

permissible balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing greater transparency to the 18-month plan process and sustaining investor confidence in the integrity of the markets. The Commission believes that the proposed changes to the appeals process are reasonable and afford adequate due process to issuers while at the same time bringing increased efficiency to the listing and delisting processes.²² Among other things, the process provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.²³ All decisions of the full Committee will also be subject to a discretionary "call for review" by the Amex Board of Governors.²⁴

Finally, the Commission believes that changes to the Amex management reporting process will help to protect investors and the public interest. The Amex represents that it has augmented its management reporting system to ensure that senior Exchange management is regularly alerted to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. In addition, Amex states that the management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards. The Amex believes that this comparison will enable the staff to provide feedback to the Committee and the Board of Governors as to the effectiveness of the Amex listing standards.

²² For example, the Committee will now follow the same review process for both listing and delisting determinations, rather than different processes for each. In addition, the Amex notes that the Committee, which has extensive experience and expertise in evaluating listing issues, will be given greater responsibility with respect to listing determinations, while the Board, through its "call for review" rights, will retain ultimate oversight of the listing and delisting process as well as of listing matters in general.

²³ Amex *Company Guide*, Sections 1203 and 1204.

²⁴ Amex *Company Guide*, Section 1206.

The Commission finds good cause for approving Amendment No. 3 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. 3, the Exchange withdrew proposed section 101(d), the "currently listed securities" standard, and designated proposed section 101(e) as section 101(d). As the changes to the proposal set forth in Amendment No. 3 are directly responsive to the concerns raised by the commenters, the Commission finds that, consistent with section 19(b)(2) of the Act,²⁵ good cause exists for approving Amendment No. 3 on an accelerated basis. The Commission notes that granting accelerated approval to Amendment No. 3 will allow the Amex to implement its issuer listing standards and procedures as soon as possible.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 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 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 Amex. All submissions should refer to File No. SR-Amex-2001-47 and should be submitted by June 4, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-Amex-2001-47), as amended, is approved.

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45892; File No. SR-CHX-2002-08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto by the Chicago Stock Exchange, Inc. Amending the Specialist Fee Schedule for Certain Nasdaq National Market Securities and Certain Tape B Issues

May 7, 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 April 26, 2002, 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 Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, 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 ("Schedule") to provide for wider application of a recently-enacted specialist fee exemption⁴ in the case of certain modestly traded Nasdaq National Market ("NNM") securities and certain modestly traded Tape B securities, securities listed for trading on the American Stock Exchange, Inc ("Amex"). The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

²⁷ 17 CFR 200.30-2(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The proposal was originally filed on March 29, 2002. On April 26, 2002, the CHX amended the proposal. See Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2002) ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 45661 (March 27, 2002), 67 FR 16481 (April 5, 2002).

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 the 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. 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 is proposing to amend the Schedule to provide wider application of a recently-enacted specialist fee exemption in the case of certain modestly traded NNM securities and certain modestly traded Tape B securities. Specifically, the proposed changes to the Schedule would modify the definition of "Exemption Eligible Securities,"⁵ which are exempt from otherwise applicable CHX fixed fees, assignment fees, and application fees.

⁵ Under the proposed rule change to the Schedule, "Exemption Eligible Security" would include either of the following categories of issues:

(a) any NNM security, which averages fewer than 1000 trades per day that are reported to the consolidated tape on an average daily basis during the applicable three-month measuring period. In the case of an NNM security assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of an NNM security that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any NNM security that has had trades reported to the consolidated tape for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

(b) any Tape B issue, which averages fewer than 400 trades per day in the national market system on an average daily basis during the applicable three-month measuring period. In the case of a Tape B issue assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of a Tape B issue that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any Tape B issue that has been traded in the national market system for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

As set forth in the Exchange's recently-enacted specialist fee exemption, the Exchange believes that the fee exemption constitutes an appropriate means of ensuring that the Exchange continues to trade an appropriate number of modestly traded securities. For a variety of reasons, some specialists have deregistered from certain issues formerly assigned to such specialists for trading on the CHX pursuant to unlisted trading privileges. At the same time, CHX floor brokers continue to receive orders for many of these "dropped" issues; such floor brokers view continued CHX trading of a wide variety of issues to be critical to their customers and an important part of the Exchange's overall strategic plan. Accordingly, the CHX has devised the proposed fee exemption, which the CHX believes will provide sufficient economic incentive for specialists to continue trading a wide array of issues.

Following one month's review and analysis of the effect of the recently-enacted fee exemption, the Exchange has determined that it is appropriate to expand the definition of "Exemption Eligible Securities" to include NNM securities with average daily volume of up to 1000 trades in the Nasdaq marketplace, as well as Tape B issues with average daily volume of up to 400 trades in the national market system.

The Exchange anticipates that by expanding the scope of issues to which the exemption applies, the Exchange will provide the intended incentive for firms to continue trading issues that might otherwise be "dropped" from trading at the CHX.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ generally, and Section 6(b)(4) of the Act⁷ in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

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

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(4).

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

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(2) thereunder,⁹ as establishing or changing a due, fee, or other charge paid solely by members of the CHX. At any time within 60 days of the filing of such 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.¹⁰

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 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-2002-08 and should be submitted by June 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

¹¹ 17 CFR 200.30-3(a)(12).