

The Commission believes that the proposal to permit CBOE market makers to widen their quotes for options where the bid price is less than \$2 under specific and limited circumstances is reasonable because when one of the Triggering Events occurs it may be difficult to accurately price an option based on the security. In addition, the Commission believes that CBOE's proposal to program its systems, or to require its market makers to program their systems, to automatically widen the quote upon the occurrence of a Triggering Event and to automatically return the quote to its normal bid-ask differential when the Triggering Event ceases should ensure that the double-width relief is only used when permitted under the rule. Accordingly, the Commission believes that the proposal is narrowly tailored to permit quote width relief only in the specific and limited circumstances provided in the proposal.

#### IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-CBOE-2003-25), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48982; File No. SR-CHX-2003-17]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated Relating to Automatic Quotations

December 23, 2003.

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 June 16, 2003, 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

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

<sup>16</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.

have been prepared by the Exchange. On November 26, 2003, the Exchange filed Amendment No. 1 to the proposal.<sup>3</sup> 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 delete an interpretation of CHX Article XX, Rule 7, which governs recognized quotations. The text of the proposed rule change 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

The proposed rule change would delete an interpretation of CHX Article XX, Rule 7, which governs recognized quotations, because the Exchange believes that the provision is now obsolete. Specifically, the CHX seeks to delete an interpretation that prohibits specialists from disseminating automatically-generated quotations that are more than \$.10 away from the Intermarket Trading System ("ITS") best bid or offer. This prohibition extends to all Dual Trading System (*i.e.*, listed) issues.<sup>4</sup>

Like many exchanges, the CHX has a functionality, commonly referred to as the "auto-quote" functionality, which its specialists may use to generate

<sup>3</sup> See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded its discussion regarding the consequences of the proposed rule change, and also clarified that the proposed rule change was filed pursuant to section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

<sup>4</sup> There is no corresponding provision in the CHX rules relating to auto-quoting in Nasdaq/NM securities.

quotations automatically, based on the best bid or offer disseminated by another market. The auto-quote functionality typically is used by a CHX specialist to generate a quotation when there is no interest in the specialist's book that would be the basis for a quotation by the specialist.<sup>5</sup> When the CHX specialist is in auto-quote mode, CHX Article XX, Rule 7, Interpretation and Policy .02 prohibits the specialist from disseminating automatically-generated quotations that are more than \$.10 away from ITS best bid or offer.<sup>6</sup>

Following the securities industry's transition to decimal pricing, the consolidated quotations in the national securities market "flicker" significantly throughout each trading day. Because the auto-quote functionality is based on a flickering quotation, quotations generated by the CHX auto-quote functionality correspondingly flicker, potentially resulting in confusion for order-sending firms (and even the specialist himself). Accordingly, the CHX believes that it is appropriate to remove the interpretation that mandates an auto-quote spread of \$.10 or less, so that the CHX specialist may utilize the auto-quote functionality (when necessary) to generate a wider or different quotation that will not be subject to incessant flickering.<sup>7</sup>

Significantly, the CHX believes that this change is not only appropriate, but is mandated given recent changes in the way that systems capacity is allocated and paid for in the listed markets. Today, under an amendment to the Consolidated Quotation Association ("CQA") plan, each listed exchange is required to estimate the systems capacity needs associated with such exchange's anticipated quotation traffic for a given time period. SIAC, as the securities information processor ("SIP") for the listed markets, then bills each exchange for the systems capacity used by such exchange in disseminating its quotations. To the extent that an exchange exceeds its capacity estimates, the CQA plan provides for potentially significant financial penalties. Excessive quotation traffic is thus not only

<sup>5</sup> The specialist is required to disseminate a continuous two-sided market in all listed issues pursuant to the terms of the ITS plan. Auto-quoting is a tool that enables a CHX specialist to satisfy this requirement, even when there is no interest in the specialist's book upon which the specialist could base a quotation.

<sup>6</sup> Prior to the securities industry transition to decimal pricing, the interpretation prohibited quotations of more than 1/8 of a point away from the ITS best bid or offer.

<sup>7</sup> For example, the specialist might want to set his or her auto-quote functionality based on the quote in a particular market (such as the market with the tightest spreads).

potentially confusing; it may also operate to the financial detriment of the CHX.

For the foregoing reasons, the CHX believes that it is appropriate to delete Article XX, Rule 7, Interpretation and Policy .02. The CHX anticipates that deletion of the mandatory \$.10 auto-quote spread will result in a significant reduction in CHX quotation traffic, which benefits the national market system. Moreover, because the vast majority of the Exchange's automatic executions are based on execution guarantees that supplement the specialist's quotation, the Exchange does not believe that the proposed rule change will have any negative effect on execution prices.<sup>8</sup> In short, the only material consequence of the proposed rule change will be CHX specialist quotations that do not flicker continuously throughout the trading day. The CHX would note that each CHX specialist remains subject to their fundamental obligation to maintain "fair and orderly markets."<sup>9</sup> The CHX believes that this obligation will ensure that specialists will not abuse the auto-quote functionality to generate quotations that are useless or disruptive to the national market system.

## 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>10</sup> The CHX believes the proposal is consistent with section 6(b)(5) of the Act<sup>11</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 on Burden on Competition*

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

<sup>8</sup> CHX Article XX, Rule 37(b) requires that orders executed automatically on the CHX be executed at the national best bid or offer in effect at the time the order is received.

<sup>9</sup> See CHX Article XXX, Rule 1, Interpretation and Policy .02.

<sup>10</sup> 15 U.S.C. 78f(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

### *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 with respect to the proposed rule change, as amended.

### **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, 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-CHX-2003-17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 filings will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-2003-17 and should be submitted by January 21, 2004.

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. 34-48985; File No. SR-CHX-2003-37]

### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to ITS Trade-Throughs**

December 23, 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 November 26, 2003, the Chicago Stock Exchange, Inc. ("CHX") 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. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(1)<sup>4</sup> thereunder, which renders the proposal effective upon filing with the Commission. 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 certain provisions of CHX Article XX, Rule 40, which incorporates certain provisions of the Intermarket Trading System ("ITS") Plan ("ITS Plan"). Specifically, the CHX seeks to add Interpretation and Policy .06 to expressly recognize that certain executions will not be considered "trade-throughs" if an ITS commitment is sent contemporaneously with the execution of a trade through the bid or offer of another market center.

The text of the proposed rule change is below. Proposed new language is in *italics*.<sup>5</sup>

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<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.

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

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

<sup>5</sup> The Commission made a technical change to the rule text to address a minor error in the proposed

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