

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52815; File No. SR-CHX-2005-31]

### Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Participant Fees and Credits

November 21, 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 October 24, 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 CHX. On November 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Exchange filed the proposed rule change pursuant section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(2)<sup>5</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, 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 amend its Participant Fee Schedule ("Fee Schedule") to modify the trading permit fee due the Exchange from a participant if the participant's trading permit is cancelled intrayear and to establish a fee associated with a participant's change of name or corporate form.

#### 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 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 Change

##### 1. Purpose

The Exchange proposes to amend its Fee Schedule to modify the trading permit fee due the Exchange from a participant if the trading permit is cancelled intrayear and to establish a fee associated with a participant's change of name or corporate form. The provisions of the Fee Schedule relating to trading permits are relatively new provisions that were added when the Exchange demutualized on February 9, 2005 and issued trading permits upon demutualization and thereafter. Although from a financial perspective, the amount of the trading permit fee (\$6,000 per year) is equivalent to pre-demutualization member dues, in fact, trading permits operate much differently than seats on the Exchange. With very limited exceptions, a trading permit cannot be sold, leased, or transferred, and cannot be retained by a participant if the participant is not using the trading permit to trade on the Exchange.

As originally drafted, the Fee Schedule contemplated that each participant would be obligated to pay the entire \$6,000 annual trading permit fee, regardless of when the trading permit was cancelled during the year. The Exchange believes that it is appropriate to amend the Fee Schedule to provide for some fee relief for participants whose trading permits are cancelled intrayear. The Exchange also believes that it is necessary for the Exchange to have an adequate basis on which to budget and project annual revenues. Accordingly, the Exchange is proposing a change that would provide for the participant to pay, upon intrayear cancellation, the lesser of \$2,000 or the then-outstanding balance of the annual fee. This compromise ensures that the Exchange can budget for at least \$2,000 in annual revenue per trading permit, while affording a participant a reduction in the annual trading permit fee if the permit is cancelled early in the year.

The Exchange also proposes to establish a \$200 fee per trading permit that a participant would be charged if the participant firm changed its name or its corporate form. This fee would be charged, for example, if a participant firm changed its name from "XYZ Corporation" to "XY Corporation" or if the participant firm changed its

corporate form from a corporation to a limited liability company. Although trading permits generally are not transferable, the Exchange believes it would work a hardship on participants if they were required to obtain new trading permits (and to pay the permit fee on the existing permit, as described above) whenever participant firms changed names or corporate forms.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act<sup>6</sup> in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

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

The Exchange does not believe that the proposed rule change, as amended, would impose any 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

The foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</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 necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.<sup>9</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>6</sup> 15 U.S.C. 78(f)(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</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 commence on November 7, 2005, the date the Exchange filed Amendment No. 1 to the proposed rule change. See 15 U.S.C. 78s(b)(3)(C).

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

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

<sup>3</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(2).

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-2005-31 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-CHX-2005-31. 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 offices of the CHX. 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-2005-31 and should be submitted on or before December 20, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Jonathan G. Katz,**  
Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52799; File No. SR-NASD-2005-084]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Rule Regarding Supervisory Control Systems, Rule 3012, To Require Notification of Reliance on "Limited Size and Resources" Exception**

November 18, 2005.

#### **I. Introduction**

On June 23, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "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 amending the rule regarding supervisory control systems, Rule 3012, to require members relying on the "limited size and resources" exception to Rule 3012's general supervisory requirement for conducting producing managers' supervisory reviews to report electronically to NASD their reliance on the exception. On July 8, 2005, NASD submitted Amendment No. 1 to the proposed rule change.<sup>3</sup> On July 27, 2005, NASD submitted Amendment No. 2.<sup>4</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on August 9, 2005.<sup>5</sup> The Commission received one comment on the proposal. For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

#### **II. Description of the Proposed Rule Change**

##### *A. Description of the Proposal*

Rule 3012 (Supervisory Control System) requires members to have a system of supervisory control policies and procedures that tests and verifies that a member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons to achieve

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

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

<sup>3</sup> Amendment No. 1 clarified the rule's text.

<sup>4</sup> Amendment No. 2 replaced and superseded Amendment No. 1. Amendment No. 2 further clarified the rule's text.

<sup>5</sup> See Exchange Act Release No. 52195 (Aug. 3, 2005), 70 FR 46242 (Aug. 9, 2005) (the "Notice").

compliance with applicable securities laws and regulations, and with applicable NASD rules, and to amend those supervisory procedures when the testing and verification demonstrate a need to do so. Rule 3012 also requires that a member's supervisory control policies and procedures include, among other things, procedures that are reasonably designed to review and supervise the customer account activity conducted by a member's producing managers.

Generally, only a person senior to or "otherwise independent" of a producing manager may conduct the producing manager's reviews. However, Rule 3012 provides a limited exception for any member firm that is so limited in size and resources (the "limited size and resources" exception) that the member does not have independent associated persons who can conduct the required supervisory reviews. In such situations, a principal who is sufficiently knowledgeable of the member's supervisory control procedures may conduct the required supervisory reviews.

In its Order approving Rule 3012, the SEC specified that NASD must notify the SEC of those members that elect to rely on Rule 3012's "limited size and resources" exception.<sup>6</sup> To fulfill this obligation, NASD will need to identify those members relying on the exception. Accordingly, NASD is filing this rule change requiring firms that rely on the "limited size and resources" exception to notify NASD of their reliance on the exception. In *Notice to Members 04-71* (October 2004), the *Notice* announcing the SEC's approval of the Supervisory Control Amendments, NASD advised its members of its intent to file this rule change.

The proposed rule change will require a member that has determined that it must rely on the "limited size and resources" exception to Rule 3012 to conduct any of its producing managers' supervisory reviews, to notify NASD electronically (or through any other process prescribed by NASD) within thirty (30) days of the date on which the member first relies on the exception.<sup>7</sup>

<sup>6</sup> See Exchange Act Release No. 50477 (Sept. 30, 2004), 69 FR 59972 (Oct. 6, 2004) (SR-NASD-2004-116).

<sup>7</sup> Because the "limited size and resources" exception became effective on January 31, 2005, a member may already be relying on the exception prior to the effective date of the proposed rule change and, consequently, will be unable to comply with the rule change's requirement that NASD be notified within thirty (30) days of the date on which the member first relies on the exception. In such instance, the proposed rule change would require the member to notify NASD within thirty (30) days of the rule change's effective date.

<sup>10</sup> 17 CFR 200.30-3(a)(12).