

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43083; File No. SR-CHX-99-31]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Preopening Orders in Dual Trading System Issues

July 28, 2000.

#### I. Introduction

On January 3, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4<sup>2</sup> thereunder, a proposed rule change relating to the definition of preopening orders in Dual Trading System Issues. The proposed rule change was published for comment in the **Federal Register** on March 29, 2000.<sup>3</sup> The Commission received no comments on the proposal. On July 19, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the proposal. The Commission is also soliciting comment on Amendment No. 1 to the proposed rule change from interested persons, and has approved the amendment on an accelerated basis, as discussed below.

#### II. Description of the Proposal

The Exchange has proposed to amend its Article XX, Rule 37(a)(4), which governs guaranteed executions of preopening orders, to define what constitutes a pre-opening order in Dual Trading System Issues. A Dual Trading System Issue is an issue that is traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and that is also traded on either the New York Stock Exchange or American Stock Exchange.

Currently, CHX Rule 37(a)(4) requires that a preopening order be accepted and filled at the primary market opening trade price. Pursuant to this language, orders received at the CHX before the primary market publishes its first print<sup>5</sup> are customarily filled at the first print price. According to the CHX, it has applied the rule in this manner because prints are the most common way of effecting an opening in a security. Nevertheless, on occasion a primary market may open a security by disseminating a quote without a corresponding print. Thus, when a security is opened by the primary market with a published quote, orders received by the CHX after such quote has been published are not considered preopening orders.

According to the Exchange, the lack of a specific definition of what is a preopening order has caused confusion and led to unintended execution guarantees. Specifically, the Exchange stated that there has been confusion about the status of orders received on the CHX after a primary market has published a quote but before a primary market has published a print. Therefore, the Exchange's proposal would clarify that orders received after a primary market opens a security with a published quote are not preopening orders for the purposes of CHX Rule 37(a)(4). Specifically, the Exchange proposed to define a preopening order as an order received prior to a primary market's opening of a subject security, which can occur either with a trade or a quote. Thus, an order received on the CHX after the primary market publishes a quote but before the primary market has published a print will not be considered a preopening order for the purposes of CHX Rule 37(a)(4) and therefore not entitled to be filled at a subsequent primary market print.

#### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>6</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5),<sup>7</sup> which requires, among other things, that the rules of an exchange be 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.

The Commission believes that the proposed definition helps to clarify the Exchange's rules regarding execution guarantees for Dual Trading System Issues. According to the Exchange, the lack of a specific definition regarding which type of orders will be executed at the primary market's opening trade price has caused confusion among investors. By providing a specific definition of a preopening order, the Exchange should be able to reduce confusion on this issue among investors and Exchange specialists and provide more certainty to investors on the execution price their orders are entitled to receive. The Commission believes that eliminating this confusion about how an order will be handled should enhance the efficiency of order executions on the CHX. Moreover, investors should be able to make informed decisions on where to route their orders for execution because they should have a clearer understanding about how their order will be handled and executed.

The Commission understands that the CHX's definition is consistent with the definition of preopening orders on other markets. Further, the Commission notes that there should not be confusion as to whether a primary market opens a security with a quote as opposed to a trade because, according to information provided by the CHX, information on how a stock opens (*i.e.*, whether it opens by a quote or a trade) is widely disseminated by market data vendors. Therefore, the Commission believes that the proposal should foster just and equitable principles of trade by specifically defining which orders are designated preopening orders and thus entitled to be executed at the primary market's opening trade price.

The Commission finds that good cause exists for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 1, the CHX amended the language of the definition of preopening order to better reflect its intent that preopening orders are orders received by the CHX before a primary market opens a subject security, which can occur by either a quote or a trade. The Commission finds that the language proposed in Amendment No. 1 further clarifies the CHX's definition of preopening orders. Therefore, because the Commission finds that Amendment No. 1 does not substantively change the meaning or

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

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

<sup>3</sup> Exchange Act Release No. 42566 (March 22, 2000), 65 FR 16677.

<sup>4</sup> Letter from Daniel J. Liberti, Vice President and Chief Enforcement Counsel, CHX, to Kelly Riley, Attorney, Division of Market Regulation, SEC, dated July 17, 2000 ("Amendment No. 1"). In Amendment No. 1, the Exchange replaced the originally proposed language defining a preopening order. As amended, CHX Rule 37(a)(4) will read: "[f]or purposes of this rule, preopening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote."

<sup>5</sup> A print is defined as an executed trade

<sup>6</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

intent of the proposed rule, the Commission believes that good cause exists, consistent with Sections 6(b)(5)<sup>8</sup> and 19(b)<sup>9</sup> of the Act, to approve Amendment No. 1 on an accelerated basis.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549-0609. 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-99-31 and should be submitted by August 25, 2000.

#### V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the amended proposed rule change (SR-CHX-99-31) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43090; File No. SR-MSRB-00-9]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Consisting of Technical Amendments to Rules G-8 and G-15

July 31, 2000.

On July 14, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder.<sup>2</sup> 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 Board has filed with the Commission a proposed rule change consisting of technical amendments to MSRB Rules G-8, on books and records to be made by brokers, dealers and municipal securities dealers, and G-15, on confirmation, clearance and settlement of transactions with customers. The proposed rule change will become operative on September 19, 2000. The text of the proposed rule change is set forth below. Additions are *italicized*; deletions are [bracketed].

#### Rule G-8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a)-(e) No change.  
(f) Compliance with Rule 17a-3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a-3 of the Commission will be deemed to be in compliance with the requirements of this rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); and paragraphs (a)(xi) [; paragraph (a)(xii), paragraph (a)(xiii); paragraph (a)(xiv); paragraph (a)(xv); paragraph (a)(xvi); paragraph (a)(xvii); paragraph (a)(xviii); and paragraph (a)(xix)] *through (a)(xx)* shall in any event be maintained.

#### Rule G-15. Confirmation, Clearance and Settlement of Transactions with Customers

(a)-(c) No change.  
(d) Delivery/Receipt vs. Payment Transactions.  
(i) No change.  
(ii) Requirement for Confirmation/Acknowledgment.  
(A) No change.  
(B) Definitions for Rule G-15(d)(ii).  
(1) No change.  
(2) "Qualified Vendor" shall mean a vendor of electronic confirmation and acknowledgement services that:  
(a)-(c) No change.  
(d) Notifies the Commission staff immediately in writing of any material change to its confirmation/affirmation systems. (For purposes of this subparagraph (d)(D)) "material change" means any changes to the vendor's systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/acknowledgment systems, including: (i) Affect or potentially affect the capacity or security of its electronic trade confirmation/acknowledgment system; (ii) rely on new or substantially different technology; (iii) provide a new service as part of the Qualified Vendor's electronic trade confirmation/acknowledgment system; or (iv) affect or have the potential to adversely affect the vendor's confirmation/acknowledgment system's interface with a Clearing Agency.);  
(e)-(g) No change.  
(3) No change.  
(C) No change.  
(iii) No change.  
(e) No change.

#### 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 text 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, Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Board is proposing technical amendments to MSRB Rules G-8 and G-15 for the purpose of making the following non-substantive changes:

First, on March 16, 2000, the Commission approved amendments to MSRB Rule G-8, on books and records, MSRB Rule G-27, on supervision, and MSRB Rule G-9, on preservation of records (the "Supervision Amendments"), relating to supervisory procedures for reviewing

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.