

following Linkage order fees: (i) \$.24 per contract transaction fee for equity, QQQQ and SPDR options, (ii) \$.35 or \$.20 per contract, depending on the premium, for OEF options and \$.45 or \$.25 per contract, depending on the premium, for other index options, (iii) \$.04 per contract floor brokerage fee, if any portion of a Linkage order is manually handled, (iv) \$.30 per contract RAES access fee, if a linkage order is executed in whole or in part on RAES, and (v) \$.10 license fee on transactions in MNX and NDX options.<sup>6</sup> Satisfaction Orders are not assessed Exchange fees.

The Exchange believes that extension of the Linkage fee pilot program until July 31, 2006 will give the Exchange and the Commission further opportunity to evaluate the appropriateness of Linkage fees.

## 2. Statutory Basis.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>7</sup> in general, and furthers the objectives of Section 6(b)(4)<sup>8</sup> of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of 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. 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-2005-54 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-2005-54. 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, 100 F Street, NE., 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-2005-54 and should be submitted on or before August 17, 2005.

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

After careful consideration, 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>9</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>10</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues,

fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2006 will give the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerating approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the CBOE and the Commission further consider the appropriateness of Linkage fees.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>13</sup> that the proposed rule change (SR-CBOE-2005-54) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Jonathan G. Katz,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52062; File No. SR-CHX-2004-03]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Standards for Manual Execution of Market and Marketable Limit Orders

July 19, 2005.

On February 11, 2004, the Chicago Stock Exchange, Incorporated ("CHX"), 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 amend Article XX, Rule 37 to eliminate a specific requirement that a specialist execute eligible orders at the price and size associated with the national best bid or offer ("NBBO") and

<sup>12</sup> 15 U.S.C. 78s(b)(2).

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

<sup>14</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>6</sup> See CBOE Fees Schedule, Footnote 15.

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

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

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

<sup>11</sup> 15 U.S.C. 78f(b)(4).

replace it with a requirement that specialists use reasonable diligence to ascertain the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. The new rule sets out factors that will be considered by the CHX in determining whether the specialist used reasonable diligence. On December 14, 2004, the CHX filed Amendment No. 1 to its original submission. The proposed rule change, as amended, was published for comment in the **Federal Register** on December 22, 2004.<sup>3</sup> The Commission received no comment letters with respect to the proposal.

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>4</sup> In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>5</sup> which requires, among other things, that an exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specialists who execute market and marketable limit orders must, among other things, satisfy their duty of best execution by executing customer trades at the most favorable terms reasonably available under the circumstances. As amended, Article XX, Rule 37 will require specialists to use reasonable diligence to find the best available price for the security so that the resultant execution price is as favorable to the order sender as possible under prevailing market conditions. Furthermore, although CHX specialists no longer would be explicitly required to execute eligible orders at the NBBO, if the amended standard results in specialists effecting orders at a price worse than the NBBO, this information would be reflected in the statistics that the CHX must produce pursuant to Rule 11Ac1-5.<sup>6</sup> Broker-dealers that route orders to the CHX would have to consider this information in connection with their duty to obtain best execution on behalf of their customers.

In addition, the Commission notes that the Exchange has committed to continue surveillance over order

executions to ensure that specialists are using reasonable diligence to find the best available price for their customers. The Commission expects that such surveillance will be proactive and that meaningful disciplinary action will be taken against specialists found to have violated the rule.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, Section 6(b)(5) of the Act.<sup>7</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-CHX-2004-03) be, and hereby is, approved.

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

**Jonathan G. Katz,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52085; File No. SR-FICC-2005-13]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Procedure for Fine Waivers and To Make Other Technical and Administrative Amendments

July 20, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on July 15, 2005, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

#### 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: (1) Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") rules to allow the

Membership and Risk Management Committee ("Committee") to delegate fine waiver decisions to management while retaining the ability to override management's decision; (2) GSD and MBSD rules to eliminate the automatic placement on the Watch List of FICC members who fail to notify FICC within two business days of first learning of their non-compliance with FICC's membership standards; (3) MBSD rules to broaden the reference to "net worth;" (4) MBSD rules by adding a confidentiality clause; and (5) GSD rules to make a technical change by moving an incorrectly placed "and."

#### 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 these statements.<sup>2</sup>

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Management Waiver of Fines

Currently, pursuant to GSD Rule 37 ("Hearing Procedures"), Section 1 ("General") and MBSD Article V ("Miscellaneous"), Rule 3 ("Fines and Other Sanctions"), each time a member requests that an assessed fine be waived, FICC management makes a determination to accept or reject the waiver request based on a review of the circumstances leading to the disputed fine. FICC management then presents its determination to the Committee for ratification at its next regularly scheduled meeting. Final determinations by the Committee may be appealed according to the GSD and MBSD rules.

The need for Committee approval of management decisions with respect to fine assessments delays final decisions for members because the Committee only meets approximately every two months. The Committee has routinely agreed with management's decisions regarding fine waivers. For these reasons, the Committee at this time feels comfortable delegating decisions on fine waiver requests to management.

<sup>2</sup> The Commission has modified the text of the summaries prepared by FICC.

<sup>3</sup> See Securities Exchange Act Release No. 50865 (December 16, 2004), 69 FR 76804.

<sup>4</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>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 17 CFR 240.11Ac1-5.

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

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

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

15 U.S.C. 78s(b)(1).