regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 June 20, 2001, the Commission approved the Exchange's proposal to amend its rules to allow floor brokers to clear the post by telephone.[7] The rule text used as a basis to mark the proposed changes in the Exchange's rules, however, inadvertently did not contain language that had been approved by the Commission several years ago.[8] The Exchange has corrected this oversight by including the correct text as Exhibit A to this proposed rule change. No other changes are made as a result of this proposal.

2. Statutory Basis

The CHX believes the proposal 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).[9] In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to, 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 on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 40369 (August 26, 1998), 63 FR 47056 (September 3, 1998) (SR–CHX–98–13).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will ensure that this correction is made as soon as possible. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 number SR–CHX–2001–18 and should be submitted by August 29, 2001.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19856 Filed 8–7–01; 8:45 am]

BILLING CODE 8610–01–M

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44646; File No. SR–CHX–2001–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Marketing Fees

August 2, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2001, the Chicago Stock Exchange, Inc. (''CHX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items the CHX has prepared. On July 19, 2001, the CHX submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule effective through December 31, 2001, to provide for assessment of a marketing fee in instances where transactions in a subject issue meet certain criteria described below. The text of the proposed rule change is available at the principal offices of the CHX 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 CHX included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX 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 CHX proposes to change its fee scheduled to include a marketing fee of $.01 per share applicable to transactions occurring on or before December 31, 2001. The marketing fee would apply only to ''Subject Transactions'' [3] in ''Subject Issues,'' [4] and would not be assessed if the specialist trading the Subject Issue elected to forego collection of the fee. The CHX anticipates that, given the criteria that must be satisfied before an issue would qualify as a ''Subject Issue,'' only 3 to 5 issues currently traded on the CHX would be immediately subject to the marketing fee. According to the CHX, some issues may be eligible for only sporadic periods and produce only minimal marketing fees. For this reason, the CHX believes that specialists may opt out of the marketing fee program for an issue that might otherwise qualify as a Subject Issue if the specialist determines that any benefit of the marketing fee is not warranted in the light of the associated administrative burden.

The CHX states that, by imposing the marketing fee, it intends to allocate equitably the financial burden of seeking order flow for Subject Issues. Currently, according to the CHX, the CHX specialist trading a Subject issue is the sole bearer of the often substantial costs associated with attracting order flow to the CHX, as well as licensing fees assessed by the licensor of the product.[5] Conversely, according to the CHX, market makers participating in transactions in Subject Issues on the CHX currently do not share any of these costs. The CHX states that the proposed rule change would allow a specialist trading a Subject Issue to elect (or decline) assessment of the marketing fee in instances where the specialist believes that it is appropriate for the financial burden of trading the Subject Issue. The CHX anticipates that the proposed rule change, and the corresponding specialist/market maker arrangement described below, will provide specialists trading Subject Issues with sufficient incentive to continue their efforts to attract additional order flow and increase market share.

The CHX believes that its proposed marketing fee, and the purposes thereof, closely mirror those of the various options exchanges that have implemented assessment of a marketing fee in the last year. The CHX believes that, like its marketing fee, the marketing fee programs of the options exchanges have sought to establish equitable means to allocate fairly the burdens of attracting order flow in certain issues. In the CHX's view, the Commission's rationale for approval of a marketing fee in the options market context is equally applicable to the CHX's current submission.[6]

The CHX states that it would calculate, bill, and collect the marketing fee and then remit the proceeds to the specialist firm that trades the Subject Issue. The specialist firm would then distribute the funds to order-sending firms in accordance with its payment for order flow arrangements or, in certain instances described below, to market makers who contribute to market share growth. Under the proposal, the CHX would refund unspent marketing fee proceeds every calendar quarter. The CHX proposes to issue the refunds on a *pro rata* basis, in amounts proportional to the amount of fees paid, to the market makers, floor brokers, and specialists that paid the fees. The CHX would not be obligated to refund amounts of $1,000 or less.

The CHX notes that the proposed rule change provides for assessment of the marketing fee on a temporary basis only through December 31, 2001. The CHX believes that a careful analysis of the marketing fee assessment and distribution process during this temporary measuring period will permit it to assess the impact of the marketing fee and to ensure that it meets its stated goals in a fair, equitable, and non-discriminatory manner.

Significantly, the CHX believes that its assessment and collection of the marketing fee may be complemented by independent contractual undertakings between CHX specialist firms and market makers. The CHX believes that, in instances where total market share in the Subject Issue exceeds a threshold percentage upon which the specialist and market makers have agreed, a specialist firm could credit to the market makers an amount equal to the market makers' pro rata portion of the percentage by which market share exceeded the threshold percentage.[7] Conversely, in instances of decreasing market share, the specialist could expect market makers to contribute to the payment for licensing fees to the extent that tape revenue rebates are less than the licensing fee for the product. The CHX anticipates that these arrangements could provide market makers with an additional incentive to help increase CHX market share in Subject Issues and could provide for equitable allocation of the revenues associated with increased market share, just as market makers are required to share the economic burden of attracting order flow for Subject Issues by paying the marketing fee.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(4) of the Act [8] 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 CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] The CHX defines ''Subject Transaction'' to mean (a) any trade with a customer, whether the contra party is a specialist or a market maker, where compensation is paid to induce the routing of the order to the CHX; or (b) any trade between a specialist and a market maker in which the market maker is exercising rights under the market maker entitlement rules.

[4] The CHX defines ''Subject Issue'' to mean any issue which meets the following two criteria: (a) average daily share volume in the issue exceeds 150,000 shares each month during a consecutive two-month period; and (b) market maker share participation in the same issue exceeds 5% for each month during the same two-month period.

[5] The CHX states that, initially, the marketing fee will most likely be assessed against exchange-traded fund products that have an associated licensing fee.

[6] *See* Securities Exchange Act Release No. 43833 (January 10, 2001), 66 FR 7822 (January 25, 2001) (Order approving International Stock Exchange's payment for order flow rule change proposal, SR–ISE–2000–10).

[7] The CHX states that a CHX specialist is entitled to a transaction credit, applied as a credit against the specialist's monthly invoice due and owing to the CHX, equal to a percentage of tape revenue generated by monthly trades in the issue traded by the specialist. According to the CHX, the percentage of tape revenue to which the specialist is entitled increases if CHX market share in the issue increases. Under the sharing arrangement outlined above, if increasing market share in a Subject Issue resulted in a specialist receiving a larger transaction credit, the specialist could pay a portion of the marketing fee collected on account of such order flow to the market makers contributing to the increase in order flow and corresponding market share increase.

[8] 15 U.S.C. 78f(b)(4).

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

On May 17, 2001, the CHX received written comment regarding the proposed rule change from Susquehanna Partners, GP, a CHX market maker firm. In its comment letter, Susquehanna raised three principal bases for objecting to the marketing fee and made collateral reference to one possible adverse consequence of the marketing fee.[9]

Two of Susquehanna's objections focus on the issue of revenue and the financial impact of the marketing fee on market makers. Specifically, Susquehanna argues that imposition of the marketing fee is not appropriate because CHX specialists currently receive a portion of the tape revenue generated by transactions on the CHX, whereas market makers do not share in this revenue. As set forth above, the CHX believes that this issue would be resolved to the parties' mutual benefit by agreements between specialists and market makers that provide for a rebate of the marketing fee to market makers who contribute to market share growth.

Susquehanna also argues that because the marketing fee is structured on a pershare basis as opposed to a per-trade basis, providers of large liquidity like Susquehanna will pay a disproportionate amount of the marketing fee. In the CHX's view, this argument ignores that the marketing fee will not be assessed in instances where the order is not the result of payment for order flow. According to the CHX, market makers who participate in large share transactions that arrive at the CHX independently of payment for order flow will not be forced to pay a marketing fee with respect to such trades. The CHX believes that per-share assessment of the marketing fee is appropriate because payment for order flow generally is made on a per share basis, permitting a virtual ''pass through'' of the marketing fee to order-sending firms.

Finally, Susquehanna argues that the CHX would be harmed if Susquehanna departs from the floor, removing a source of liquidity for large-sized orders. The CHX believes that it has adequate sources of liquidity without Susquehanna, should Susquehanna decline to bear its proportionate share of order flow costs by ceasing operations on the CHX floor in order to avoid assessment of the marketing fee.

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

The foregoing rule change proposal has become immediately effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(2) thereunder[11] because the CHX has designate it as establishing or changing a due, fee, or other charge of the CHX. At any time within 60 days after the filing of the 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 purpose of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the forgoing, including whether the proposed rule change in 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 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–2001–10 and should be submitted by August 29, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–19858 Filed 8–7–01; 8:45 am]

BILLING CODE 8010–M

[9] The CHX states that Susquehanna had raised the same objections at a meeting of the Strategic Planning Subcommittee on Payment for Order Flow on May 8, 2001. The CHX also notes that, following a lengthy exploration of the issue raised by all parties in interest, and notwithstanding market maker opposition to he marketing fee, this subcommittee voted, by clear majority, in favor of the proposed rule change.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] For purposes of calculating the abrogation date, the Commission considers the 60-day period to have commenced on July 19, 2001, the date on which the CHX amended the filing.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44641; File No. SR–ISE–2001–17]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Permanent Approval of Its Allocation Algorithm Pilot

August 2, 2001.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2001, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), a proposed rule change requesting permanent approval of its allocation algorithm pilot.

The proposed rule change was published for comment in the **Federal Register** on July 11, 2001.[3] No comments were received on the proposal. This order approves the proposal on an accelerated basis.

II. Description of the Proposal

The Exchange is proposing to amend Supplementary Material .01 to Rule 713 to adopt the Exchange's current allocation algorithm pilot program on a permanent basis. The Exchange's allocation algorithm pilot was approved by the Commission on May 22, 2000,[4] and recently was extended until August 1, 2001.[5]

ISE Rule 713 provides that customer orders have priority, based on the time priority of such orders. ISE Rule 713(e) provides that if there are two or more non-customer orders or market maker quotations at the Exchange's inside market, after filling all customers at that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 44508 (July 3, 2001), 66 FR 36353.

[4] *See* Securities Exchange Act Release No. 42808 (May 22, 2000), 65 FR 34515 (May 30, 2000) (''Release No. 42808'').

[5] *See* Securities Exchange Act Release No. 44340 (May 22, 2001), 66 FR 29373 (May 30, 2001) (''Release No. 44340'').