

capped at \$2,000 per dividend spread transaction.<sup>6</sup> CBOE defines a dividend spread as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. This program is similar to fee cap programs adopted by other exchanges.<sup>7</sup>

The Exchange proposes to amend its Fee Schedule to enhance its dividend spread fee cap program. Specifically, the Exchange proposes to cap market-maker, firm, and broker-dealer transaction fees at \$2,000 for all dividend spread transactions executed on the same trading day in the same options class. The Exchange proposes to implement the enhanced fee cap program as a pilot program that will expire on September 1, 2005. The Exchange believes that enhancing the fee cap to accommodate these transactions will attract additional liquidity.

As is done under the current program, the Exchange will rebate transaction fees for qualifying transactions. Members who wish to benefit from the fee cap will be required to submit to the Exchange a rebate request form with supporting documentation (e.g., clearing firm transaction data).

In addition, the Exchange proposes to update the Fee Schedule in various places to reflect the symbol change, from QQQ to QQQQ, that accompanied the transfer of the listing of the Nasdaq-100 Index Tracking Stock from the American Stock Exchange to the Nasdaq Stock Market.

## 2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act<sup>8</sup>, in general, and furthers the objectives of section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

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

No written comments were 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**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>11</sup> because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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>12</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 is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-18 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2005-18. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

[rules/sro.shtml](#)). 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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-18 and should be submitted on or before April 28, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5-1600 Filed 4-6-05; 8:45 am]

BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51465; File No. SR-CHX-2005-04]

### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Inc. To Clarify That Specialists May Not Charge Commissions With Respect to the Execution of CHXpress Orders**

April 1, 2005.

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 March 1, 2005, the Chicago Stock Exchange, Inc. ("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 March 21, 2005, the Exchange filed Amendment No. 1 to

<sup>6</sup> See Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004) (SR-CBOE-2004-38).

<sup>7</sup> See Securities Exchange Act Release Nos. 48363 (August 19, 2003), 68 FR 51625 (August 27, 2003) (SR-PCX-2003-39); 48983 (December 23, 2003), 68 FR 75703 (December 31, 2003) (SR-Phlx-2003-80); and 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004) (SR-Amex-2004-09).

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

<sup>9</sup> 15 U.S.C. 78f(b)(4).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to have commenced on March 17, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C)

<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.

the proposed rule change.<sup>3</sup> On March 30, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</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 amend its rules to clarify that a specialist is not permitted to charge a commission on the execution of CHXpress™ orders. The text of the proposed rule change is included below. Italics indicate new text; brackets indicate deletions.

**ARTICLE XX**

**Regular Trading Sessions**

\* \* \* \* \*

**Guaranteed Execution System and Midwest Automated Execution System**

Rule 37. (a) No change to text.  
(b) No change to text.  
(1)–(10) No change to text.  
(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.

\* \* \* \* \*

*(H) A CHX specialist may not charge a commission for execution of a CHXpress order.*

\* \* \* \* \*

**ARTICLE XXX**

**Specialists**

\* \* \* \* \*

**Precedence to Orders in Book**

RULE 2. The specialist, co-specialist and relief specialist shall at all times give precedence to orders in the book for purchase or sale of securities over the orders which originate with him or it as a dealer, provided, his or its orders and those of his or its customer are market orders, or limited orders at the same price. Notwithstanding the foregoing, whenever a specialist, co-specialist or relief specialist elects to accept a professional order for the book which is not required to be accepted by such specialist, co-specialist or relief specialist pursuant to the rules and

policies of the Exchange, such specialist, co-specialist or relief specialist is not required to relinquish precedence to such order over the orders which originate with him or it as dealer, provided (a) his or its orders and those of his or its customer are limited orders at the same price and (b) the specialist, co-specialist or relief specialist is displaying his or its order, including its size, through the quotation system. [No specialist, co-specialist or relief specialist may charge a Participant a commission in any transaction in which he or it is a principal.]

*\* \* \* Interpretations and Policies*

*.005 No specialist, co-specialist or relief specialist may charge a Participant a commission in any transaction in which such specialist, co-specialist or relief specialist is a principal, or for execution of any CHXpress order.*

\* \* \* \* \*

**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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 is rolling out a new, automated functionality for the handling of CHXpress orders. According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.<sup>5</sup> With a few exceptions, CHXpress orders will be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when CHXpress is available).<sup>6</sup> If a CHXpress

order cannot be immediately executed, it will be placed in the specialist's book for display or later execution.<sup>7</sup> A CHX specialist may not cancel or place a CHXpress order on hold or otherwise prevent the order-sending firm from canceling the order. In addition, CHX specialists do not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders.<sup>8</sup> Specifically, these orders are not eligible for automated price improvement, or execution based on quotes in the national market system or prints in the primary market for a security. CHX specialists also would not be required to seek liquidity for CHXpress orders in other markets.

Through this filing, the Exchange seeks to clarify that a CHX specialist would not be permitted to charge a commission in connection with the execution of a CHXpress order. The Exchange believes that this clarification is appropriate for several reasons. First, as noted above, the handling of these orders within the Exchange's systems is entirely automatic—orders can execute automatically and be displayed automatically. Moreover, CHX specialists would not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders. Specifically, these orders would not be eligible for automated price improvement, or execution based on quotes in the national market system or prints in the primary market for a security. A CHX specialist also would not act as agent for the orders in other markets.

**2. Statutory Basis**

The Exchange 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) of the Act.<sup>9</sup> The Exchange believes the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> in that the

market, the CHXpress order would be automatically cancelled. If trading in an issue has been halted, all CHXpress orders in that issue would be automatically cancelled. See CHX Article XX, Rule 37(b)(11)(C).

<sup>7</sup> A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. See CHX Article XX, Rule 37(b)(11)(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross another ITS market. A CHXpress order that would improperly lock or cross the NBBO will be cancelled. Because CHXpress orders will be automatically displayed, there is no mechanism to allow them to be excluded from the CHX's quote.

<sup>8</sup> See CHX Article XX, Rule 37(b)(11)(E)–(F).

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>3</sup> See Form 19b–4, dated March 20, 2005 (“Amendment No. 1”), which replaced the original filing in its entirety.

<sup>4</sup> See Form 19b–4, dated March 30, 2005 (“Amendment No. 2”), which corrected an inadvertent reference to filing pursuant to Section 19(b)(3)(A) instead of Section 19(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 50481 (Sept. 30, 2004); 69 FR 60197 (Oct. 7, 2004) (SR–CHX–2004–12).

<sup>6</sup> If the execution of a CHXpress order would cause an improper trade-through of another ITS

proposal 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 inappropriate burden on competition.

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

The Exchange has neither solicited nor received written comments on 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 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 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. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2005-04 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-CHX-2005-04. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2005-04 and should be submitted on or before April 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1584 Filed 4-6-05; 8:45 am]

**BILLING CODE 8010-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-51456; File No. SR-NSX-2004-07]

#### **Self-Regulatory Organizations; National Stock Exchange; Order Approving Proposed Rule Change Relating to Non-Member Give-Ups**

March 31, 2005.

On August 31, 2004, the National Stock Exchange<sup>SM</sup> ("NSX<sup>SM</sup>") submitted to the Securities and Exchange Commission ("Commission"), 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> a proposed rule change relating to non-member give-ups. On December 3, 2004, the NSX<sup>SM</sup> filed Amendment No. 1 to the proposed rule change. The Commission published the proposed rule change, as amended for comment in

the **Federal Register** on December 29, 2004.<sup>3</sup> The Commission did not receive any comments on the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange.<sup>4</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that the rules of the NSX<sup>SM</sup> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that permitting NSX<sup>SM</sup> members to give-up non-NSX<sup>SM</sup> members' clearing numbers for purposes of clearing and settling trades should add transparency to trading on the NSX<sup>SM</sup> and should eliminate unnecessary steps in clearing and settling these trades. The proposed rule requires that the NSX<sup>SM</sup> member clearing firm accept financial responsibility for all transactions with non-members. It further requires non-members to enter into a contract consenting to the disciplinary jurisdiction of the NSX<sup>SM</sup>. This requirement should provide an adequate level of control by the NSX<sup>SM</sup> over non-members engaging in transactions on the NSX<sup>SM</sup>.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NSX-2004-07) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-1579 Filed 4-6-05; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>3</sup> Securities Exchange Act Release No. 50898 (December 21, 2004), 69 FR 78028.

<sup>4</sup> In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<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.