

of orders received by it for presentation to responsible brokers or dealers. The Commission intends to monitor closely the CBOE's efforts in this regard.

*E. Obligations of Market Makers*

CBOE Rule 8.7 governs market maker obligations. Market makers on the CBOE Hybrid System would continue to be subject to the obligations imposed by this rule, as amended. The proposed change to Section (b)(ii) of CBOE Rule 8.7 clarifies that market makers would be obligated to honor their quotes for up to their disseminated size, in accordance with the Quote Rule. In addition, market makers would be deemed the "responsible broker or dealer" for quotes they cause to be disseminated.

Under Hybrid, market makers would be able to quote verbally in open outcry in response to a request for a market, or to quote electronically (or submit orders electronically) by use of an exchange-approved quoting device. CBOE Rule 8.7 also would clarify that market makers must be physically present in the trading crowd to quote and submit orders. Market maker quotes would be required to be for ten contracts or more. This size obligation would apply only to a market maker's initial undecrement quote.

In addition, the Exchange proposes new paragraph (d) to CBOE Rule 8.7, which would establish additional obligations for market makers trading Hybrid classes.<sup>74</sup> Specifically, if a market maker on the CBOE Hybrid System transacts more than 20% of its contract volume electronically in an appointed Hybrid class during any calendar quarter, the market maker would be required to maintain continuous, two-sided quotes for at least ten contracts in a designated percentage of series within the class, depending on the percentage of the market maker's contract volume transacted electronically.<sup>75</sup> The following schedule would apply:

% of Overall Class Volume Transacted on CBOE During the Previous Quarter that was Transacted Electronically	Electronic Quoting % Requirement (Percentage of series)
50 or Below .....	20
51-75 .....	40
Above 75 .....	60

Such market makers also would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an

<sup>74, 75</sup> The proposed obligations in paragraph (d) would be applicable on a per class basis and would apply only to market makers trading on the CBOE Hybrid System and only in those Hybrid classes.

order as agent. Finally, such market makers would be required to comply with the quote-width requirements contained in CBOE Rule 8.7(b)(iv).

Market makers that transact 20% or less of their contract volume electronically would be required to provide a two-sided market for a minimum of ten contracts in response to any request for quote by a floor broker or DPM representing an order as agent. Such verbal quotes would be required to comply with the quote-width requirements in CBOE Rule 8.7(b)(iv). These market makers' electronic quotes, however, would not be required to comply with the quote-width requirements of CBOE Rule 8.7(b)(iv). Although these market makers would not be obligated to quote electronically in any designated percentage of series within that class, any volume transacted electronically by such market maker would not count towards their in-person requirement in CBOE Rule 8.7.03(B).<sup>76</sup>

Market makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.<sup>77</sup> The Commission believes that a market maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, by excluding electronic transactions from satisfying a market maker's in-person requirements where the market maker transacts only 20% or less of its contract volume electronically and is not required to continuously quote or comply with quote-width requirements, the Commission believes that CBOE's rules impose such affirmative obligations on CBOE Hybrid market makers.

**V. Accelerated Approval of Amendments No. 5 and 6**

The Commission finds good cause for approving Amendments No. 5 and 6 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.<sup>78</sup> Amendments No. 5 and 6 merely make clarifications to the proposed rule text in response to

<sup>76</sup> All market makers electronically quoting in a Hybrid class would be required to post an initial undecrement bid or offer of at least ten contracts.

<sup>77</sup> See 12 CFR 221.5(c)(6).

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

comments made in the ISE Letter and by Commission staff. Therefore, the Commission believes that accelerated approval of Amendments No. 5 and 6 is appropriate.

**VI. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.<sup>79</sup>

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>80</sup> that the proposed rule change (SR-CBOE-2002-05) and Amendments No. 1, 2, 3, and 4 are approved, and that Amendments No. 5 and 6 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>81</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 03-14368 Filed 6-6-03; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47951; File No. SR-CHX-2003-13]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated To Extend a Pilot Rule Interpretation Relating To Trading of Nasdaq/NM Securities in Subpenny Increments**

May 30, 2003.

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 May 28, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. The Commission is

<sup>79</sup> 15 U.S.C. 78f(b)(5).

<sup>80</sup> 15 U.S.C. 78s(b)(2).

<sup>81</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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). The Commission waived the 5-day pre-filing notice requirement.

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 through December 1, 2003, the pilot rule interpretation relating to the trading of Nasdaq/NM securities in subpenny increments. The pilot is due to expire on May 31, 2003. The CHX does not propose to make any substantive or typographical changes to the pilot; the only change is an extension of the pilot's expiration date through December 1, 2003. The text of the proposal 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 its proposal 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 April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")<sup>5</sup> that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot has been extended six times and is now due to expire on May 31, 2003.<sup>6</sup> The CHX now proposes to

<sup>5</sup> See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001)(SR-CHX-2001-07).

<sup>6</sup> See Securities Exchange Act Release Nos. 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending the pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending the pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR

extend the pilot through December 1, 2003. The CHX proposes no other changes to the pilot, other than extending it through December 1, 2003.

##### **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).<sup>7</sup> In particular, 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 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.

### **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<sup>9</sup> and Rule 19b-4(f)(6) 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

6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); and 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003).

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

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

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

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

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 waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to continue uninterrupted through December 1, 2003, and allow the Commission to further study the trading of Nasdaq/NM securities in subpenny increments. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup>

### **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 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-2003-13 and should be submitted by June 30, 2003.

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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<sup>11</sup> 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).

<sup>12</sup> 17 CFR 200.30-3(a)(12).