	No charge.
(2) All others orders (except as set forth below):	
	Rate per share
First 500 shares .....	\$ .00
Next 2,000 shares .....	\$ .0075
Next 7,500 shares .....	\$ .005
Remaining shares .....	\$ .004 (up to a maximum of \$100.00 per side)
(3) Monthly maximums for fees incurred in (2) above:	
(i) Maximum monthly transaction fees for orders sent via MAX.	\$7,000
(ii) Maximum monthly transaction fee for firms without a floor broker or market maker presence on the floor.	\$78,000
(iii) Maximum monthly transaction fee for firms with a floor broker or market maker presence on the floor.	\$54,000
(iv) Maximum monthly transaction fees shall not exceed the lesser of that specified in (ii) or (iii) above, or \$ .40 per 100 average monthly gross round lot shares.	

The above transaction fees shall not apply to transactions executed through MAX in Tape B eligible issues or in the stocks comprising the Standard & Poor's 500 Stock Price Index. [which are executed through MAX.]

\* \* \* \* \*

(e) Equipment/Space Charges:

<sup>14</sup> See January 1997 Order, supra note 4.

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

<sup>16</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.