

Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,<sup>13</sup> to approve the proposal, on an accelerated basis.

## V. Conclusion

Therefore it is ordered, pursuant to Section 19(b)(2) of the Act,<sup>14</sup> that the proposed rule change (SR-Amex-2005-18) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51192; File No. SR-CHX-2005-02]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Membership Dues and Fees

February 11, 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 January 3, 2005, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the CHX. On February 10, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On February 11, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act<sup>5</sup> which

renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CHX proposes to amend its membership dues and fees schedule ("Fee Schedule") to: (i) Provide for a technology charge relating to retention of electronic communications associated with an inactive mailbox, (ii) modify the Exchange's transaction fee cap provision to exclude certain floor broker orders, and (iii) clarify a provision relating to specialist fixed fees. The text of the proposed rule change is below. Additions are *italicized*; deletions are [bracketed].

\* \* \* \* \*

#### MEMBERSHIP DUES AND FEES

- A. Membership Dues and Transfer Fees—No change to text.
- B. Self-Regulatory Organization Fee—No change to text.
- C. Registration Fees—No change to text.
- D. Specialist Assignment Fees—No change to text.
- E. Specialist Fixed Fees  
Except in the case of *Tape B* 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:

\* \* \* \* \*

- F. Transaction 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 Odd Lots—No change to text. Open Limit Orders—No change to text.

The above order processing fees shall not apply to transactions in NASDAQ/NMS Securities, or to transactions in the stocks comprising the Standard & Poor's 500 Stock Price Index executed through MAX. [These order processing fees also shall not apply, through June 30, 2001, to any transaction that takes place during the E-Session.]

4. Transaction Fees. Transaction fees will be assessed on the executions of the following round-lot orders:
  - a-i.—No change to text.
  - j. The transaction fees set forth in Sections F.4(d), (e) and (f), *other than transaction fees for orders that are not routed to a floor broker via MAX*, shall be subject to the

following monthly maximums:

- (i)-(iv) No change to text.
- k-1.—No change to text.
5. Floor Broker as Principal Fees—No change to text.
- G. Space Charges—No change to text.
- H. Equipment, Information Services and Technology Charges

\* \* \* \* \*  
Retention of electronic communications: \$25 per month, per active mailbox; \$20 per month, per inactive mailbox; \$200 per disk for offline optical disk storage (5.2 GB), if requested; \$300 per disk for offline optical disk storage (9.1 GB), if requested.

I. Clearing Support Fees—No change to text.

\* \* \* \* \*

### 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 Exchange 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 the Fee Schedule to: (i) Provide for a technology charge relating to retention of electronic communications associated with an inactive mailbox, (ii) modify the Exchange's transaction fee cap provision to exclude certain floor broker orders, and (iii) clarify a provision relating to specialist fixed fees.

*Technology Charges:* The Fee Schedule currently contains a provision establishing a technology charge for the retention of electronic communications. Many of the Exchange's members seek to retain electronic communications associated with inactive mailboxes, in order to satisfy their record retention obligations. Accordingly, the Exchange believes that it is appropriate to amend its Fee Schedule to impose a \$20 per month retention charge per inactive mailbox.<sup>6</sup>

<sup>6</sup> An active mailbox becomes inactive as a matter of course when the user notifies the Exchange's

<sup>13</sup> 15 U.S.C. 78f(b)(5) and 78s(b)(2).

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</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> Amendment No. 1 replaced the original rule filing in its entirety. In Amendment No. 1, CHX clarified the distinction between active and inactive mailboxes under the "Technology Charges" discussion and clarified the effect of the recent amendment (File No. CHX-2004-22) discussed in the "Specialist Fixed Fee" section.

<sup>4</sup> Amendment No. 2 replaced Amendment No. 1 in its entirety. In Amendment No. 2, CHX made technical changes to the proposed rule change.

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

**Transaction Fee Cap:** The Fee Schedule provides for a cap on transaction fees associated with certain market maker and floor broker agency executions. The cap is available to order-sending firms that execute a specified number of orders on the Exchange per day. The Exchange is amending the Fee Schedule to clarify that this transaction fee cap is not applicable to orders that are routed to a CHX floor broker by means other than the Exchange's automated MAX<sup>®</sup> system. The Exchange believes that this limitation of the fee cap is amply warranted, because a CHX floor broker may be required to expend considerably more time and effort to execute an agency order that is received telephonically, physically, or through means other than the MAX system.

**Specialist Fixed Fee:** Section E of The Fee Schedule was recently amended, in the case of fixed fees for firms trading NASDAQ/NM Securities, to eliminate fixed fee calculations that are contingent upon the definition of "Exemption Eligible Security" that is set forth in Section D of the Fee Schedule.<sup>7</sup> Accordingly, the Exchange is further modifying Section E to clarify that the exemption for Exemption Eligible Securities now applies only to Tape B issues (*i.e.*, issues that are listed on a stock exchange other than the New York Stock Exchange).

Finally, the Exchange is amending Section F of the Fee Schedule to eliminate an obsolete reference to transactions that take place "during the E-Session." The Exchange terminated its E-Session program several years ago, rendering this reference obsolete.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6 of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>9</sup> in particular, in that it provides for the

Information Services department that they are terminating their CHX e-mail account. This may occur when the user leaves the CHX floor or establishes an alternative e-mail account. All users are required to submit such documentation when they terminate their CHX e-mail account. An account may only become active again if a written request is submitted to the CHX Information Services department, together with the user's written acknowledgement of CHX policies and procedures relating to the use of electronic mail.

<sup>7</sup> See Securities Exchange Act Release No. 34-50616 (November 1, 2004), 69 FR 64608 (November 5, 2004) (SR-CHX-2004-22). This rule change instituted a pro-rata fee calculation, and eliminated a volume-driven definition, in the case of Nasdaq/NM securities. Accordingly, the definition of Exemption Eligible Securities for Nasdaq/NM securities is no longer applicable when calculating the fixed fee for Nasdaq/NM specialists.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4).

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 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

The foregoing rule change 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>10</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>11</sup> 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.<sup>12</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 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 Number SR-CHX-2005-02 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-CHX-2005-02. This file

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(2).

<sup>12</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on February 11, 2005, the date the CHX filed Amendment No. 2. See Rule 19b-4(f)(6).

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 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 Number SR-CHX-2005-02 and should be submitted on or before March 11, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51197; File No. SR-NASD-2005-003]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 4350(n) and IM-4350-7 To Conform the Time Frame for the Disclosure of a Waiver to a Company's Code of Conduct to the Time Frame Required for Similar Disclosure by the Commission's Form 8-K

February 14, 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 January 12, 2005, the National Association of

<sup>13</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.