

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

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change<sup>8</sup> has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)<sup>10</sup> thereunder.

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.<sup>11</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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, as amended, 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

<sup>8</sup> As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78b(3)(C).

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 the File No. SR-CBOE-2002-51 and should be submitted by November 5, 2002.

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. 34-46616; File No. SR-CHX-2002-33]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

October 8, 2002.

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 is hereby given that on October 3, 2002, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantively prepared by the Exchange. 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 extend, for a period of 30 days, an existing pilot rule change that amends certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through (as defined below). The text of the proposed rule change, which would be

<sup>12</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.

in effect for a pilot period of 30 days, is available at the Commission and at the CHX.

#### 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 the purpose of and basis for the proposed rule change and discussed any comments it received 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 August 28, 2002, the Commission issued an order granting a *de minimis* exemption (the "Exemption") for transactions in certain exchange-traded funds ("ETFs") from the trade-through provisions of the Intermarket Trading System ("ITS") Plan.<sup>3</sup> The Exemption was proposed by Commission staff to permit rapid execution of orders in certain ETFs at prices that may trade through the quotations of other markets, including the NBBO price. Because Exempted Trade-Throughs will, by definition, be exempt from ITS restrictions, a market participant that reports execution of an Exempted Trade-Through will not be required to satisfy an administrative request from any ITS participant for satisfaction following the Exempted Trade-Through.<sup>4</sup>

Article XX, Rules 37(a)(3) and 37(b)(6) of the CHX Rules, which govern execution of limit orders in a CHX specialist's book, provide for execution

<sup>3</sup> See Securities Exchange Act Release No. 46428, 67 FR 56607 (September 4, 2002). At present, the Exemption extends to transactions in three designated ETFs—the Nasdaq-100 Index ("QQQ"), the Dow Jones Industrial Average ("DIAMONDS") and the Standard & Poor's 500 Index ("SPDRs")—when the transactions are "executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS" (each, an "Exempted Trade-Through"). The Exemption is effective as of September 4, 2002.

<sup>4</sup> Under current ITS rules and practice, if an ITS participant trades through the quotation of another ITS participant, thereby violating the ITS trade-through prohibition, the non-violating participant is entitled to send an administrative message noting the trade-through and the violating participant is required to respond with a commitment to trade at the price and size quoted by the non-violating participant.

of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market. These rule provisions were enacted as a means of attracting order flow to the CHX by guaranteeing that a limit order resident in a CHX specialist's book would receive a fill if the primary market traded through the limit price. The CHX specialist is willing to provide this "trade-through protection" to its customer limit orders because the CHX specialist can seek relief via ITS in the event of a trade-through.

Now that the Exemption has become effective, however, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will now constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

On September 4, 2002, the CHX filed an identical proposed rule change with the Commission; the rule change was effective upon filing, for a period of 30 days.<sup>5</sup> The CHX also filed the rule change seeking permanent approval thereof following notice and comment pursuant to Section 19(b)(2) of the Act, but the comment period following publication of the proposal in the **Federal Register** has not yet expired.<sup>6</sup> Accordingly, the CHX is filing this submission to extend the existing pilot for an additional period of 30 days, until November 3, 2002, during which time the CHX hopes to obtain the Commission's permanent approval of the proposed rule change.

## 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations

<sup>5</sup> See Securities Exchange Act Release No. 46557 (September 26, 2002), 67 FR 61941 (October 2, 2002).

<sup>6</sup> See Securities Exchange Act Release No. 46556 (September 26, 2002), 67 FR 61940 (October 2, 2002).

thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>7</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> 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 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*

No written comments were either solicited or received.

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

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and subparagraph (f)(1) of Rule 19b-4 thereunder.<sup>10</sup>

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.

## 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, 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

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>10</sup> 17 CFR 240.19b-4(f)(1).

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-2002-33 and should be submitted by November 5, 2002.

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. 34-46605; File No. SR-PCX-2002-60]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Joint Accounts

October 4, 2002.

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> notice is hereby given that on September 23, 2002, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

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

The PCX proposes to amend PCX Rule 6.84 in order to allow a market maker to participate in more than two joint accounts. The text of the proposed rule change is below. The deleted text is in brackets.

#### Text of the Proposed Rule Change

Rule 6.84(a). No Market Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any option contract or

<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.