

SR-CHX-2002-39 and should be submitted by February 7, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47175; File No. SR-CHX-2002-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

January 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on December 23, 2002, the Chicago Stock Exchange, Inc. ("Exchange" or "CHX") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal effective upon filing with the SEC.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change 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 membership dues and fees schedule (the "Schedule"), effective January 1, 2003, to: (1) Increase membership dues from \$5,000 to \$6,000 per year; (2) eliminate the fee relating to member firm branch offices; (3) extend the OTC Fixed Fee Charge, Listed Specialist Credit Reduction Charge and Floor Broker Credit Reduction Charge; (4) increase the monthly caps on transaction fees on orders sent through the Exchange's MAX® system; (5) add a new

processing fee for certain transactions in OTC securities; and (6) revise references to certain Nasdaq charges and make other clarifying changes.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

Membership Dues and Fees

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A. Membership Dues and Transfer Fees

All members: Effective [April 1, 2000] *January 1, 2003*, [\$5,000] *\$6,000* per year, payable monthly in equal installments.

Transfer of memberships: No change to text.

B. Self-Regulatory Organization Fee

No change to text.

C. Registration Fees

Firm or Corporation: No change to text.

[Office (other than principal)]:

[\$25 per year (up to a maximum of 1,500 offices each year) and \$25 for each additional registration during the year.]

Off-Floor Traders: No change to text.

Clerks: No change to text.

Registration Processing Fees: No change to text.

D. Specialist Assignment Fees

No change to text.

E. Specialist Fixed Fees

Except in the case of Exemption Eligible Securities (as defined above in Section D), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Dual Trading System Security = No change to text.

Fixed Fee For Specialist Firms Trading Nasdaq/NMS Securities =

The lowest monthly fixed fee charged each member firm for the period from January through June 2002, less the market data rebate earned by the firm in June, 2002. [(Effective July 2002)].

[For each month from September 2002 through December 2002,] E[each specialist firm shall be charged a Fixed Fee Charge equal to that specialist firm's pro rata share of an additional \$10,000 monthly fee. A specialist firm's pro rata share shall be based on the firm's percentage participation in the total market data rebates paid to specialist firms trading Nasdaq/NMS Securities in

June 2002.

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F. Transactions and Order Processing Fees

1. SEC Transaction Fees: No change to text.

2. NASD Fees on Cleared Transactions: No change to text.

3. Order Processing Fees: No change to text.

4. Transaction Fees:

a. to g: No change to text.

h. Effective January 1, [2001] *2003*, monthly maximums for fees:

(1) Maximum monthly transaction fees [\$7,000] *\$10,000* for orders sent via MAX

(2) Maximum monthly transaction fee \$110,000 for transactions in NASDAQ/NMS Securities (*other than transactions included in (1) above*)

(3) Maximum monthly transaction fee \$110,000 for transactions in Dual Trading System Securities (*other than transactions included in (1) above*)

(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or \$.40 per 100 average monthly gross round lot shares.

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H. Equipment, Information Services and Technology Charges

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Telephone Charges: No change to text.

[Tools of the Trade Access]

[Each specialist firm shall be billed on a monthly basis, based on usage by each of the firm's OTC/UTP co-specialists, for actual Tools of the Trade access charges that become due in accordance with the Exchange's license agreement with Financial Systemware, Inc.]

[Tools of the Trade Connection Charges]

[All Tools of the Trade Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Tools of the Trade server to facilitate OTC/UTP trading) shall be allocated pro rata on a monthly basis among all specialist firms that use Tools of the Trade in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm using Tools of the Trade software.]

Server and Network Infrastructure: All Server and Network Infrastructure.

Charges; Nasdaq Connection Charges; Charges and all Nasdaq Connection Charges (*i.e.*, the costs of providing access to and use of the Exchange's Nasdaq servers to facilitate OTC/UTP

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ The proposal affects only fees and charges assessed to members. Telephone conversation between Ellen Neely, General Counsel, CHX and Tim Fox, Attorney, Division of Market Regulation, Commission, January 9, 2003.

trading) shall be allocated pro rata on a monthly basis among all specialist firms engaged in OTC/UTP trading, based on the number of OTC/UTP co-specialists at each firm.

Time clocks: No change to text.

Cable TV: No change to text.

[ACT/Select Net access]: No change to text.

Nasdaq/Nasdaq Tools Fees and Charges

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MAX Connection Charges: No change to text.

MAX Access Charge

\$1,000 per access point, allocated pro rata among the firms that gain access to the Exchange's MAX system through that access point.

I. Clearing Support Fees

(Minimum clearing support fee is \$600 per month)

1. Account Fees: No change to text.
2. CUSIP Fees: No change to text.

3. *Processing Fees*

Transactions in OTC securities that are executed by floor brokers in securities that are not assessed a Specialist OTC CUSIP Fee but are processed by the Exchange's clearing systems

\$.0015/share, up to \$100 per side

J. Listing Fees

No change to text.

K. Market Regulation and Market Surveillance Fees

No change to text.

L. Supplies and Reports

No change to text.

M. Credits

1. **Specialist Credits**

Total monthly fees owed by a specialist to the Exchange will be reduced (and specialists will be paid each month for any unused credits) by the application of the following credits:

a. [Effective July 1, 2002] [f]For transactions in Tape A Securities:

CHX monthly CTA trade volume by stock	Transaction credit
<7%	18%
7%—12%	45%
>12%	70%

"Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association.

"Transaction Credit" when used in connection with Tape A Securities means the applicable percentage of

monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

[For each month from September 2002 through December 2002,] [t]The Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A & B Transaction Credits) × \$40,000 = Tape A Pro Rata Share

(Specialist's Monthly Tape A Transaction Credits ÷ Total CHX Monthly Tape A Transaction Credits) × Tape A Pro Rata Share = Specialist's Credit Reduction Charge

b. [Effective July 1, 2002] [f]For transactions in Tape B Securities:

CHX monthly CTA trade volume by stock	Transaction credit
≤5.75%	18%
>5.75%	50%

"Transaction Credit" when used in connection with Tape B Securities means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

"Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

[For each month from September 2002 through December 2002,] [t]The Transaction Credit calculated above for each specialist firm shall be decreased by an amount equal to that specialist firm's "Credit Reduction Charge," which shall be calculated as follows:

(Total CHX Monthly Tape B Transaction Credits Total CHX Monthly Tape A & B Transaction Credits) × \$40,000 = Tape B Pro Rata Share

(Specialist's Monthly Tape B Transaction Credits ÷ Total CHX Monthly Tape B Transaction Credits) × Tape B Pro Rata Share = Specialist's Credit Reduction Charge

2. **Floor Broker Credits**

a. **Earned Credits.** [Effective January 1, 2001,] [t]Total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor

brokers will be paid each month for any unused credits):

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[For each month from September 2002 through December 2002,] [t]The Earned Credit calculated above for each floor broker shall be decreased by an amount equal to that floor broker's "Credit Reduction Charge," which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) × \$50,000 = Floor Broker's Credit Reduction Charge

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3. **Credits for Qualified Market Makers Registered in Cabinet Securities**

No change to text.

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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 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 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 amends the Schedule in several ways. First, the proposal increases membership dues, for all members, from \$5,000 to \$6,000 per year and eliminates the fee relating to member firm branch offices. The Exchange believes that it is appropriate to eliminate the branch office fees given, among other things, its limited involvement in branch office examinations.

Next, the proposal extends, for an indefinite term, the OTC Specialist Fixed Fee Charge, Listed Specialist Credit Reduction Charge and Floor Broker Credit Reduction Charge. These charges were put in place late last year⁵ and have the impact of increasing the OTC Specialist Fixed Fee and reducing the amount of tape credits available to

⁵ See Securities Exchange Act Release No. 46592 (October 2, 2002), 67 FR 62999 (October 9, 2002) (SR-CHX-2002-28).

floor brokers and specialists trading listed securities.

The proposal also increases the monthly caps on transaction fees on orders sent through the Exchange's MAX® system, adds a new access charge for firms that send orders through the Exchange's MAX system and adds a new processing fee for certain transactions in OTC securities. The new access charge will apply to firms that send orders from outside the Exchange to the Exchange's MAX system and is designed to help defray the costs of maintaining system access. The new processing fee will apply to transactions by CHX floor brokers in OTC securities, when those securities are not traded by a CHX specialist, but where the floor broker transactions are processed by the Exchange's clearing systems.

Finally, this proposal revises references to certain Nasdaq charges and makes other clarifying changes. Specifically, the proposal updates references to Nasdaq's Tools of the Trade product to confirm that this product is now offered directly through Nasdaq and confirms that each of the Exchange's monthly transaction fee caps apply separately to different types of transaction charges.

The Exchange has proposed these fee changes in connection with the development of its 2003 operating budget and believes that these changes appropriately and equitably allocate among Exchange members the costs associated with providing various Exchange services and the overall costs associated with operating the Exchange. All of these changes to the Exchange's Schedule of Membership Dues and Fees are effective as of January 1, 2003.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act⁶ 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 CHX 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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change establishes or changes a member due, fee or other charge, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4⁸ thereunder.

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.⁹

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 CHX. All submissions should refer to File No. SR-CHX-2002-38 and should be submitted by February 7, 2003.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47176; File No. SR-NASD-2003-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Refunds of Member Surcharges in Arbitration

January 13, 2003.

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 2, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NASD is proposing to amend rule 10333(a) of the NASD Code of Arbitration Procedure to provide that, in certain circumstances, NASD will refund the member surcharge paid by a member firm named as a party to an arbitration proceeding (or where its employee/former employee has been named as a party). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

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Code of Arbitration Procedure

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10333. Member Surcharge and Process Fees

(a) Member Surcharge

(1) Each member that is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Cross-Claim or Third-Party Claim, shall be assessed a [non-refundable] surcharge pursuant to the schedule below when the Director of Arbitration perfects service of the claim naming the member on any party to the proceeding.

(2) For each associated person who is named, the surcharge shall be assessed

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

⁹ 15 U.S.C. 78s(b)(3)(C).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78(f)(b)(4).