

amending the Amex rules to allow specialists in Nasdaq securities to send quotations to the SIP between 9:25 and 9:30 a.m. for test purposes only<sup>9</sup> more accurately reflects an existing practice.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-2005-026), as amended, is approved.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52242; File No. SR-CHX-2005-16]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment Nos. 1 and 2 There to Amend Exchange Article VI, Rule 9 Relating to Continuing Education for Registered Persons

August 11, 2005.

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 20, 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 July 18, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On August 5, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The CHX has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(f)(6) thereunder,<sup>6</sup> which renders the proposal effective upon filing with the Commission. The Commission is

<sup>9</sup> Any such pre-opening quotations are not available to create a binding contract.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<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.

<sup>3</sup> In Amendment No. 1, the Exchange amended the proposed rule change to incorporate the new "base date" term used by other self-regulatory organizations and to make other minor changes to the rule text.

<sup>4</sup> In Amendment No. 2, the Exchange withdrew its request for accelerated effectiveness and made minor edits to the rule text.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

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

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 CHX proposes to eliminate the current exemptions from the Exchange's continuing education requirements that apply to persons who have been continuously registered for more than 10 years. Below is the text of the proposed rule change. Proposed new language is in *italics*. Deletions are in [brackets].

#### ARTICLE VI

##### Restrictions and Requirements

\* \* \* \* \*

##### Continuing Education for Registered Persons

RULE 9. (a) Regulatory Element—No member or member organization shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of Section (a) of this Rule.

Each registered person shall complete the Regulatory Element of the continuing education program on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each of the occasions, the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. A person's initial registration date, *also known as the "base date,"* shall establish the cycle of anniversary dates for purposes of this rule. The content of the Regulatory Element of the program shall be determined by the Exchange for each registration category of persons subject to the rule.

[(1) Registered persons who have been continuously registered for more than ten years as of March 1, 2000 shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten years as enumerated in subsection (a)(3)(i)-(ii) of this Rule. However, persons delegated supervisory responsibility or authority and are registered in such capacity are exempt from participation in the Regulatory Element under this provision only if they have been continuously registered in a supervisory capacity for more than

ten years as of March 1, 2000 and provided that such supervisory person has not been subject to any disciplinary action under subsection (a)(3)(i)-(ii) of this Rule.]

[Persons who have been currently registered for ten years or less as of March 1, 2000 shall participate in the Regulatory Element of the continuing education program within one hundred twenty days after the occurrence of their next registration anniversary date and every three years thereafter.]

[(2) Failure to complete—Unless otherwise determined by the Exchange, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration.

The Exchange may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

[(3) [Re-entry into program]

*Disciplinary Actions*—Unless otherwise determined by the Exchange, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements if such person:

(i) Becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934;

(ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(iii) is ordered as a sanction in a disciplinary proceeding to [re-enter] *re-take* the continuing education program by any securities governmental agency or any securities self-regulatory organization.

*The re-taking of the Regulatory Element* [Re-entry] shall commence with [initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above.

\* \* \* \* \*

## \* \* \* Interpretations and Policies

\* \* \* \* \*

.03 A registered person, [who has been continuously registered for more than ten years as of March 1, 2000] who becomes subject to a disciplinary action as enumerated in subsections (a)(3)(i)–(ii) of the Rule, will be required to satisfy the requirements of the Regulatory Element of the continuing education program *with* [as if] the date the disciplinary action becomes final *as* [is] the person's [initial registration anniversary] *new base date*.

\* \* \* \* \*

.06 A registered person who is a member of the Exchange and of another self-regulatory organization ("SRO") shall be subject to the other SRO's implementation date for the elimination of exceptions to the Regulatory Element section of the continuing education program, if that date is earlier than October 1, 2005.

## 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, as amended, 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 CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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's continuing education rules generally require registered persons to complete the regulatory element of the continuing education program on their second registration anniversary dates and every three years thereafter, or as otherwise prescribed by the Exchange.<sup>7</sup> The rules currently provide an exception for two groups of persons: (1) Registered persons who have been continuously registered for more than ten years as of March 1, 2000 and (2) persons who have been continuously registered in a supervisory capacity for more than ten years as of March 1, 2000.<sup>8</sup> These exceptions are available so long as the registered persons have not been subject to

specific types of disciplinary actions within the last ten years.<sup>9</sup>

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (the "Council") agreed to recommend that self-regulatory organizations ("SROs") eliminate, from their continuing education rules, the two exceptions described above. The Council made that recommendation to ensure that all registered market participants receive the full benefits of continuing education programs, including a new module that focuses on ethical issues.

After considering the issue, the Exchange believes that it is appropriate to eliminate the two exceptions, so that all of its registered participants—regardless of the length of time of their registrations—will participate in the regulatory element of the required continuing education programs. The Exchange proposes that this rule change take effect on October 1, 2005.<sup>10</sup>

#### 2. Statutory Basis

The CHX believes the proposed rule change, as amended, 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>11</sup> In particular, the CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>12</sup> in that it is designed to facilitate transactions in securities, promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and

<sup>9</sup> See CHX Article VI, Rule 9(a)(1). A registered person does not qualify for the exception if he or she (i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; (ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or (iii) is ordered as a sanction in a disciplinary proceeding to re-enter (or as proposed, to re-take) the continuing education program by any securities governmental agency or any securities self-regulatory organization. See CHX Article VI, Rule 9(a)(3), which is being redesignated as CHX Article VI, Rule 9(a)(2) in this proposed rule change.

<sup>10</sup> To eliminate any confusion, the Exchange has confirmed in the proposed rule that an Exchange participant who is also a member of another SRO must comply with the rules of the other SRO which eliminated these exceptions as of an earlier date. See Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50630 (November 3, 2004), 69 FR 65232 (November 10, 2004); 50651 (November 10, 2004) 69 FR 67374 (November 17, 2004).

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

open market and a national market system, and, in general, to protect investors and the public interest by requiring all registered Exchange participants to participate in the regulatory element of continuing education programs.

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

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

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of such 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>15</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, as amended, is consistent with

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6) also requires that the Exchange give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. The Commission notes that the Exchange satisfied the pre-filing five-day notice requirement.

<sup>15</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on August 5, 2005, the date the Exchange filed Amendment No. 2.

<sup>7</sup> See CHX Article VI, Rule 9(a).

<sup>8</sup> See CHX Article VI, Rule 9(a)(1).

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-2005-16 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CHX-2005-16. 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, 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 also will be available for inspection and copying at the principal offices 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-2005-16 and should be submitted on or before September 8, 2005.

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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<sup>16</sup> 17 CFR 200.30-3(a)(12).

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52248; File No. SR-CHX-2004-25]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 3 to a Proposed Rule Change Relating to a Prohibition on Using a Layoff Service Unless the Service Provides Required Information to the Exchange**

August 12, 2005.

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 August 12, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") Amendment No. 3 to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The proposed rule change was originally filed on August 31, 2004 and was amended by Amendment No. 1, filed on June 7, 2005, and Amendment No. 2, filed on June 27, 2005. The proposed rule change, as amended by Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on July 12, 2005.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment No. 3, from interested persons.

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

The Exchange is amending its proposal to prohibit Exchange Participants from using any communications means to send orders to another market for execution (a "layoff service") unless that layoff service has established a process for providing the Exchange with specific information about the orders and the executions that participants receive. This amendment changes the proposed effective date contained in the proposed rule text from August 1, 2005 to September 30, 2005.

#### **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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 51967 (July 1, 2005), 70 FR 40086 (July 12, 2005) ("First Notice").

the purpose of and basis for the proposed rule changes 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 Changes*

##### 1. Purpose

As noted in the original filing, the Exchange is proposing to amend its rule relating to communications from the trading floor to provide the Exchange with the layoff service information that it needs to enhance its surveillance programs. Through this Amendment No. 3, the Exchange is seeking to revise the proposed effective date of its proposed rule to September 30, 2005. The Exchange believes that this later effective date will better allow all of its Participants and their layoff vendors to be able to comply with the proposed rule in a timely manner on its effective date.

##### 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) of the Act.<sup>4</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>5</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 by permitting the Exchange to require its participants (or their layoff service providers) to provide the Exchange with data necessary to conduct appropriate surveillance of its participants' trading activities.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

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

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