

*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-2004-37 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-2004-37. 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 inspection and copying at the principal offices 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-2004-37 and should be submitted on or before November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-50619; File No. SR-CHX-2003-07]

**Self-Regulatory Organizations;  
Chicago Stock Exchange, Inc.; Order  
Granting Approval of Proposed Rule  
Change and Amendments No. 1 and  
No. 2 Thereto Relating to Out-of-Range  
Execution Rules**

November 2, 2004.

On March 20, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") 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 Rule 19b-4 thereunder,<sup>2</sup> to amend CHX Article XX, Rule 37, which governs, among other things, "out-of-range" executions.<sup>3</sup> The Exchange amended the proposal on March 10, 2004,<sup>4</sup> and September 15, 2004.<sup>5</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on September 29, 2004.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>8</sup> because 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

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

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

<sup>3</sup> An "out-of-range" execution is an execution that would create a new high or new low for the day when compared to the primary market range.

<sup>4</sup> See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2004 ("Amendment No. 1"). Amendment No. 1 clarified the purpose and effects of the proposal.

<sup>5</sup> See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

<sup>6</sup> See Securities Exchange Act Release No. 50417 (September 21, 2004), 69 FR 58208.

<sup>7</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

CHX Article XX, Rule 37, governs the Exchange's Midwest Automated Execution ("MAX") system and its SuperMAX 2000 system. Currently, Rule 37 contains provisions stating that neither system shall automatically execute an order if the execution would set a new high or new low for the day compared to the primary market price. If an out-of-range execution would result, the order is deemed to have been submitted with a request for a stop and will be sent to a CHX specialist for manual handling. This proposal would eliminate these provisions, thereby allowing MAX and SuperMAX 2000 to effect automatic executions that may establish new highs or new lows for the day. CHX believes that these provisions are no longer necessary because, with the advent of decimal pricing and the increase in trading volume at regional exchanges such as CHX, an out-of-range execution is more readily seen by customers as reflecting the current market for the security.

The out-of-range provisions in Rule 37 were designed to assist specialists in providing customers primary market price protection and to provide those customers an opportunity for price improvement by offering a stop. Although the Commission found these provisions to be consistent with the Act,<sup>9</sup> it does not believe that the Act compels CHX to offer this particular form of investor protection. Therefore, the Commission believes that it is consistent with the Act for CHX to delete these provisions, thereby allowing its automatic execution systems to establish new highs and new lows for a security.

Although deleting the provisions that treat orders that would result in out-of-range executions as if they had a request for a stop, certain of CHX's other rules contain references to the practice of stopping stock.<sup>10</sup> CHX has represented that it is appropriate to clarify whether the practice of stopping stock should be permitted on the Exchange. If the Exchange's management, member committees, and Board of Governors determine that the practice of stopping stock on the Exchange should be prohibited, the Exchange would propose a separate rule change to the Commission. On the other hand, if the Exchange determines that it remains appropriate for CHX specialists to stop stock in certain limited circumstances, CHX has represented that it would

<sup>9</sup> See Securities Exchange Act Release No. 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995).

<sup>10</sup> See CHX Article XX, Rules 28 and 37(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

propose a rule change to the Commission defining the circumstances under which stock may be stopped on the Exchange and specifying appropriate conduct by CHX specialists.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-CHX-2003-07), as amended, be, and it hereby is, approved.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50621; File No. SR-NASD-2004-151]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Making Technical Modifications to the NASD Trade Reporting Rules

November 2, 2004.

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 October 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 Nasdaq. Nasdaq has designated this proposal as one concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the rule effective upon Commission receipt of this filing. 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

Nasdaq proposes to make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members' trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR-NASD-2004-076 (the "name change" filing)<sup>5</sup> was filed without including the language changes previously approved as part of SR-NASD-2003-159.<sup>6</sup> In addition, the filing makes two technical corrections to the text of NASD Rules 5430(b)(10) and 6620(e)(5) to correct placement errors made in SR-NASD-2004-076.<sup>7</sup> The text of the proposed rule change is available at the NASD and at the Commission.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq proposes to make technical modifications to the NASD trade reporting rules. These modifications do not in any way alter members' trade reporting obligations. The changes merely reflect technical language changes necessitated by the fact that SR-NASD-2004-076<sup>8</sup> was filed without including the language previously approved as part of SR-NASD-2003-159.<sup>9</sup>

On April 19, 2004, the Commission approved SR-NASD-2003-159,<sup>10</sup> which filing created several new trade report modifiers and expanded the use of certain existing modifiers. For example, Nasdaq created the .ST modifier, which it will attach to late reports of pre-open

and after-hours trades. The filing also proposed expanding use of the .W modifier to identify Stop Stock Transactions, and allowing the .PRP modifier to be used for exchange-listed securities. These modifications pertain only to reports submitted to Nasdaq's Automated Confirmation Transaction Service ("ACT"), and do not affect reports submitted to the NASD's alternative display facility. The appropriate language changes were included in the filing—SR-NASD-2003-159.<sup>11</sup>

Subsequent to the Commission approving SR-NASD-2003-159, Nasdaq filed, as effective upon filing, SR-NASD-2004-076,<sup>12</sup> re-naming certain Nasdaq systems. For example, Nasdaq's trade reporting system and its execution system were known as ACT and SuperMontage, respectively. SR-NASD-2004-076<sup>13</sup> eliminated the individual names of these systems, which are referred to collectively now as the Nasdaq Market Center. However, Nasdaq deliberately did not incorporate in the name-change filing the rule language changes approved in SR-NASD-2003-159<sup>14</sup> because, at that time, there were some questions as to when, or if, some of the new modifiers would be implemented.

The .ST modifier, while approved by the Commission, could not be implemented until the respective participants of the Nasdaq UTP Plan and Consolidated Tape Association Plan ("CTA Plan") approved the changes, which approval had not been obtained when the name-change filing was submitted. Nasdaq believed incorporating the rule language changes approved in SR-NASD-2003-159<sup>15</sup> in the name-change filing would create confusion because the language was not effective.

Since the filing of SR-NASD-2004-076,<sup>16</sup> Nasdaq has obtained approval from the Nasdaq UTP Plan and CTA Plan participants to implement the .ST modifier and other modifiers approved in SR-NASD-2003-159.<sup>17</sup> Because of these developments, Nasdaq believes it is appropriate to include the language associated with these modifiers in the NASD rules. However, given that implementation of some of the changes will be delayed for an additional period of time, Nasdaq is adding footnotes after affected text to indicate that the rule

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> 7 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> Securities Exchange Act Release No. 50074 (July 23, 2004), 69 FR 45866 (July 30, 2004).

<sup>6</sup> Securities Exchange Act Release No. 49581 (April 19, 2004), 69 FR 22578 (April 26, 2004).

<sup>7</sup> See footnote 5, *supra*.

<sup>8</sup> *Id.*

<sup>9</sup> See footnote 6, *supra*.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See footnote 5, *supra*.

<sup>13</sup> *Id.*

<sup>14</sup> See footnote 6, *supra*.

<sup>15</sup> *Id.*

<sup>16</sup> See footnote 5, *supra*.

<sup>17</sup> See footnote 6, *supra*.