

the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-2001-72 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45268; File No. SR-CHX-2001-24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Pricing of Preopening Orders for Nasdaq/NM Securities

January 11, 2002.

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 November 14, 2001, 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 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 Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The text of the proposed rule change is as follows. New text is italicized. Deleted text is bracketed.

RULE 37.

(a) No change to text.

1-3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trade price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled [on a single price opening at or better than the NBBO] at or better than the first unlocked,

uncrossed *bid* (for a sell order or offer (for a buy order) in the Nasdaq market. In trading halt situations, orders will be executed at or better than the first unlocked uncrossed bid or offer in the Nasdaq market after reopening. For purposes of this rule, (a) pre-opening 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 and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:25 a.m. (Central Time) on the date of the opening.

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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 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 Exchange proposes to amend Article XX, rule 37(a)(4) of the CHX Rules, which governs, among other things, pricing of preopening orders for Nasdaq/NM securities. The proposed rule change would eliminate reference to a single price opening for such preopening orders. The amended rule would provide that opening prices would instead be determined based on the first unlocked, uncrossed bid and offer in the Nasdaq market. This standard would apply to both preopening orders and to orders executed at the opening following a trading halt.

The rule change is being proposed in response to changing practices in the Nasdaq market relating to calculation of opening prices. The vast majority of the Exchange's competitors in the Nasdaq market now calculate opening prices in a manner consistent with the proposed rule change. The Exchange believes that this rule change is not only in line with market custom and practice, but is also responsive to customer preferences. Moreover, this rule change could incentivize specialists to provide greater

price improvement intraday, thereby improving execution quality statistics, to the ultimate benefit of investors in Nasdaq/NM securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act³ in general, and furthers the objectives of Section 6(b)(5)⁴ in particular, 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 represents that the proposed rule change will impose no burden on competition.

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

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

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 self-regulatory organization 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

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

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-2001-24 and should be submitted by February 8, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45271; File No. SR-CHX-2001-17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Eligibility of Limit Orders for Trade Through Protection

January 11, 2002.

On August 6, 2001, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change that would amend CHX Article XX, Rule 37(b)(6) to require that a limit order be resident in the specialist's book for a time period of 0-15 seconds (as designated by the specialist) before it would be eligible for trade through protection.

The proposed rule change was published for comment in the **Federal Register** on December 5, 2001.³ The Commission received no comments on the proposal.

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

exchange⁴ and, in particular, the requirements of section 6 of the Act⁵ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act⁶ in that it 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁷ that the proposed rule change (File No. SR-CHX-2001-17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-1357 Filed 1-17-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45270; File No. SR-NASD-99-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Establishing a Pilot Program To Establish Fees for a Volume and Issue Data Package Known as Post Data

January 11, 2002.

I. Introduction

On February 18, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 7010, System Services, to establish a fee for a Volume and Issue Data Package ("Post Data") provided through the *Nasdaq Trader.com* Web site. The proposal would establish one fee to be

⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f.

⁶ 15 U.S.C. 78s(b)(2).

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

paid by subscribers, and another fee to be paid by market data vendors.

Post Data would provide three separate reports in a single package, consisting of (1) Daily share volume reports for each Nasdaq security; (2) daily issue data containing a summary of the previous day's activity for each Nasdaq issue; and (3) monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trading (such as block or total). The proposed rule change will be implemented for a one-year pilot period.

On March 24, 1999, Nasdaq amended the proposal, which amendment replaced and superseded the original proposal.³ Notice of the proposed rule change, as modified by Amendment No. 1, appeared in the **Federal Register** on April 9, 1999.⁴ The Commission received three comment letters on the proposed rule change.⁵

Nasdaq also amended the proposal on May 30, 2001,⁶ and again on July 10, 2001.⁷ Because Amendment Nos. 2 and

³ Nasdaq's initial proposal was to provide T+1 daily share volume reports in each Nasdaq security to market data vendors, NASD members, and non-NASD member Qualified Institutional Buyers ("QIBs") as defined in Rule 144A under the Securities Act of 1933. 17 CFR 230.144A. In Amendment No. 1, Nasdaq revised the proposal to include daily issue summaries of the previous day's activity for every Nasdaq issue, and monthly summaries of trading volume statistics for the top 50 market participants broken down by industry sector, security, and type of trade.

⁴ Securities Exchange Act Release No. 41244 (April 1, 1999), 64 FR 17429.

⁵ See April 30, 1999 letter from Matthew W. Johnson, Managing Director, Lehman Brothers Inc., to Margaret H. McFarland, Deputy Secretary, SEC ("Lehman Letter"); April 12, 1999 letter from Stephen K. Lynner, President, AutEX Group ("AutEX"), to Jonathan G. Katz, Secretary, SEC; and June 23, 1999 letter from Stephen K. Lynner, President, AutEX, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC.

⁶ See May 29, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, SEC, and attachments ("Amendment No. 2"). Amendment No. 2 completely replaced and superseded Amendment No. 1, and proposed new fees for Post Data, as well as minor adjustments to the original proposal.

⁷ See July 9, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Belinda Blaine, Associate Director, Division, SEC ("Amendment No. 3"). In Amendment No. 3, Nasdaq clarified that: (1) Amendment No. 2, as further amended by Amendment No. 3, replaces and supersedes the original proposal and Amendment No. 1; (2) the proposal is filed by the NASD, acting through its subsidiary, Nasdaq; (3) the footnote that defines a "qualified institutional buyer" should be included in the proposed rule language of NASD Rule 7010(p); and (4) modifications to Post Data during the pilot period will be limited to minor enhancements to the content of the package and will be made in accordance with Section 19(b) of the Act and Rule 19b-4 thereunder. 15 U.S.C. 78s(b)

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 45115 (November 28, 2001), 66 FR 63269 (December 5, 2001).