

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-CBOE-2005-47 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CBOE-2005-47. 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 office of the CBOE. 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-CBOE-2005-47 and should be submitted on or before July 18, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51889; File No. SR-CHX-2005-18]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit the Submission of Immediate or Cancel CHXpress Orders

June 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on June 3, 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 and II, below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. 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 Exchange proposes to amend its rules to permit the submission of immediate or cancel CHXpress orders. The text of the proposed rule change is included below. *Italics* indicate new text.

\* \* \* \* \*

#### Article XX

##### Regular Trading Sessions

\* \* \* \* \*

##### Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a) No change to text.

(b) No change to text.

\* \* \* \* \*

(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.

(A) Only an unconditional round lot limit order, or a round lot limit order with an "immediate or cancel"

condition, is eligible for entry as a CHXpress order. A CHXpress order may not be entered until an order has been executed on the primary market in the subject issue. A CHXpress order is good only for the day on which it is submitted and will be automatically cancelled at the end of each day's trading session. CHXpress orders shall be identified with the designator "XPR."

(B) No change to text.

(C) No change to text.

(D) If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution, in accordance with CHX rules, *unless the CHXpress order is an "immediate or cancel" order, in which case it will be automatically cancelled.* A CHXpress order will be instantaneously displayed, when it constitutes the best bid or offer in the CHX book. A CHXpress order, however, will not be displayed, if its display would improperly lock or cross another ITS market. If the display of a CHXpress order would improperly lock or cross another ITS market, the CHXpress order will be automatically cancelled.

\* \* \* \* \*

#### 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 Exchange 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 is rolling out a new, automated functionality for the handling of particular orders, called CHXpress™. According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.<sup>5</sup> With a few exceptions, CHXpress orders will be executed immediately and

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Securities Exchange Act Release No. 50481 (September 30, 2004); 69 FR 60197 (October 7, 2004).

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

automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when that functionality is available).<sup>6</sup> If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for instantaneous display or later execution.<sup>7</sup>

The current rules relating to CHXpress orders require that the orders be unconditional round-lot limit orders.<sup>8</sup> The Exchange now believes that it would be appropriate to also allow CHX participants to submit CHXpress orders with an "immediate or cancel" condition. According to the Exchange, allowing the submission of CHXpress orders with an "immediate or cancel" condition would reduce the amount of CHX systems capacity required to process CHXpress orders, by reducing the number of times that an order-sending firm would submit both an order and a later cancellation if the order was not immediately executed. The Exchange also believes that some order-sending firms might welcome the opportunity to submit immediate or cancel orders because of the reduced message traffic that they would otherwise be required to send to the Exchange. The Exchange therefore believes that this relatively minor change to its rules will increase the efficiency of the operation of its systems; at the same time, the Exchange does not believe that the proposal would have any impact on the protection of investors or the public interest.

## 2. Statutory Basis

The Exchange believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.<sup>9</sup> The Exchange believes the proposal is consistent with

<sup>6</sup> CHXpress orders will not be executed if those executions would improperly trade-through another ITS market or if trading in the issue had been halted. CHXpress orders that would improperly trade through an ITS market or that are received during a trading halt will be cancelled. If trading in an issue has been halted, CHXpress orders in the book will be cancelled.

<sup>7</sup> A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. See CHX Article XX, Rule 37(b)(11)(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross the National Best Bid or Offer ("NBBO"). A CHXpress order that would improperly lock or cross the NBBO will be cancelled. CHXpress orders cannot be excluded from the CHX's quote.

<sup>8</sup> See CHX Article XX, Rule 37(b)(11)(A).

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

Section 6(b)(5) of the Act,<sup>10</sup> in that the proposal is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

### 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.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder<sup>12</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange satisfied the five-day pre-filing requirement. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow Exchange participants to submit an additional order type, which could increase the efficiency of their order submission and cancellation processes. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>13</sup>

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the 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>14</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:

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### Paper Comments

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efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>14</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2005-18 and should be submitted on or before July 18, 2005.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51896; File No. SR-FICC-2004-22]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change Establishing a Sponsored Membership Program

June 21, 2005.

On November 12, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on February 28, 2005, and May 6, 2005, amended the proposed rule change.<sup>2</sup> Notice of the proposal was published in the **Federal Register** on May 12, 2005.<sup>3</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

The rule change creates a new Rule 3A of FICC's Government Securities Division's ("GSD") rules that will establish new membership categories and requirements for sponsoring members and sponsored members whereby certain existing netting members will be permitted to sponsor certain buy-side entities into membership. The rule change will also make conforming changes to FICC's existing rules to accommodate the

introduction of these new membership categories.

GSD will initially permit only bank netting members to apply to become sponsoring members.<sup>4</sup> In order to be eligible to become a sponsoring member, a bank netting member will have to meet more stringent minimum financial requirements than those required for GSD netting membership. Specifically, the sponsoring member will have to have a level of equity capital of at least \$5 billion and will have to satisfy the ratios established by the Federal Deposit Insurance Corporation for being "well-capitalized." If the sponsoring member has a bank holding company that is registered under the Bank Holding Company Act of 1956, then the bank holding company will also have to be "well-capitalized" under the relevant regulations of the Board of Governors of the Federal Reserve System. These financial criteria are both the initial and the continuing minimum financial requirements for sponsoring members. All applications for sponsoring membership will be decided on by FICC's Membership and Risk Management Committee.<sup>5</sup>

To become a sponsored member, GSD will permit only entities that are (i) registered investment companies under the Investment Company Act of 1940 and (ii) qualified institutional buyers under Rule 144A of the Securities Act of 1933.<sup>6</sup> In addition, an entity will only be able to become a sponsored member if there is a sponsoring member willing to sponsor the entity into membership. FICC will require each sponsoring member to represent in writing that each entity it wishes to sponsor meets these requirements. Thereafter, sponsoring members will have to make these representations to FICC on an on-going basis. Sponsored members will have to immediately notify their sponsoring member anytime it is no longer in compliance with the membership requirements. GSD management will decide on entities applying to become sponsored members.<sup>7</sup>

Since a sponsoring member will act as the processing agent for its sponsored members, FICC will interact solely with the sponsoring member for operational purposes. The sponsoring member will have to establish an omnibus account

for all of its sponsored members' activity. The omnibus account will be in addition to the sponsoring member's regular netting account. FICC will permit, but not require, the sponsoring member to submit sponsored member activity on a locked-in basis.<sup>8</sup>

FICC will provide its settlement guaranty to each sponsored member with respect to its respective net settlement positions (*i.e.*, for clearing fund calculation, each sponsored member's trading activity is treated separately). For operational and securities clearance purposes, however, all of the activity in the omnibus account will be netted as if it were the activity of one netting member. As a result, the omnibus account will have only one net settlement obligation per CUSIP on a daily basis.<sup>9</sup> The same will be true with respect to funds-only settlement for the omnibus account.<sup>10</sup>

The required clearing fund deposit of each sponsored member whose trading activity is submitted to the omnibus account will be calculated in the same manner as is done for the trading activity of a netting member in its regular netting account except that FICC will compute the required clearing fund deposit for each sponsored member on a standalone basis. FICC then will add each sponsored member's calculated requirement to two additional figures that will be calculated at the omnibus account level (*i.e.*, the portion of the clearing fund calculation for adjusted funds-only settlement amounts for and fail net settlement positions) to come to a total clearing fund requirement for the omnibus account. For risk management purposes, FICC will not net the resulting clearing fund calculations of each sponsored member within the omnibus account with those of other sponsored members in the omnibus account.<sup>11</sup>

FICC understands that the custodial banks that are likely to be interested in becoming sponsoring members generally collateralize their custody clients (*i.e.*, the potential sponsored members) at 102 percent for U.S. Treasury repurchase agreements.<sup>12</sup> Under the GSD clearing fund formula, this would cause a sponsoring member to pay clearing fund of an additional 4 percent of its overall transactional volume with its sponsored members,

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> The May 6, 2005, amendment to the proposed rule change clarified that sponsored members must "immediately" notify the sponsoring member (instead of "promptly" notify FICC as would have been required by the original filing) and that sponsoring members must promptly notify FICC if the sponsored member is no longer in compliance with the membership requirements. Because this change is technical in nature, republication of the notice was not required.

<sup>3</sup> Securities Exchange Act Release No. 51659 (May 5, 2005); 70 FR 25129.

<sup>4</sup> FICC will submit a proposed rule change should it decide to expand the types of entities that may be sponsoring members.

<sup>5</sup> Rule 3A, Section 2.

<sup>6</sup> FICC will submit a proposed rule change should it decide to expand the types of entities that may be sponsored members.

<sup>7</sup> Rule 3A, Sections 2(d) and 3.

<sup>8</sup> Rule 3A, Sections 5 and 6.

<sup>9</sup> Rule 3A, Sections 7 and 8.

<sup>10</sup> Rule 3A, Section 9.

<sup>11</sup> Rule 3A, Section 10.

<sup>12</sup> This means that when a custody client wishes to engage in a reverse repo transaction (for example, the custodian client is lending \$100), it will generally require collateral of 102 percent of the value of the money loaned (in this example, \$102 worth of U.S. Treasury securities).