

share orders at a price no worse than the national best bid or offer in effect at the time the order was received. In addition, CHX specialists may continue to offer price improvement for 100-share orders.

Notwithstanding the foregoing, the Commission cautions that the duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.¹⁷ A broker-dealer's duty of best execution is not necessarily satisfied by routing orders to a market center that merely guarantees an execution at the national best bid or offer.¹⁸ Various markets and market makers may provide opportunities for executions at prices superior to the national best bid and offer. The Commission believes that broker-dealers deciding where to route or execute small customer orders must carefully evaluate the extent to which this order flow would be afforded better terms if executed in a market or with a market maker offering price improvement opportunities. In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from the different markets or market makers trading a security.¹⁹

With respect to odd-lots, because the CHX intends for CHX Article XXXI to govern the execution of odd-lot orders,²⁰ the Commission believes that deleting CHX Rule Article XX, Rule 37(d)(1)(d), will clarify the CHX's rules and eliminate potential confusion concerning the execution prices due to odd-lot orders.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 2 clarifies the proposal by indicating that an order must receive the national best bid or offer in effect at the time the order was received, and by stating that the CHX intends for CHX Article XXXI to govern the execution prices due odd-lot orders. Accordingly, the Commission

finds that it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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-2003-21 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-2003-21. 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-2003-21 and should be submitted on or before June 16, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CHX-2003-21), as amended, is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49728; File No. SR-CHX-2004-15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by The Chicago Stock Exchange, Inc. To Set Fees for Member Firms for Computer Hardware Stored on the Exchange Premises and for the Connection of that Hardware to the CHX System

May 19, 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 April 30, 2004, the Chicago Stock Exchange, Inc. ("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. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,³ which renders the proposal 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 Exchange proposes to amend its membership dues and fees schedule (the "Fee Schedule") to charge member firms a fee for computer hardware stored on Exchange premises, and for the connection of that hardware to CHX systems, where that hardware is associated with systems that are used solely for any purpose other than transmitting orders to the Exchange for

¹⁷ See, e.g., Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (adopting Exchange Act Rule 11Ac1-4 and amending Exchange Act Rule 11Ac1-1) ("Order Handling Rules Release") at Section III.C.2.

¹⁸ See, e.g., Order Handling Rules Release at III.C.2. and Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000) (notice of filing of SR-NYSE-99-48 and Commission request for comment on issues relating to market fragmentation) at Section IV.A.3.c.

¹⁹ See Order Handling Rule Release, *supra* note 17 at Section III.C.2.

²⁰ See Amendment No. 2, *supra* note 4.

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)(ii).

execution. The text of the proposed rule change is available at the Commission and 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 on the proposed rule change. The text of these statements 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

Many of the Exchange's member firms use automated systems that interact either with their own posts on the floor or with the posts of other trading floor members. These systems might be used to help members manage their positions, to automate the execution of orders that would otherwise be handled manually, to act as a layoff vendor by coordinating the routing of orders to another market or for a variety of other purposes. These systems are linked to the Exchange's own systems through various data connections. In some cases, member firms also store hardware associated with these systems in the Exchange's computer facilities.

The Exchange believes that it is appropriate to share, with member firms, the costs of providing both this equipment storage and the various data connections to the Exchange's systems. This fee proposal would establish a series of fees applicable to the storage of hardware, and the maintenance of connections to CHX systems, for member-owned systems that are solely used for any purpose other than transmitting orders to the Exchange for execution.⁴ These fees include a one-

⁴ The Exchange's members request from time to time, that the Exchange allow other market centers to establish direct linkages to the Exchange's floor so that members can transmit orders to other markets. These linkage systems are available to all CHX specialists and floor brokers that contract with each market center. The Exchange believes that these direct connections provide cost-effective and efficient mechanisms that link the Exchange's members with other markets. However, since only one of these market centers is a member of the CHX, the Exchange believes that it would be inappropriate to impose these fees on one market center, while other market centers are exempt based

time fee associated with the initial installation of the hardware or connection, as well as a monthly cost for the period that the hardware or connection remains in place. These fee changes are designed to take effect May 1, 2004.

2. Statutory Basis

The Exchange believes the proposal is consistent with Section 6(b) of the Act,⁵ in general and Section 6(b)(4) of the Act,⁶ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,⁷ and Rule 19b-4(f)(2)⁸ thereunder, because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

on their non-member status. Therefore, these fees do not apply to hardware owned and stored in CHX facilities by members that are market centers, or to the data connections associated with that hardware. Telephone conversation between Ellen Neely, Senior Vice President and General Counsel, CHX and Ian Patel, Special Counsel, and Marisol Rubecindo, Law Clerk, Division of Market Regulation, Commission, dated May 17, 2004.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(4).

⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

⁸ 17 CFR 240.19b-4(f)(2).

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-2004-15 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-2004-15. 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 20549-0609. 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-2004-15 and should be submitted on or before June 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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⁹ 17 CFR 200.30-3(a)(12).