

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 Section, 450 Fifth Street, NW., Washington, DC 20549. 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-2004-28 and should be submitted on or before August 5, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁸ in that it is designed, among other things, to facilitate transactions in securities, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of CBOE listed issuers. The proposal also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the CBOE's proposal is similar to proposals of other self-regulatory organizations ("SROs") recently approved by the Commission.

The CBOE has requested that the Commission grant accelerated approval

to the proposed rule change, as amended, so that the proposed corporate governance listing standards can be quickly implemented. The Commission believes that the revisions proposed by the Exchange significantly align the corporate governance standards proposed for companies listed on the CBOE with the standards approved by the Commission for companies listed on other SROs.¹⁹ The Commission believes it is appropriate to accelerate approval of the proposed rule change so that the comprehensive set of strengthened corporate governance standards for companies listed on the CBOE may be implemented on generally the same timetable (with some modification of certain deadlines) as that for similar standards adopted for issuers listed on other SROs. The Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,²⁰ to approve the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change, as amended (SR-CBOE-2004-28) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Dated:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-16052 Filed 7-14-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49994; File No. SR-CHX-2004-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Reinstate and Extend a Pilot Rule Interpretation Relating To Trading of Nasdaq/National Market Securities in Subpenny Increments

July 9, 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 July 6, 2004, the Chicago Stock Exchange, Incorporated ("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 has filed this proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comment 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 immediately reinstate and extend through June 30, 2005, the pilot rule interpretation relating to the trading of Nasdaq/National market securities in subpenny increments. The CHX represents that it does not propose to make any substantive or typographical changes to the pilot; the only change is to immediately reinstate the pilot and extend its expiration date through June 30, 2005. The text of the proposed rule change is available at the Commission and at 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 Exchange 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

¹⁷ 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See *supra* note 6.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 15 U.S.C. 78s(b)(2).

²² 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).

⁴ 17 CFR 240.19b-4(f)(6).

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

On April 6, 2001, the Commission approved, on a pilot basis through July 9, 2001, a pilot rule interpretation (CHX Article XXX, Rule 2, Interpretation and Policy .06 "Trading in Nasdaq/NM Securities in Subpenny Increments")⁵ that requires a CHX specialist (including a market maker who holds customer limit orders) to better the price of a customer limit order in his book which is priced at the national best bid or offer ("NBBO") by at least one penny if the specialist determines to trade with an incoming market or marketable limit order. The pilot, which was approved in conjunction with exemptive relief granted by the Commission to allow for trading in Nasdaq/NM securities in subpenny increments,⁶ has been extended eight times and expired on June 30, 2004.⁷ The CHX now proposes

⁵ See Securities Exchange Act Release No. 44164 (April 6, 2001), 66 FR 19263 (April 11, 2001) (SR-CHX-2001-07).

⁶ In proposed Regulation NMS, the Commission proposed rules that would prohibit national securities exchanges, national securities associations, alternative trading systems, vendors, brokers and dealers from displaying, ranking, or accepting bids, offers or orders in subpenny increments in most covered securities. See Proposed Rule 612 under the Act. The CHX represents that nothing in proposed Regulation NMS, however, would prohibit trading in subpenny increments. As a result, the Exchange believes that its pilot rule would remain in place, through its proposed new date of effectiveness, if Regulation NMS were adopted in its current form. The Exchange recognizes, however, that the exemptive relief it has been granted—to allow the Exchange's members to display their quotes in penny increments while trading in subpenny increments—would be superseded if Regulation NMS's currently proposed provisions are adopted. The Exchange has stated that it will undertake to work with the Commission to ensure that the pilot program would be consistent with the rules and regulations contained in Regulation NMS, when it is adopted. Telephone conversation between Kathleen Boege, Vice President and Associate General Counsel, CHX, and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, on July 9, 2004.

⁷ See Securities Exchange Act Release Nos. 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); Securities Exchange Act Release No. 45386 (February 1, 2002), 67 FR 6062 (February 8, 2002) (extending pilot through April 15, 2002); 45755 (April 15, 2002), 67 FR 19607 (April 22, 2002) (extending pilot through September 30, 2002); 46587 (October 2, 2002), 67 FR 63180 (October 10, 2002) (extending pilot through January 31, 2003);

to immediately reinstate and extend the pilot through June 30, 2005. The CHX proposes no other changes to the pilot, other than immediately reinstating and extending it through June 30, 2005.

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).⁸ The CHX believes the proposal is consistent with Section 6(b)(5) of the Act⁹ in that it is designed to promote just and equitable principles of trade, to remove impediments to and 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 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 Exchange asserts that the proposed rule change is immediately effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because it (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with protection of investors and the public interest.

The Exchange has requested the Commission to waive the 30-day operative delay and the five-day pre-filing notice requirement. The Commission believes waiving the 30-day operative delay is consistent with

47372 (February 14, 2003), 68 FR 8955 (February 26, 2003) (extending pilot through May 31, 2003); 47951 (May 30, 2003), 68 FR 34448 (June 9, 2003) (extending pilot through December 1, 2003); 48871 (December 3, 2003), 68 FR 69097 (December 11, 2003) (extending pilot through June 30, 2004).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

the protection of investors and the public interest because it will allow the pilot to be reinstated and continue uninterrupted through June 30, 2005.¹² The Commission has also determined to waive the five-day pre-filing notice requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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.

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. Please include SR-CHX-2004-20 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 SR-CHX-2004-20. 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for

¹² For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

inspection and copying at the principal office of the Exchange. 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 SR-CHX-2004-20 and should be submitted on or before August 5, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-16048 Filed 7-14-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49989; File No. SR-FICC-2004-12]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Fee Structure of the Government Securities Division Regarding Late Notifications of Repo Collateral Substitutions and to Designate an Additional High Volume Repo Substitution Day Trigger

July 8, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on June 15, 2004, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I and II below, which Items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) under the Act³ and Rule 19b-4(f)(6) thereunder⁴ whereby the proposal is 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 purpose of the proposed rule change is to amend the fee structure of FICC's Government Securities Division

("GSD") regarding late notifications of repo collateral substitutions and to designate an additional high volume repo substitution day trigger.

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

In its filing with the Commission, FICC 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. FICC 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. Proposed Fee Structure Amendment

The GSD's Rules contain two deadlines for the submission of required repo collateral substitution notifications to FICC: (i) A deadline of noon, after which the dealer member that initiated the substitution is subject to a late fee of \$500 per substitution notification and (ii) an absolute deadline of 12:30 p.m., after which the rules require that the GSD reject the substitution notification. FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that The Bond Market Association ("TBMA") announces in advance will be high volume days. FICC also can trigger the designation of a day as a high volume day.

The proposed rule filing: (i) Lowers the \$500 late fee to \$100 for notifications received after the noon deadline, (ii) removes the absolute deadline of 12:30 p.m. after which time notifications are to be rejected, (iii) provides that notifications received after the 12:30 p.m. deadline will be processed by FICC on a good faith basis only, and (iv) imposes a fee of \$250 for notifications received and processed after the 12:30 p.m. deadline. These changes are being done in consideration of the manual process currently involved in submitting the required notifications. Specifically, FICC provides a substitution notification screen that participants use to submit collateral substitution requests to FICC. However, the process required to complete the notification screen is labor intensive and subject to the typical inefficiencies and errors associated with manual processing. Furthermore, regarding repos done on a blind-

brokered basis, which is how the vast majority of repos are executed, the repo dealer must contact the repo broker to arrange for the substitution since the repo dealer does not know its original counterparty. The repo broker then contacts the reverse repo dealer to notify it of the substitution. The interaction between repo brokers and counterparty dealers further lengthens the time required to effect a substitution notification. In certain instances, the assessments of fees against the initiating-dealer counterparty have resulted in painstaking efforts to "identify" the FICC member that caused the late notification. These efforts may at times strain the critical relationships between repo brokers and dealers.

FICC believes that until it provides a more comprehensive automated service for facilitating the timely and efficient processing of collateral substitution notifications to members, it is inappropriate to impose an absolute deadline after which it rejects a substitution notification. FICC proposes that any notification received after 12:30 p.m. be processed on a good faith basis only and subject to a late fee of \$250 if processed by FICC. Also for this reason, FICC believes that the fee associated with the late submission of such notifications should be lowered to \$100 for notifications received after 12 p.m. The 12 p.m. and 12:30 p.m. deadlines will continue to be extended by an hour on those days indicated by TBMA as high volume repo substitution days as well as those days which FICC designates as high volume days.

2. Designation of an Additional High Volume Repo Substitution Day Trigger

As stated above, FICC extends the noon and 12:30 p.m. submission deadlines by one hour on those days that TBMA announces in advance will be high volume days. The rules currently provide FICC with the authority to trigger a designation of a high volume day as well.⁵ Up until this point, the event used by FICC to trigger a high volume day has been the receipt of more than 150 collateral substitution notifications in the aggregate by the GSD's repo broker members.

FICC, after consultation with TBMA and its members, now seeks to designate the receipt by any one repo broker of 40 or more collateral substitution notifications as another high volume day trigger. FICC has experienced days where the number of notifications did

¹³ 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).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ This authority was given to the Government Securities Clearing Corporation ("GSCC"), FICC's predecessor. Securities Exchange Act Release No. 46855 (November 20, 2002), 67 FR 70987.