

*Composition of the MTS Committee*

CBOE is amending Rule 8.82 to modify the composition of the MTS Committee. Under the proposed rule change, the nine elected members of the MTS Committee will include: three persons whose primary business is as a Market-Maker, three persons whose primary business is as a Market-Maker or as a Designated Primary Market Maker ("DPM") Designee, and three persons whose primary business is as a Floor Broker, at least two of whom represent public customer business in the course of their activities as a Floor Broker. The proposal removes a provision requiring that no more than two members of the MTS Committee be associated with a DPM. The Vice Chairman of the Exchange and the Chairman of the Market Performance Committee will continue to serve on the MTS Committee.

The amendments to CBOE Rule 8.82 also provide that one of the nine elected positions on the MTS Committee may instead be filled by a lessor whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and whose primary residence is located within 80 miles of the Exchange's trading floor. In addition, the amendments to Rule 8.82 provide that the sole judge of whether a candidate satisfies the applicable qualifications for election to the MTS Committee in a designated category shall be the Nominating Committee, in the case of candidates nominated by the Nominating Committee, or the Executive Committee, in the case of candidates nominated by petition, and the decision of the respective committee shall be final. The proposal further amends CBOE Rule 8.82 to provide that: (i) no elected member of the MTS Committee may be affiliated with any other elected member of the MTS Committee; (ii) the term of office of elected MTS Committee members will commence at the time of the first regular Board meeting of the calendar year; (iii) the Board of Directors is the sole judge of whether or not an MTS Committee member no longer qualifies to serve on the Committee; (iv) the Board may remove MTS Committee members for cause; and (v) the Vice Chairman, with the approval of the Board, may fill vacancies on the MTS Committee until the first regular Board meeting of the calendar year following the next annual election. The MTS Committee monitors and implements the Exchange's DPM program.

*Terms of Office for Committee Members*

The proposed rule change also amends CBOE Rule 2.1 to provide that the term of office for committee members appointed pursuant to that Rule will continue until the first regular Board meeting of the next calendar year and until their successors are appointed or until death, resignation or removal. In addition, amended Rule 2.1 provides that any action taken by majority of the committee members voting, as opposed to present, at a meeting shall be the act of the committee.

*Other Business Activities of the President of the Exchange*

The Exchange also is amending CBOE Constitution Section 8.6 to allow the Board of Directors to exempt the President from the prohibition against engaging in any business other than as President of the Exchange, in the same manner that the Board may exempt the Chairman of the Board pursuant to Constitution Section 8.2. The Commission notes that the Pacific Exchange, Inc. ("PCX") has a similar provision in its Constitution.<sup>4</sup> In addition, the Commission notes that under CBOE Rule 8.1(d), the President cannot be affiliated with a CBOE member.

In addition to the changes described above, the Exchange is adopting changes to several provisions of its Constitution and rules that are intended to update those provisions to reflect current practice. Those changes are described in the Notice of Proposed Rule Change.

**III. Discussion**

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>5</sup> In particular, the Commission finds that the proposal is consistent with the requirements of Sections 6(b)(3)<sup>6</sup> and 6(b)(5)<sup>7</sup> of the Act. Section 6(b)(3) requires, among other things, that the CBOE's rules assure a fair representation of its members in the administration of its affairs. Section 6(b)(5) requires, among other things, that CBOE's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and

<sup>4</sup> See PCX Constitution Section 2(a).

<sup>5</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b)(3).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

practices, and, in general, protect investors and the public interest.

The Commission believes that the proposed rule change should clarify CBOE's Constitution with respect to the terms of office of its Directors and committee members, as well as the composition of its Nominating Committee and thereby should increase the efficiency of CBOE's governance. In addition, the Commission believes that the amendments to the composition of CBOE's MTS Committee are consistent with its obligation to ensure its members are fairly represented in the administration of its affairs, and should permit CBOE to include representatives of diversified broker-dealers on the Committee without permitting the Committee to become dominated by any one type of member constituency. Further, the Commission believes that the proposed rule change should update CBOE's election and voting procedures, as well as the methods by which CBOE may provide notice to its members.

**IV. Conclusion**

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change, as amended, (SR-CBOE-2003-55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-49188; File No. SR-CHX-2003-17]

**Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated Relating to Automatic Quotations**

February 4, 2004.

On June 16, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change that would delete an interpretation of CHX Article XX, Rule 7 that prohibits specialists from disseminating automatically-generated quotations that are more than \$.10 away from the Intermarket Trading System best bid or offer. On November 26, 2003, CHX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The **Federal Register** published the proposed rule change, as amended, for comment on December 31, 2003.<sup>4</sup> The Commission received no comments on the proposal.

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.<sup>5</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>6</sup> which requires, among other things, that an exchange's rules be designed 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. The CHX has represented that, following the securities industry's transition to decimal pricing, the consolidated quotations in the national securities markets flicker significantly throughout the trading day. Consequently, the quotations generated by CHX's auto-quote functionality flicker significantly during the trading day, resulting in significant, costly quotation traffic. Given that the Consolidated Quotation Association is now charging participants based on their capacity requirements, CHX wants to eliminate any unnecessary use of capacity. The Commission notes that, since automatic executions are required to be executed at the national best bid or offer in effect at the time the order is received or better, the proposed change should not

have any negative effect on execution prices.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change, as amended, (SR-CHX-2003-17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49183; File No. SR-NYSE-2002-32]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 To Incorporate Interpretive Material to Several NYSE Rules

February 4, 2004.

#### I. Introduction

On August 12, 2002, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to incorporate interpretive material to several existing NYSE Rules. On March 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On May 21, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup>

On June 9, 2003, the proposed rule change, as amended by Amendment Nos. 1 and 2, was published for comment in the **Federal Register**.<sup>5</sup> The Commission received no comments on the proposed rule change, as amended. On June 11, 2003, the NYSE filed Amendment No. 3 to the proposed rule

change.<sup>6</sup> On January 29, 2004, the NYSE filed Amendment No. 4 to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, as amended.

#### II. Description of the Proposed Rule Change

The NYSE filed the proposed rule change to codify long-standing interpretive material to several NYSE rules and to respond to recommendations made by an independent consultant retained by the NYSE.<sup>8</sup>

##### A. NYSE Rule 72

NYSE Rule 72 delineates the basic rule governing the priority and precedence of bids and offers at the same price on the Exchange. NYSE Rule 72(b) provides that certain types of agency cross transactions at a given price receive priority over pre-existing bids or offers at that price. The Exchange proposes to add a sentence to NYSE Rule 72(b) to clarify that a broker whose cross is broken up because another member has provided price improvement must follow the crossing procedures of NYSE Rule 76 before completing the balance of the cross.

The Exchange is also proposing to add an example to NYSE Rule 72(b) to illustrate its interpretation that a sale "clears the floor," meaning all bids and offers not satisfied in a given transaction are deemed to be simultaneously re-entered and on parity with each other.

##### B. NYSE Rule 75

The Exchange is proposing to codify formally in NYSE Rule 75 its long-standing practice that Floor disputes involving \$10,000 or more, or questioned trades, can be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or

<sup>6</sup> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated June 10, 2003 ("Amendment No. 3"). In Amendment No. 3, the Exchange added the phrase "or rejected" to a sentence within NYSE Rule 91.10 to clarify that transactions that are not rejected are deemed to be accepted for the purposes of NYSE Rule 91.10. This sentence now reads that "[t]ransactions which are not then confirmed or rejected in accordance with the procedures above are deemed to have been accepted." This is a technical amendment and is not subject to notice and comment.

<sup>7</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated January 29, 2004 ("Amendment No. 4"). In Amendment No. 4, the Exchange provided the Commission with examples of different scenarios for confirming principal transactions under NYSE Rule 91.10. This is a technical amendment and is not subject to notice and comment.

<sup>8</sup> See *In the Matter of New York Stock Exchange, Inc.*, 70 S.E.C. Docket 106, Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3-9925.

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

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

<sup>3</sup> See letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange expanded its discussion regarding the consequences of the proposed rule change, and also clarified that the proposed rule change was filed pursuant to Section 19(b)(2) of the Act. 15 U.S.C. 78s(b)(2).

<sup>4</sup> See Securities Exchange Act Release No. 48982 (December 23, 2003), 68 FR 75674.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</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> See letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2003 ("Amendment No. 1").

<sup>4</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 20, 2003 ("Amendment No. 2").

<sup>5</sup> See Securities Exchange Act Release No. 47961 (June 2, 2003), 68 FR 34453.