

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i)<sup>10</sup> of the Act and Rule 19b-4(f)(1) thereunder.<sup>11</sup> At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the 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 in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-00-38 in the caption above and should be submitted by September 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43199; File No. SR-CHX-00-20]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Automatic Execution of Orders for Nasdaq/NM Securities and Amendment No. 1 Thereto

August 23, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice hereby is given that on June 9, 2000, 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 Exchange. On August 16, 2000, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities on the Exchange. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The text of the proposed rule change is available at the Exchange and at the Commission.

#### 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 regarding the proposed rule change. The text of these statements may be examined at the

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

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

<sup>3</sup> See Letter from Paul O'Kelly, Executive Vice President, CHX, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 15, 2000. ("Amendment No. 1"). In Amendment No. 1, the Exchange clarified how specialists would utilize the proposed enhanced liquidity function, and deleted a portion of the proposed rule text that would have permitted a specialist to switch to manual execution mode in unusual trading situations after, among other things, seeking relief from a member of the Exchange. Under the amended version of the rule, a specialist must seek relief from two floor officials.

places specifies in Item IV below. The Exchange has prepared summaries, set forth in Section A, B and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to amend the CHX rules governing automatic execution sequences and algorithms relating to the trading of Nasdaq/NM Securities. Specifically, the Exchange proposes to amend portions of Article XX, Rule 37. The proposed amendments are intended to bring the Exchange's rules in line with the patterns and practices that currently exist in other markets with respect to the trading of Nasdaq/NM Securities.<sup>4</sup>

Article XX, Rule 37, describes among other things, the circumstances under which orders must be accepted and guaranteed an execution at the national best or offer (the "BEST Rule"). Rule 37 also describes a specialist's ability to set a parameter (the auto-execution threshold) that identifies which of the orders guaranteed a fill under the BEST Rule will be automatically, not manually, executed. The proposed rule change would allow specialists to reduce the minimum auto-execution threshold from 1000 shares to 300 shares, but would not change specialists' obligations under the Best Rule.<sup>5</sup> In other words, specialists could choose to *automatically* execute only those orders of 300 shares or less, but would still be required to guarantee executions at the national best bid or offer ("NBBO") for orders up to an including 1,000 shares. The amended rule also would permit specialists to choose to provide an enhanced execution guarantee to orders above 3000 shares by setting a new parameter called an "enhanced liquidity quantity." Orders then would be automatically filled up to this enhanced liquidity quantity.<sup>6</sup>

The rule change also would provide new guidelines for Nasdaq/NM specialists seeking to switch from

<sup>4</sup> See NASD Notices to Members 99-11 and 99-12 (February, 1999) (discussing NASD member firm order execution practices, particularly during periods of significant market volatility).

<sup>5</sup> The CHX represents that reduction of the minimum auto-execution threshold is intended to limit the exposure of Nasdaq/NM specialists in the case of Nasdaq/NM Securities. The Exchange anticipates, however, that for the majority of Nasdaq/NM Securities, specialists will voluntarily remain at the 1000-share auto-execution threshold.

<sup>6</sup> See Amendment No. 1, *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>11</sup> 17 CFR 240.19b-4(f)(1).

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

automatic execution mode to a manual execution mode in the event of unusual trading situations. The amended rule, which mirrors guidelines issued recently by the NASD to its members, would provide that in the case of Nasdaq/NM Securities, that term "unusual trading conditions" includes the existence of large order imbalances and/or significant price volatility.<sup>7</sup> The rule would require that upon switching to manual execution mode based on the existence of unusual trading conditions, the specialist must: (1) Document the basis for election of manual execution mode; (2) disclose to its customers the differences in procedures from normal market conditions and the circumstances under which the specialist generally may activate manual execution mode; and (3) seek permission to switch to manual execution mode from two floor officials.<sup>8</sup>

The foregoing changes are intended to place the Exchange's rules in line with existing market pattern and practice relating to the trading of Nasdaq/NM Securities. The rule change thus necessarily contemplates certain distinctions between transactions in Dual Trading System issues and Nasdaq/NM issues. All such distinctions were approved by the Exchange's Rules Committee and its Committee on Floor Procedure, both of which are populated by specialists. Both committees concur that the proposed changes do not place specialists on unequal footing based on the type of issue traded, but rather merely reflect the distinctions between the markets for Dual Trading System issues and Nasdaq/NM issues.

## 2. Statutory Basis

The Exchange believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).<sup>9</sup> In particular, the proposed rule is consistent with section 6(b)(5)<sup>10</sup> of the Act 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.

<sup>7</sup> See NASD Notice to Members 99-12, p. 2.

<sup>8</sup> See Amendment No. 1, *supra* note 3.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### *B. Self-Regulatory Organization's Statement of 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*

Written comments were neither solicited nor 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 other 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.

### **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. 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 in Washington, D.C. 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-00-20 and should be submitted by September 20, 2000.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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. 34-43202; File No. SR-NASD-99-53]

### **Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of the Nasdaq Order Display Facility and Modifications of the Nasdaq Trading Platform**

August 23, 2000.

On October 1, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("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 the Nasdaq Order Display Facility and the Order Collector Facility, collectively referred to as the SuperMontage. On October 26, and October 29, 1999, respectively, Nasdaq filed Amendment Nos. 1 and 2 to the proposal.<sup>3</sup> The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.<sup>4</sup> On March 16, 2000, Nasdaq filed Amendment No. 3 to the proposal.<sup>5</sup> On March 23, 2000, Nasdaq filed Amendment No. 4<sup>6</sup> to the proposal, which was published for comment in the **Federal Register** on March 30,

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

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

<sup>3</sup> See letters from Thomas P. Moran, Assistant General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 26, 1999 ("Amendment No. 1"); and from John F. Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division, Commission, dated October 29, 1999 ("Amendment No. 2").

<sup>4</sup> See Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

<sup>5</sup> See letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated March 15, 2000 ("Amendment No. 3").

<sup>6</sup> See letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 ("Amendment No. 4").