

and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change would not 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*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **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-CBOE-2005-101 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-CBOE-2005-101. 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 the filing also will be available for inspection and copying at the principal office of 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-2005-101 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Jonathan G. Katz,**  
Secretary.

[FR Doc. E5-7669 Filed 12-21-05; 8:45 am]  
BILLING CODE 8010-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52953; File No. SR-CHX-2005-36]

### **Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Chicago Stock Exchange, Inc. and Amendment No. 1 Thereto Regarding Trading in Sub-Penny Increments**

December 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 1, 2005, the Chicago Stock Exchange, Inc. (the "CHX" or the "Exchange") 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 the CHX. On December 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule

change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

Through this filing, the Exchange proposes to amend its rules to permit Exchange participants to execute orders in sub-penny increments. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), at the Exchange's principal office, and in 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, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. 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

Under the Exchange's existing trading rules, the Exchange's participants may not bid or offer in increments below \$0.01.<sup>4</sup> Through this filing, the Exchange seeks to permit its participants to execute trades in sub-penny increments and to establish rules that regulate the instances when a specialist may trade in sub-penny increments against incoming orders

<sup>3</sup> See Form 19b-4 dated December 7, 2005. ("Amendment No. 1"). In Amendment No. 1, the Exchange: (1) Deleted any references to customer orders to make clear that a specialist must not "step ahead" of any order in the book (not just customer orders) by less than \$0.01; (2) deleted a proposed sentence relating to a specialist's trading in other markets; (3) revised the rule text to confirm the smallest increment (\$0.0001) in which an order may be executed on the Exchange; and (4) made clear that this proposal relates only to the Exchange's current trading model.

<sup>4</sup> The Exchange does not currently have a rule that sets a minimum increment at which trades can occur. Its rule relating to minimum variations specifically refers to variations at which bids or offers may be made on the Exchange. See Article XX, Rule 22.

<sup>7</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.

when there are orders in the specialist's book.<sup>5</sup>

As an initial matter, the proposed rule change would provide that Exchange participants may execute transactions in sub-penny increments.<sup>6</sup> As noted above, there is not currently an Exchange rule that prohibits this practice, but the Exchange believes it is appropriate to establish that trading in sub-penny increments is specifically permitted. The Exchange believes that it is appropriate to allow its participants to execute transactions in sub-penny increments because other markets permit trading in these increments and the Exchange and its participants would be at a competitive disadvantage if this trading were not permitted.<sup>7</sup>

Additionally, the proposed rule change would provide that an Exchange specialist (or a market maker holding a customer order) may not execute an incoming order in a sub-penny increment that is less than \$0.01 better than a limit order in the specialist's (or market maker's) book. This prohibition on "stepping ahead" of a resting limit order for less than a penny would be expanded from its current scope, which applies only to the trading of Nasdaq/NM securities, to apply to the trading of all securities on the Exchange.<sup>8</sup> The

<sup>5</sup> The Exchange intends to file a separate proposal to permit its participants and customers, beginning with the compliance date of Rule 612, to bid or offer in sub-penny increments in Nasdaq/NM securities, when those bids or offers are priced less than \$1.00 per share.

<sup>6</sup> See proposed Article XX, Rule 22(b).

<sup>7</sup> In addition, although Rule 612 of Regulation NMS specifically prohibits the display, ranking, or acceptance of a bid, offer, or order in sub-penny increments where the bid, offer, or order is priced at or above \$1.00, it does not prohibit trading in sub-penny increments. See 17 CFR 242.612(a). Indeed, the Commission, in the release of the final rules associated with Regulation NMS, noted that "Rule 612 will not prohibit a sub-penny execution resulting from \* \* \* price improvement \* \* \* so long as the execution did not result from an impermissible sub-penny order or quotation." Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556 (June 29, 2005).

<sup>8</sup> The Exchange's rule relating to sub-penny trading in Nasdaq/NM securities was first approved in 2001 and has been extended many times. See Securities Exchange Act Release Nos. 44164 (April 6, 2001), 66 FR 19263 (April 13, 2001); 44535 (July 10, 2001), 66 FR 37251 (July 17, 2001) (extending pilot through November 5, 2001); 45062 (November 15, 2001), 66 FR 58768 (November 23, 2001) (extending pilot through January 14, 2002); 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending the pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending the pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending the pilot through January 31, 2003); 47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending the pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending the pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004); 49994 (July 9, 2004), 69 FR

Exchange believes that this rule, which provides protection to orders in a specialist's book, should be extended to orders in listed securities before an Exchange specialist is permitted to.

This proposed rule change would apply only in the Exchange's current trading model. Within the current model, an Exchange specialist (or any market maker handling a customer order) typically would provide sub-penny price improvement to an order either on a manual basis or through an automated pricing mechanism used by specialist firms to process orders that are not automatically executed within the Exchange's systems. The Exchange will re-address issues associated with sub-penny trading as part of the filing the Exchange will make to qualify as an "Automated Trading Center" under Regulation NMS.<sup>9</sup>

## 2. Statutory Basis

The CHX 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).<sup>10</sup> The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act,<sup>11</sup> because they would promote just and equitable principles of trade; remove impediments to, and perfect the mechanism of, a free and open market and a national market system; and, in general, protect investors and the public interest by permitting trading to occur in sub-penny increments on the Exchange while providing protection to customer orders that are accepted or displayed in penny increments.

### B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule changes would impose any burden on competition.

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

No written comments were either solicited or received.

42486 (July 15, 2004) (extending pilot through June 30, 2005); and 52326 (August 23, 2005), 70 FR 51394 (August 30, 2005). improvement to an inbound order.

<sup>9</sup> See 17 CFR 242.600(b)(4).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, 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-CHX-2005-36 on the subject line.

### Paper Comments

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

All submissions should refer to File No. SR-CHX-2005-36. 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 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-2005-36 and should be submitted on or before January 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52960; File No. SR-ISE-2005-59]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand its \$2.50 Strike Price Program

December 15, 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 December 13, 2005, the International Securities Exchange, Inc. (“ISE” 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 ISE. The Exchange has filed the proposal as a “non-controversial” rule change 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 it 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

ISE proposes to amend ISE Rule 504 pertaining to the \$2.50 Strike Price Program (“Program”). Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Rule 504. Series of Options Contracts Open for Trading

(a) through (f)—No change.

(g) *Pursuant to a program initially approved by the SEC in 1995, [T]the options exchanges may select up to 200 options classes on individual stocks for which the interval of strike prices will be \$2.50 where the strike price is greater than \$25 but less than \$50 (the “\$2.50 Strike Price Program”). On any option class that has been selected as part of this \$2.50 Strike Price Program, \$2.50 strike prices between \$50 and \$75 may be listed, provided that \$2.50 strike prices between \$50 and \$75 are no more than \$10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an options class has been selected as part of the \$2.50 Strike Price Program, and the underlying stock closes at \$48.50 in its primary market, the Exchange may list the \$52.50 strike price and the \$57.50 strike price on the next business day. If an underlying security closes at \$54, the Exchange may list the \$52.50 strike price, the \$57.50 strike price and the \$62.50 strike price on the next business day. [The 200 options classes may be selected by the various options exchanges pursuant to any agreement mutually agreed to by the individual exchanges. In addition to those options selected by the Exchange, t]The Exchange may list a strike price interval [may be] of \$2.50 in any multiply-traded option once [another exchange trading that option selects such option as part of this program] an exchange selects an option as part of the \$2.50 Price Program. [The Exchange and any of the other exchanges may also list strike prices of \$2.50 on any options class that was previously selected by the NYSE.]*

(h) No change.

\* \* \* \* \*

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

In its filing with the Commission, ISE 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 ISE Rule 504 to allow the listing of options with \$2.50 strike price intervals for options with strike prices between \$50 and \$75 on those option classes that have been selected as part of the Program, provided the \$2.50 strike price intervals between \$50 and \$75 are no more than \$10 from the closing price of the underlying stock in its primary market on the preceding day. For example, if an options class has been selected as part of the Program, and the underlying stock closes at \$48.50 in its primary market, the Exchange may list options with strike prices of \$52.50 and \$57.50 on the next business day. If an underlying security closes at \$54, the Exchange may list options with strike prices of \$52.50, \$57.50, and \$62.50 on the next business day.

The Program was initially adopted in 1995 as a joint pilot program of the options exchanges, whereby the options exchanges were permitted to list options with \$2.50 strike price intervals up to \$50 on a total of up to 100 option classes.<sup>5</sup> The Program was later expanded and permanently approved in 1998 to allow the options exchanges to select up to 200 classes on which to list options with \$2.50 strike price intervals up to \$50.<sup>6</sup> Of these 200 options classes eligible for the Program, 60 classes were allocated to the Chicago Board Options Exchange (“CBOE”) and 51 classes were allocated to the American Stock Exchange (“Amex”), all pursuant to a formulae approved by the SEC. Each options exchange, however, is permitted to list options with \$2.50 strike price intervals on any option class that another exchange selects as part of the Program.<sup>7</sup>

The Exchange believes that its experiences over the years with the Program have produced positive results.

<sup>5</sup> See Securities Exchange Act Release No. 35993 (July 19, 1995), 60 FR 38073 (July 25, 1995) (approving File Nos. SR-Phlx-95-08, SR-Amex-95-12, SR-PSE-95-07, SR-CBOE-95-19, and SR-NYSE-95-12).

<sup>6</sup> See Securities Exchange Act Release No. 40662 (November 12, 1998), 63 FR 64297 (November 19, 1998) (approving File Nos. SR-Amex-98-21, SR-CBOE-98-29, SR-PCX-98-31, and SR-Phlx-98-26).

<sup>7</sup> The ISE does not select any option classes for inclusion in the Program. The Exchange lists options with \$2.50 strike price intervals on those classes selected by the other options exchanges. Telephone conversation between Samir Patel, Assistant General Counsel, ISE, and Theodore S. Venuti, Attorney, Division of Market Regulation, Commission, on December 15, 2005.

<sup>12</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> 15 U.S.C. 78s(b)(3)(A).

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