

the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever exchange is the initial listing market shall be designated as the primary market. If the initial listing market is a market other than the NYSE or the AMEX, but the subject security is traded by both the NYSE and the AMEX, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.

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II. Description of the Proposal and Amendment Nos. 1 and 2 Thereto

The CHX submitted a proposed rule change and Amendment Nos. 1 and 2 thereto to amend CHX Article XX, Rule 37(a)(3)(a), which governs execution of resting limit orders based on certain conditions in the primary market and to add proposed *Interpretation and Policy* .07. Specifically, the proposed rule change would permit the Exchange's Rules Subcommittee to designate the primary market in each listed issue for purposes of determining limit order execution guarantees to be offered on the CHX instead of using the current CTA Plan definition of a primary market.

Under the proposed change, as amended, the Exchange's Rules Subcommittee would be given the authority to define the primary market for listed securities, for purposes of determining the limit order execution guarantees offered on the Exchange. As an initial matter, the Rules Subcommittee intends to designate the initial listing market for a security as the primary market, unless that security is traded by either the New York Stock Exchange, Inc. ("NYSE") or the American Stock Exchange LLC ("Amex"); if the security is traded by one of those markets, then the primary market would be the NYSE (for the securities it trades) and the Amex (for the securities it trades). If a security is traded on both the NYSE and the Amex, whichever of the two is the initial listing market would be designated as the primary market.⁶ If the initial listing

⁶ If the Rules Subcommittee identifies a different designation for all listed securities traded on the Exchange, the Exchange will notify its order-sending firms of those Exchange-wide changes and file those changes with the Commission as an interpretation of an existing rule pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1). If, however, the Rules Subcommittee responds to the fragmentation in the market by identifying different designated markets for different securities, the Exchange will file, pursuant to Rule 19-4(f)(1), a new interpretation confirming that the Rules Subcommittee has identified different designated markets in different securities for purposes of this

market is a market other than the NYSE or the Amex, but the subject security is traded by both the NYSE and the Amex, the primary market shall be the market with the largest trading volume in the subject security, calculated on a twelve-month rolling basis.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with section 6(b)(5) of the Act,⁷ in that it is designed to promote just and equitable principles of trade, to remove impediments to 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. The Commission believes that allowing the CHX's Rules Subcommittee to define the primary market for listed securities instead of using the current CTA Plan definition of primary market for purposes of determining limit order execution guarantees on the CHX should help to limit the continual redesignation of what the primary market is for a particular security. The Commission further believes that the proposed rule change, as amended, should help to alleviate any confusion for CHX order-sending firms and their customers as to what constitutes the primary market in a particular security. Finally, the Commission believes that the proposed rule change, as amended, should assist the CHX's Rules Subcommittee in consistently designating a market that is a significant source of liquidity, to the benefit of customers whose orders are routed to the CHX.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulation thereunder applicable to a national securities exchange, and, in particular, section 6(b)(5) of the Act.⁸

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-CHX-2003-24) and Amendment Nos. 1 and 2 are approved.

voluntary functionality, but will not list all of those different designations.

⁷ 15 U.S.C. 78f(b)(5).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49772; File No. SR-CHX-2004-08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated To Amend the CHX Membership Dues and Fees Schedule To Provide a Tape Credit of 50% to Specialists Trading Tape A and Tape B Securities

May 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 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, II and III below, which Items have been prepared by the Exchange. On May 18, 2004, the CHX filed Amendment No. 1 to the proposed rule change.³ 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

The CHX proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective February 1, 2004, to provide a tape credit of 50% to specialists trading Tape A and Tape B securities. The text of the proposed rule change is available at the CHX 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, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 completely replaced and superseded the original proposed rule change.

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

Under the Exchange's current Fee Schedule, the Exchange provides tape credits to specialists trading Tape A and Tape B securities.⁴ Specifically, under the Tape A credit program, the Exchange provides credits of 18% (for market share less than 7%), 45% (for market share between 7 and 12%) and 70% (for market share above 12%). A similar structure applies to the Tape B credit program, where the Exchange provides credits of 18% (for market share less than or equal to 5.75%) and 50% (for market share greater than 5.75%). These credits are expressed in marginal rates, however, so that no specialist receives the top level of credit for all trading in a particular security.⁵ Specialists may also receive additional transaction credits under the Fee Schedule.⁶

The Exchange now proposes to amend the Fee Schedule, effective February 1, 2004, by providing a flat, not marginal, 50% tape credit to specialists trading Tape A and Tape B securities.⁷ This tape credit program is designed to provide credits to specialist firms that trade Tape A and Tape B securities in a manner that rewards them for their trading on the Exchange.

The Exchange's proposal is substantially similar to tape credit or rebate programs that have been

⁴ "Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association. "Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

⁵ For example, if a specialist trades a Tape A security and had a 15% market share in that security, the Exchange would provide a credit of 18% on the trades that make up the first 7% of that market share, a credit of 45% on the trades that make up between 7 and 12% of that market share and a credit of 70% only on those trades that exceed 12% of market share.

⁶ The Exchange implemented a program, effective May 1, 2003, to provide additional tape revenue to specialists from certain incremental increases in the Exchange's share of Tape A and Tape B volume. See Securities Exchange Act Release No. 48477 (September 4, 2003), 68 FR 53625 (September 11, 2003)(SR-CHX-2003-15).

⁷ In the instant filing, the Exchange also (a) confirms that the specialist tape credits do not include any tape credits that might be paid to the Exchange's floor brokers under a separate tape program; and (b) deletes the provision currently in the Fee Schedule that relates to specialist credits available for trading that occurs during the E-Session, a trading session that no longer is held.

approved for other market centers.⁸ As a result, the Exchange believes that the Commission would not be breaking new ground in approving this proposal; instead, it would only be allowing the Exchange to operate a market data revenue-sharing program that could compete on substantially similar footing with programs of other markets.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(4) of the Act⁹ in that it provides for the 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

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 CHX 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

⁸ See e.g., Securities Exchange Act Release Nos. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR-BSE-2002-10)(approving proposal to (a) share 50% of Tape A revenues, in excess of a threshold amount, with eligible member firms; and (b) share 50% of net Tape B revenue per trade with member firms that route business to the BSE); 48106 (June 27, 2003), 68 FR 40318 (July 7, 2003)(SR-PCX-2002-62)(approving an ArcaEx revenue sharing program that shared 50% of gross Tape A revenues with eligible users of the ArcaEx facility); and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2002)(SR-NASD-2002-149)(approving a transaction credit program for the Nasdaq InterMarket that shared 50% of Tape A and Tape B revenues with eligible members, based on the members' pro rata share of transactions in those securities).

⁹ 15 U.S.C. 78(f)(b)(4).

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 File Number SR-CHX-2004-08 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-2004-08. 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 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-2004-08 and should be submitted on or before June 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,

Deputy Secretary.

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¹⁰ 17 CFR 200.30-3(a)(12).