

(A) By order approve such 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 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. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR-CBOE-2003-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy 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 filing will also be available for inspection and copying at the principal office of CBOE. All submissions should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-4270 Filed 2-25-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49283; File No. SR-CHX-2003-25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Stop Order Handling Rules

February 19, 2004.

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 August 11, 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, II, and III below, which Items have been prepared by the Exchange. On January 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.³ On February 17, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 CHX Article XXX, Rule 22, which governs handling of stop orders. Specifically, the proposed rule change would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, should be treated as a market order for purposes of determining the execution price due the order.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 28, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the originally filed proposal in its entirety.

⁴ See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the originally filed proposal, as superceded by Amendment No. 1, in its entirety.

Chicago Stock Exchange Rules

Article XXX

Specialists

* * * * *

Stop Orders

RULE 22. *A stop order to buy becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange or association at or above the stop price. A stop order to sell becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange at or below the stop price. A specialist must not initiate a transaction for his own account in a stock in which he is registered that would result in putting into effect any stop order he may have on his book. However, a specialist may be party to the election of a stop order only when his bid or offer made with the approval of a Floor Official has the effect of bettering the market and when he guarantees that the stop order will be executed at the same price as the electing sale.*

* * * * *

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, as amended, 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, as amended, would amend CHX Article XXX, Rule 22, which governs the handling of stop orders. Specifically, the proposed rule change, as amended, would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, would be treated as a market order for purposes of determining the execution price due the order.

¹² 17 CFR 200.30-3(a)(12).

The Exchange does not currently have a rule that defines a stop order or a rule that sets out the required treatment of elected stop orders and believes that it is appropriate to provide certainty to its members and the investors that they serve by putting such a rule in place.⁵ Under the Exchange's proposal, stop orders would no longer be executed in accordance with the Exchange's "next, no better" policy. Rather, a stop order would be defined as an order that becomes a market order once the price of the stop order is equaled or penetrated on a national securities exchange or association.⁶ The Exchange represents that this proposed handling of a stop order is in line with the rules of other markets, including the New York Stock Exchange, Inc., the American Stock Exchange LLC, and the Pacific Exchange, Inc. and provides an appropriate fill for stop orders sent to the Exchange for execution.⁷

⁵ Although the Exchange does not currently have a rule defining stop orders, the Exchange has operated under a long-standing policy relating to stop orders; the standing policy provides that a stop order in a listed security that is routed to the CHX (and then elected by a primary market print at the stop price) is given a "next, no better" execution, meaning that the order must be executed at the next execution price on the primary market. If the next primary market execution is at a price better than the election price, the order may be executed at the election price. Otherwise stated, if the next primary market execution is at a better price than the election price, the CHX specialist has the discretion to provide either the election price or the better price.

⁶ On the CHX, market orders are executed in accordance with CHX Article XX, Rule 37, which requires that (a) market orders executed automatically be executed at the national best bid or offer in effect at the time the order was received; and (b) market orders executed manually be executed by the specialist in his principal capacity at the national best bid or offer in effect at the time the order was received, or, if the specialist elects to act as agent for the order, at the best available price in the national marketplace, using order routing systems where appropriate. If the Commission approves this proposed rule change, elected stop orders would be executed in accordance with the provisions of CHX Article XX, Rule 37. An elected stop order would be eligible for automatic execution if it were within the auto ex size threshold designated by the specialist in accordance with CHX Article XX, Rule 37(b)(1).

⁷ See, e.g., NYSE Rule 13 ("A stop order to buy becomes a market order when a transaction in the security occurs at or above the stop price after the order is represented in the Trading Crowd. A stop order to sell becomes a market order when a transaction in the security occurs at or below the stop price after the order is represented in the Trading Crowd"); Amex Rule 131 (same text as NYSE Rule 13); and Archipelago Exchange Facility Rule 7.31 ("A stop order to buy becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Order to sell becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or below the stop price").

2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with section 6(b)⁸ of the Act, in general, and furthers the objectives of section 6(b)(5)⁹ of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and 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 believes that no burden will be placed on competition as a result of the proposed rule change.

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

No written comments were solicited or received with respect to the proposed rule change.

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 its 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, 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-2003-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 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 the File No. SR-CHX-2003-25 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-4223 Filed 2-25-04; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49286; File No. SR-NASD-2004-004]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Regarding Listing Fee Waivers Under the NASD Rule 4500 Series With Regard to Certain Dual Listing and Transfer Situations

February 19, 2004.

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 January 12, 2004, 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") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).