

BSE proposes to change the indexing of the MAC from overall market share to class-by-class market share. BSE believes that this new structure would be more equitable and that Market Makers should pay for the level of liquidity in each class in which they trade.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>7</sup> in particular, because it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members of the Exchange.

### 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 that is 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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

The foregoing proposed rule change, which has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder, is effective upon filing with the Commission. 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>10</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 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 No. SR-BSE-2006-12 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-BSE-2006-12. 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 will also 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 No. SR-BSE-2006-12 and should be submitted on or before August 2, 2006.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54100; File No. SR-CHX-2006-13]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Participant Fees and Credits

July 5, 2006.

On April 24, 2006, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with 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 to amend its Participant Fee Schedule ("Fee Schedule") to reduce, retroactively to March 1, 2006, the assignment fees charged to specialist firms seeking the right to trade securities, when the securities are assigned in competition with other firms. The proposed rule change was published for comment in the **Federal Register** on June 1, 2006.<sup>3</sup> The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with section 6(b)(4) of the Act,<sup>4</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.<sup>5</sup> The proposed retroactive fee reduction was filed simultaneously with, and is identical to, a fee reduction applied by the Exchange prospectively as of April 24, 2006.<sup>6</sup> That fee reduction was based on the Exchange's belief that the right to trade securities as an Exchange specialist has only a short-term benefit, in view of an Exchange proposal pending with the Commission to implement a new trading model that does not involve the use of specialists to handle customer orders.<sup>7</sup> The Exchange believes that it is appropriate to apply the fee reduction

<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. 53868 (May 25, 2006), 71 FR 31242.

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

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. See 15 U.S.C. 78c(f).

<sup>6</sup> See Securities Exchange Act Release No. 53781 (May 10, 2006), 71 FR 28727 (May 17, 2006) (notice and immediate effectiveness of SR-CHX-2006-12).

<sup>7</sup> See SR-CHX-2006-05.

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> The effective date of the original proposed rule change is June 23, 2006, and the effective date of Amendment No. 1 is June 30, 2006. 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 such period to commence on June 30, 2006, the date on which the Exchange filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

retroactively to specialist assignments made in the period beginning March 1, 2006, a time when, the Exchange states, its management began talking with specialist firms about the reasons for, and possibility of, this type of fee reduction. The Commission believes such reduction is consistent with the Act.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CHX-2006-13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54103; File No. SR-NASD-2004-043]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to the Proposed Rule Change Relating to Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material

July 5, 2006.

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 December 12, 2005, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. This order notices, and solicits comments from interested persons on, Amendment No. 4 to the proposal and approves the proposal as amended.

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

NASD is proposing to amend NASD Rules 2210 and 2211 to require member communications with the public, other than institutional sales material and public appearances, that present mutual

fund performance information ("performance sales material") to disclose the fund's fees, expenses and standardized performance. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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.

##### *Purpose*

On March 10, 2004, NASD filed with the Commission a proposal to amend NASD Rules 2210 and 2211 to require that mutual fund communications with the public that provide performance data disclose the fund's fees, expenses and standardized performance. NASD believes these new requirements would improve investor awareness of the costs of buying and owning a mutual fund, facilitate comparison of funds and make the presentation of standardized performance more prominent. The Commission published the proposed rule change and Amendment No. 1 thereto for comment in the **Federal Register** on August 27, 2004.<sup>3</sup> The Initial Proposal would have required that:

- Performance sales material disclose:
  - The standardized performance information mandated by Rule 482 under the Securities Act of 1933<sup>4</sup> ("Rule 482") and Rule 34b-1 under the Investment Company Act of 1940<sup>5</sup> ("Rule 34b-1");
  - To the extent applicable, the maximum front-end and deferred sales charges stated in the fund's current prospectus; and
  - The fund's total annual operating expense ratio, as stated in the investment company's current

<sup>3</sup> Exchange Act Release No. 50226 (Aug. 20, 2004), 69 FR 52738 (Aug. 27, 2004) ("Initial Proposal"). Amendment No. 2, which changed the proposal in response to industry comments, was filed on May 2, 2005. Amendment Nos. 3 and 4, which altered the proposed rule change to harmonize it with the requirements of Rule 482 and Rule 34b-1, were filed on July 27, 2005, and December 13, 2005, respectively. Amendment No. 4 replaced Amendment Nos. 2 and 3 in their entirety.

<sup>4</sup> 17 CFR 230.482.

<sup>5</sup> 17 CFR 270.34b-1.

prospectus.

- All required performance information and fee disclosure be set forth:
  - Clearly and prominently, and standardized performance information be in a type size at least as large as that used for any non-standardized performance information;
  - With respect to any radio, television or video advertisements, with equal prominence to that given to any non-standardized performance information; and
  - In any advertisement, other than radio, television or video advertisements, in a prominent text box that contains only the required information.

#### *Comments Received on the Initial Proposal and NASD's Response*

The Commission received five comment letters on the Initial Proposal.<sup>6</sup> Commenters' concerns fell into three principal categories. First, commenters either opposed the text box requirement in its entirety or believed that, to be workable, NASD needed to modify the proposal to allow greater flexibility for electronic media such as Web sites. Second, some commenters stated that ongoing fees should be calculated net of fee waivers and expense reimbursements. Finally, commenters urged NASD to provide members with ample time to comply with any new rule and to allow the use of templates when filing revised sales material. A summary of the comment letters and NASD's response is set forth below.

#### *Text Box Requirement*

Three commenters objected that the proposed text box requirement would be unduly restrictive and would make it difficult to advertise the performance of multiple funds.<sup>7</sup> These commenters also

<sup>6</sup> Letters to Jonathan G. Katz, Secretary, Commission, from Colon Brown, President, Brown & Brown Securities, Inc. (Sept. 10, 2004) ("Brown Letter"); Alexander G. Gavis, Vice President and Associate General Counsel, Fidelity Investments (Oct. 12, 2004) ("Fidelity Letter"); Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute (Sept. 17, 2004) ("ICI Letter"); Stuart R. Strachan, Chairman, Investment Company Committee of the Securities Industry Association (Sept. 17, 2004) ("SIA Letter"); Heidi Stam, Principal, Securities Regulation, Vanguard Group, Inc. (Sept. 17, 2004) ("Vanguard Letter"). In addition, NASD received a letter from Forrest R. Foss, Associate Counsel, T. Rowe Price Associates, Inc. (Dec. 6, 2004) ("T. Rowe Price Letter"). We have included NASD's responses to the concerns expressed in the T. Rowe Price Letter in the discussion below.

<sup>7</sup> Fidelity Letter, ICI Letter, T. Rowe Price Letter. Two of the commenters opined that an advertisement that compares a fund's performance against a benchmark index could not include the

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</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.