

proposed Rule 28A, "stop" or "stop limit" orders for Dual Trading System issues will only be permitted to be entered at a price above (for buy orders) or below (for sell orders) the then-current offer or bid, respectively, in the primary market. Stop or stop limit orders for Nasdaq/NM Issues will only be permitted to be entered at a price above (for buy orders) or below (for sell orders) the then-current National Best Offer or National Best Bid, respectively.

As set forth in the proposed Rule 28A, a specialist's obligations with respect to incoming "stop" and "stop limit" orders are distinct from liabilities relating to "stopped" orders, which under Rule 28 are guaranteed execution at a specified price and size.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>5</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 does not believe that the proposed rule change will impose any inappropriate burden on competition.

### (C) Self-Regulatory Organization's Statement on Comments Regarding 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 date of 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 which the Exchange 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.

received, unless the member can achieve price improvement for the customer. Telephone conversation between Paul O'Kelly, Executive Vice President, CHX, and Marc McKayle, Attorney, Division of Market Regulation, Commission on September 30, 1999. Also see CHX Rule 28 of Article XX.

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

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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-99-14 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41947; File No. SR-CHX-99-15]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

September 29, 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 September 14, 1999, 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 CHX. The Commission is publishing this notice to

<sup>6</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.

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. Specifically, the portion of the CHX fee schedule governing transaction fees would be amended to provide for application of a \$.0025 per share transaction fee to all agency orders transacted by CHX floor brokers in NASDAQ/NMS Securities, up to a maximum of \$100 per side. Additionally, the CHX fee schedule would be amended to increase the current earned credit available to floor brokers by a factor of three and to provide a new credit based on Consolidated Tape Association revenue generated by each floor broker.<sup>3</sup> The rule changes will be reflected in the October, 1999 invoices transmitted by the Exchange to its members. The text of the proposed rule change is available upon request from the Commission or the CHX.

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

In its filing with the Commission, the Exchange 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 Exchange 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 proposed rule change amends the CHX schedule of membership dues and fees in three ways to provide new transaction fees and enhanced credits for CHX floor brokers. First, the portion of the CHX fee schedule governing transaction fees is amended to provide

<sup>3</sup> The proposed language with regards to tape credits reads as follows: "Tape Credits. Total monthly fees owed by a floor broker to the Exchange will also be reduced (but to no less than zero) by the application of a Tape Credit. 'Tape Credit' means 35% of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular floor broker. To the extent that CHX tape revenue is subject to a year end adjustment, Tape Credits may be adjusted accordingly."

for application of a \$.0025 per share transaction fee to all agency orders transacted by CHX floor brokers in NASDAQ/NMS Securities, up to a maximum of \$100 per side. Second, the CHX fee schedule is amended to increase the current earned credit available to floor brokers by a factor of three. Finally, the schedule is modified to provide a new credit based on Consolidated Tape Association revenue generated by each floor broker. The proposed rule change is intended to stimulate growth on the Exchange, enhance the competitive capability of floor brokers and foster cooperation on the Exchange's trading floor by making a reasonable allocation of those CHX revenues generated by its floor brokers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) <sup>4</sup> of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

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

The Exchange does not believe that the proposed rule change will impose any 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 solicited or received.

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

The proposed rule change is effective immediately upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act <sup>5</sup> and subparagraph (f)(2) of Rule 19b-4 under the Act <sup>6</sup> because the proposal is establishing or changing a due, fee or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule 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, including whether the proposed rule

change is consistent with the Act.<sup>7</sup> Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-99-15 and should be submitted by October 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41967; File No. SR-NASD-98-85]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 2, 3, and 5 of the Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish the Nasdaq Application of the OptiMark System

September 30, 1999.

#### I. Introduction

On November 13, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change to establish rules for a new facility called the Nasdaq

Application of the OptiMark System ("Application"). The Application is an electronic trading system based on information processing technology provided by OptiMark Technologies, Inc., together with its wholly-owned subsidiary, OptiMark Services, Inc. ("OSI").<sup>3</sup> On December 11, 1998, Nasdaq filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on January 5, 1999.<sup>4</sup> The Commission received four comment letters in response to the proposal.<sup>5</sup> On July 16, 1999, the NASD filed Amendment No. 2 to the proposed rule change.<sup>6</sup> On September 13, 1999, the NASD filed Amendments Nos. 3 and 4 to the proposed rule change.<sup>7</sup> On September

<sup>3</sup> OptiMark Technologies, Inc. is a computer technology firm that has developed certain patented technology referred to as "OptiMark™." The Application is one of several different trading services based on this technology that may be available for other markets in the future. The Commission previously approved one such service for operation on the Pacific Exchange, Inc. See Securities Exchange Act Release No. 39086 (September 17, 1997), 62 FR 50036 (September 24, 1997). While the OptiMark technology is virtually identical to that which was approved for the PCX Application, the proposed Nasdaq Application adapts and uses the OptiMark technology within the existing Nasdaq market structure.

<sup>4</sup> Securities Exchange Act Release No. 40835 (December 28, 1998), 64 FR 549 (January 5, 1999).

<sup>5</sup> Letter from Jerry Putnam, President, Archipelago, L.L.C., to Jonathan G. Katz, Secretary, SEC, dated January 22, 1999 ("Archipelago Letter"); letter from Ari Burstein, Assistant Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1999 ("ICI Letter"); letter from W. Dennis Ferguson, Chairman, Clearing Firms Committee, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC, dated July 22, 1999; letter from W. Dennis Ferguson, Chairman, Clearing Firms Committee, SIA, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated August 23, 1999.

<sup>6</sup> Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated July 16, 1999 ("Amendment No. 2"). In Amendment No. 2, the NASD amended proposed NASD Rule 4993(b) to provide that a Cycle will include Nasdaq Quote Montage Profiles reflecting all bid and offer quotes as reflected in the Nasdaq Quote Montage immediately prior to the commencement of the Cycle that could potentially be traded through by a Profile.

<sup>7</sup> Letter from Eugene A. Lopez, Vice President, Trading and Market Services, Nasdaq, to Richard Strasser, Assistant Director, Division, SEC, dated September 13, 1999 ("Amendment No. 3"). In Amendment No. 3, the NASD amended proposed NASD rules 4991 and 4992 to clarify that only a Clearing Broker, as that term is defined in NASD Rule 6100(f), can establish the trading limits for users, including NASD members, that are not self-clearing. In addition, Amendment No. 3 clarifies that the terms "Designated Broker" is broader than "Clearing Broker" and includes correspondent brokers. Consequently, every user must be sponsored in the Application by a Designated Broker that is a Clearing Broker and that establishes the trading limits for its users and accepts responsibility for their trades. Some users also may

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>8</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.