

proposed Market Maker Exception ensures that qualifying security futures dealers on CME are subject to performance bond requirements that are comparable to those traditionally applicable to security futures dealers on securities exchanges. In addition, it is expected that other self-regulatory organizations listing Security Futures will adopt rules that are substantially similar to the proposed rule amendments.

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

Comments on the proposed rule amendments have not been solicited by the Exchange nor have any such comments been received to date.

**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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended; 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, 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No.

SR-CME-2002-01 and should be submitted by November 12, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-46657; File No. SR-CHX-2002-18]**

**Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Execution Price for Odd-Lot Orders Executed on the Chicago Stock Exchange**

October 11, 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 June 20, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CHX.<sup>3</sup> CHX filed Amendment No. 1 to the proposed rule change on September 23, 2002.<sup>4</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons, and order accelerated approval of the proposed rule change.

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

The Exchange proposes to amend Article XXXI, Rule 9 of the CHX Rules, which governs, among other things, execution prices for odd-lot orders. The text of the proposed rule follows:

Additions are *italicized*; deletions are [bracketed].

<sup>15</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.

<sup>3</sup> This submission is virtually identical to SR-CHX-2001-29, which was filed with the Commission on November 23, 2001, but was erroneously given a pre-existing file number by the CHX.

<sup>4</sup> See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission (September 20, 2002) ("Amendment No. 1"). In Amendment No. 1, CHX made clarifying and technical changes to the rule text of the proposed rule change.

**Chicago Stock Exchange Rules**

**Article XXXI**

**Odd-Lots and Odd-Lot Dealers, Dual System**

\* \* \* \* \*

**Execution of Odd-Lot Orders During the Primary Trading Session**

**Rule 9.**

\* \* \* \* \*

(b) Nasdaq/NM Securities and Dually Traded Issues. As to Nasdaq/NM Securities [and to certain stocks dually traded on this Exchange and on another national securities exchange and which stocks have been designated as being in the dual trading system], market orders will be accepted for execution as an odd-lot based on the best bid disseminated pursuant to SEC Rule 11 Ac1-1 on a sell order or the best offer disseminated pursuant to SEC Rule 11 Ac 1-1 on a buy order in effect at the time the order is presented at the specialist post, provided the order is for a number of shares less than the full lot in said stock. *Any market order to purchase or sell a Dual Trading System issue in an odd-lot amount, which is transmitted for execution to an odd-lot dealer or its agent shall be executed, unless otherwise provided herein, at the price of the adjusted ITS bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange system designated to process odd-lot orders (the "odd-lot system").*

\* \* \* \* \*

(b) General. [An odd-lot market order shall be executed at the proper full lot bid or ask price.]

\* \* \* \* \*

(vi) *In instances in which quotation information is not available, e.g., the quotation collection or dissemination facilities are inoperable, or the primary market in the security has been determined to be in non-firm mode (as referenced in Interpretation and Policy .01), standard, regular way odd-lot market orders shall be executed based on the next primary market round lot sale or shall be executed by the member organization designated by the Exchange as the odd-lot dealer for the issue, at a price deemed appropriate under prevailing market conditions.*

\* \* \* \* \*

**Interpretations and Policies:**

.01 *Adjusted Best Bid or Offer. For purposes of paragraph (b) of this Rule, the terms "adjusted ITS best bid" and "adjusted ITS best offer" for a security shall mean the highest bid and lowest*

offer, respectively, disseminated by (i) the Exchange or (ii) a market center participating in the Intermarket Trading System; provided, however, that the bid and offer in another ITS market center will be considered in determining the adjusted ITS best bid or adjusted ITS best offer in a security only if (a) the security is included in ITS in that market center; (b) the size of the quotation is greater than 100 shares; (c) the bid or offer is no more than \$.25 away from the bid or offer disseminated by the primary market; (d) the quotation conforms to Exchange requirements regarding minimum trading variations; (e) the quotation does not result in a locked market; (f) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information; and (g) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1-1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1-1.

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

In its filing with the Commission, CHX 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 places specified in Item III 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 XXXI, Rule 9 of the CHX Rules, which governs, among other things, execution prices for odd-lot orders. According to the Exchange, the proposed rule change is substantially similar to a proposed rule change approved by the Commission with respect to Rule 124(A) of the New York Stock Exchange ("NYSE"), which governs execution prices for odd-lot orders on the floor of the NYSE.<sup>5</sup>

Under the proposed rule change, odd-lot orders for Dual Trading System

issues will be executed at the adjusted Intermarket Trading System ("ITS") Best Bid or Offer ("BBO"). The ITS BBO is defined in proposed Interpretation and Policy .01 for Article XXXI, Rule 9 as the highest bid or lowest offer disseminated by the Exchange or a market center participating in ITS. Under the proposed Interpretation, the bid or offer of another market center would be used in determining the ITS BBO if: (1) The security is included in ITS in that market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than \$.25 away from the bid or offer disseminated by the primary market, (4) the quotation conforms to Exchange requirements regarding minimum trading variations, and (5) the quotation does not result in a locked market. The Exchange believes that these provisions should help ensure that the odd-lot execution price for ITS securities is not established utilizing erroneous quotation information from other market centers. Similarly, proposed Article XXXI, Rule 9(c)(vi) would govern odd-lot executions for ITS securities in instances where quotation information is unavailable due to unusual market conditions. In particular, if unusual market conditions existed (*i.e.*, inoperable quotation collection or dissemination facilities, or the primary market in the security has been determined to be in non-firm mode (as referenced in proposed Interpretation and Policy .01)), standard, regular way odd-lot market orders would be executed based on the next primary market round lot sale or shall be executed by the member organization designated by the Exchange as the odd-lot dealer for the issue, at a price deemed appropriate under prevailing market conditions.

The Exchange believes that the proposed rule change is appropriate because the rule amendments are virtually identical to the analogous NYSE rule. Moreover, the Exchange believes that the proposed rule change is to the ultimate benefit of investors, to the extent that calculation of the adjusted ITS BBO excludes erroneous quotation information.

#### 2. Statutory Basis

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>6</sup> In particular, the proposed rule is consistent with Section 6(b)(5) of the

Act<sup>7</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, as amended, 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. 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. 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-2002-18 and should be submitted by November 12, 2002.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).<sup>8</sup> Specifically, the Commission believes the proposal is consistent with the

<sup>5</sup> See Securities Exchange Act Release No. 38874 (July 25, 1997), 62 FR 41456 (August 1, 1997).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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

Section 6(b)(5)<sup>9</sup> requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market, to facilitate transactions in securities and, in general, to protect investors and the public interest.<sup>10</sup>

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the instant proposed rule change, as amended, is substantively similar to NYSE Rule 124, which has been reviewed and approved by the Commission.<sup>11</sup> Thus, this proposal does not raise any new regulatory issues or concerns. For instance, like NYSE Rule 124, the proposed rule change would amend Article XXXI, Rule 9 to base odd-lots prices on the adjusted ITS BBO if: (1) The security is included in ITS in the relevant market center, (2) the size of the quotation is greater than 100 shares, (3) the bid or offer is no more than \$0.25 away from the bid or offer disseminated by the primary market, (4) the quotation conforms to Exchange requirements regarding minimum trading variations, and (5) the quotation does not result in a locked market. Article XXXI, Rule 9 is also similar to NYSE Rule 124 in that when the adjusted ITS BBO is unavailable due to unusual market conditions the odd-lot market for an ITS security would be determined by the next round-lot sale on the Exchange.

The Commission believes that generally pricing odd-lots for listed securities based on the ITS BBO should improve the execution quality for odd-lot orders. Further, the Commission believes that the proposal should help to ensure that odd-lot executions are based on market activity that is relevant and reliable. The Commission believes that the proposed rule change, as amended, should provide small investors, who may find it difficult to trade orders in round-lot increments, with better executions and should enhance the integrity of the market.

## V. Conclusion

For the foregoing reasons, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3 of the Act. 15 U.S.C. 78c(f).

<sup>11</sup> See *supra* note 5.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2002-18), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46652; File No. SR-NASD-2002-133]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. To Establish an Execution Price Governor in SuperMontage

October 11, 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 30, 2002, 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") a proposed rule change, as described in Items I and II below, which Items have been prepared by the NASD. The NASD amended its proposal on October 9, 2002<sup>3</sup> and October 10, 2002.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and to approve the proposal, as amended, on an accelerated basis.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</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.

<sup>3</sup> See letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 27, 2002 ("Amendment No. 1"). In Amendment No. 1, the NASD submitted the proposal on a pilot basis under Section 19(b)(2) of the Act, requested accelerated approval, and replaced in its entirety the original rule filing submitted to the Commission dated on September 27, 2002.

<sup>4</sup> See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated October 10, 2002 ("Amendment No. 2"). In Amendment No. 2, the NASD made minor technical corrections to the rule text.

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

Nasdaq is proposing to establish, for a 60-day pilot period, a SuperMontage execution price governor to prevent inadvertent executions significantly away from the inside market. The text of the proposed rule change is below. Proposed new language is *italicized*.

\* \* \* \* \*

#### 4710. Participant Obligations in NNMS

(a) No Change.

(b) Non-Directed Orders

(1) General Provisions—A Quoting Market Participant in an NNMS Security shall be subject to the following requirements for Non-Directed Orders:

(A) No Change.

(i) No Change.

(ii) No Change.

(iii) No Change.

(B) Processing of Non-Directed Orders—No Change.

(i) through (iii) No Change.

(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq.

(b) If an NNMS Market Participant enters a Preferred Order, the order shall be executed against (or delivered in an amount equal to) both the Displayed Quote/Order and Reserve Size of the Quoting Market Participant to which the order is being directed, if that Quoting Market Participant is at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed). Any unexecuted portion of a Preferred Order shall be returned to the entering NNMS Market Participant. If the Quoting Market Participant is not at the best bid/best offer when the Preferred Order is next in line to be delivered (or executed), the Preferred Order shall be returned to the entering NNMS Market Participant.

(c) *If an NNMS Market Participant enters a Quote or Non-Directed Order that would result in NNMS either: 1) delivering an execution to a Quoting Market Participant(s) that participates in the automatic-execution functionality of the system at a price substantially away from the current inside bid/offer in that security; or 2) delivering a Liability*