

take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,⁹

It Is Hereby Ordered that banks, savings associations, and savings banks are exempt from the definition of the term "broker" under the Exchange Act until March 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50616; File No. SR-CHX-2004-22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Modify Certain Charges that are Payable by CHX Specialists That Trade NASDAQ/NM Securities

November 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice hereby is given that on September 27, 2004, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 "Fee Schedule"), to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM securities. The text of the proposed rule change is available at the Office of the Secretary, the Commission and the CHX.

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 regarding 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 CHX proposes to amend its Fee Schedule to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM ("Over-the-Counter" or "OTC") securities. Specifically, the changes to the Fee Schedule would (a) modify the formula for calculating the monthly fixed fee that is payable by OTC specialists; (b) establish a flat monthly CUSIP fee of \$2,000 per OTC specialist firm, regardless of the number of issues traded; and (c) eliminate application and assignment fees for OTC issues that are assigned without competition.

Fixed fees. The current monthly fixed fee payable by specialists trading OTC securities is calculated for each firm by subtracting, from the fixed fee charged to the firm in December 2003, a firm's pro rata share of a specific dollar amount. Additional reductions of the fixed fee are available to firms that meet specific share volume targets.

Under the proposed new fee calculation, the CHX would increase the basic amount paid by its OTC specialist firms to help the CHX better cover its costs of supporting the OTC specialist program, but would provide incentives, through fixed fee reductions, to specialist firms that trade additional Nasdaq/NM securities and thus increase the number of issues traded on the CHX. Specifically, the CHX would calculate the basic fixed fee by charging OTC specialist firms the greater of \$20,000 or each firm's pro rata share of \$60,000. A firm's pro rata share would be based on the number of firms trading OTC securities in a particular month.³ The CHX would also automatically increase

the basic monthly fixed fee by \$.0024 per share for all MAX-executed shares above 20 million shares, up to \$30,000 per firm, to recognize the fact that the CHX's costs of supporting the OTC specialist program would increase with substantial increases in its specialists' trading volume. As a final component of its fixed fee proposal, however, the CHX would reduce the fixed fee by \$100 for each additional Nasdaq/NM issue assigned to an OTC specialist firm, subject to a maximum monthly reduction of \$10,000 per firm. As noted above, this fee reduction provides an incentive to OTC specialist firms to trade additional Nasdaq/NM securities.

CUSIP, application and assignment fees. As noted above, the CHX also proposes to replace its current per-issue CUSIP fee with a flat fee and to eliminate the application and assignment fees that otherwise would be assessed when Nasdaq/NM issues are assigned without competition.⁴ These two proposals—like the proposed modification in the fixed fee—are designed to encourage specialist firms to trade additional Nasdaq/NM securities by allowing them to do so without absorbing additional costs.⁵

The CHX believes that these changes to the Fee Schedule represent a fair allocation of the costs associated with the OTC specialist program.⁶ As noted above, the changes are also intended to provide OTC specialists with an appropriate incentive to increase the number of OTC issues traded by an OTC specialist (consistent with the OTC specialist's duties as a specialist), which could allow the CHX's members to offer their customers access to a wider array of specialist-traded OTC securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act⁷ in that it provides for the equitable allocation of reasonable dues, fees and

⁴ The CHX would continue to charge specialist assignment fees with respect to securities that are assigned to a specialist firm in competition with other firms, reflecting the increased administrative costs associated with allocating stocks in competition.

⁵ The proposed elimination of the application and assignment fees would reduce fees for any OTC specialist firm that seeks to trade additional securities. The proposed changes to the CUSIP fee would reduce the CUSIP fees currently charged to two of the CHX's OTC specialist firms and would increase, slightly, the CUSIP fees currently charged one of the CHX's OTC specialist firms.

⁶ At a basic level, many of the CHX's costs of supporting the OTC specialist program do not vary based on the number of OTC specialist firms or the number of issues traded. These costs, however, can increase with substantial increases in trading volume. The CHX's proposed changes to the fixed fee are consistent with these principles.

⁷ 15 U.S.C. 78f(b)(4).

⁹ 15 U.S.C. 78mm.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ For example, if two specialist firms were trading OTC securities, each firm would pay \$30,000. If three specialist firms were trading OTC securities, each firm would pay \$20,000.

other charges among the CHX's members.

B. Self-Regulatory Organization's Statement of 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 Regarding 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder⁹ because it establishes or changes a due, fee or other charge imposed by the CHX. At any time within 60 days of the filing of such 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.

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 email to rules-comments@sec.gov. Please include File Number SR-CHX-2004-22 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CHX-2004-22. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office 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 No. SR-CHX-2004-22 and should be submitted on or before November 26, 2004.

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. 34-50611; File No. SR-NASD-2004-027]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Investment Company Portfolio Transactions

October 29, 2004.

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 February 10, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with 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 NASD. NASD amended the proposed rule change on

September 17, 2004.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁴

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

NASD is proposing to amend NASD Conduct Rule 2830(k). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Rule 2830. Investment Company Securities

(a) through (j) No change.

(k) Execution of Investment Company Portfolio Transactions

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

(2) *No member shall sell shares of, or act as underwriter for, an investment company, if the member knows or has reason to know that such investment company, or an investment adviser or principal underwriter of the company, has a written or oral agreement or understanding under which the company directs or is expected to direct portfolio securities transactions (or any commission, markup or other remuneration resulting from any such transaction) to a broker or a dealer in consideration for the promotion or sale of shares issued by the company or any other registered investment company.*

³ See Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2004 ("Amendment No. 1"). Amendment No. 1 modified proposed Rule 2830(k)(2) to clarify that its prohibition would apply to situations in which an investment company directs or is expected to direct portfolio transactions in exchange for distribution. Amendment No. 1 also modified that proposed prohibition to clarify that it would apply not only to the distribution of shares of a fund that directs portfolio transaction commissions to the distributing broker, but also to the distribution of the shares of any other registered investment company. Amendment No. 1 further clarified the description of the purpose of the proposed rule change.

⁴ The Commission recently amended rule 12b-1, 17 CFR 270.12b1-1, under the Investment Company Act of 1940, 15 U.S.C. 80a, to prohibit open-end management investment companies from paying for the distribution of their shares with brokerage commissions. See Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004). This NASD rule proposal corresponds with the Commission's action.

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.