

good cause for approving Amendment No. 1 to the proposal, prior to the 30th day after publishing notice of Amendment No. 1 in the **Federal Register**.

The Commission believes that it has received and fully considered meaningful comments with respect to the proposal, and that Amendment No. 1 does not raise any new regulatory issues that warrant further delay. In Amendment No. 1, the CBOE added language to the proposed rule text to clarify that if an e-DPM is the Preferred DPM for an order and the DPM is not also quoting at the NBBO, the remainder of the participation entitlement that is not allocated to the Preferred DPM is divided evenly among the remaining e-DPMs on the Exchange quote. The Commission believes that the addition of the clarifying language is appropriate to provide for foreseeable scenarios regarding allocation of the participation entitlement for a Preferred DPM.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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-2004-71 on the subject line.

##### *Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-71. 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 publicly available. All submissions should refer to File Number SR-CBOE-2004-71 and should be submitted on or before June 29, 2005.

#### VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-CBOE-2004-71) be, and hereby is, approved, and that Amendment No. 1 to the proposed rule change be, and hereby is, approved on an accelerated basis, for a pilot period to expire on June 2, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>38</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51776; File No. SR-CHX-2005-11]

#### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Rule Change Relating to Transactions in Certain Odd-Lot Orders

June 2, 2005.

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 May 6, 2005, 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 and II below, which Items have been prepared by the CHX. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</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> 15 U.S.C. 78s(b)(3)(A).

thereunder,<sup>4</sup> 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 clarify that odd lot orders executed by CHX specialists shall be executed in accordance with CHX Article XX, Rule 37(a)(2), which governs execution of round lot orders by CHX specialists. The CHX has designated this proposal as non-controversial and has requested that the Commission waive the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.<sup>5</sup> The text of the proposed rule change is below. Proposed new language is *italicized*.

\* \* \* \* \*

#### Article XXXI

Odd Lots and Odd-Lot Dealers, Dual System

\* \* \* \* \*

#### Rule 9.

\* \* \* \* \*

Interpretations and Policies

.01 No change to text.

.02 *Notwithstanding paragraph (b) of this Rule, if a CHX specialist is the registered odd-lot dealer for an issue, orders in such issue shall be executed in accordance with Article XX, Rule 37(a)(2).*

\* \* \* \* \*

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

In its filing with the Commission, CHX 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.

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

1. Purpose

Odd-lot orders (*i.e.*, orders of less than 100 shares) are traded on the CHX by registered odd-lot dealers, and are governed by Article XXXI of the CHX Rules. According to the CHX, in many cases, the registered odd-lot dealer for an issue is the specialist who has been assigned the issue by the CHX Committee on Specialist Assignment and Evaluation. In other cases, the registered odd-lot dealer is a member firm that operates as an odd-lot execution service.

CHX Article XXXI, Rule 9 governs the execution prices that are due odd-lot orders. The CHX states that this rule obligates an odd-lot dealer to execute an odd-lot order at the "adjusted BBO," which is predicated on the national best bid or offer but excludes certain quotations, including 100-share quotations of other market centers. According to the CHX, in cases where a CHX specialist is the registered odd-lot dealer, however, the Exchange's systems execute odd-lot orders at the national best bid or offer (which most often is superior to the adjusted BBO), so that the execution price of the odd-lot orders will be consistent with the execution price of round-lot orders. The Exchange believes that this consistency is appropriate and benefits investors.

To codify the Exchange's interpretation, and to preclude any inconsistency between a specialist's pricing of odd-lot orders and round lot orders, the proposed rule change would add an Interpretation and Policy providing that, for issues where a CHX specialist is the registered odd-lot dealer, the provisions of CHX Article XX, Rule 37(a)(2), *i.e.*, the Exchange's "Best Rule," would govern the execution price due an odd-lot order. The Exchange believes that this interpretation would help avoid customer confusion.

The proposed rule change would also permit CHX specialists to elect to act as agent for odd-lot orders, in accordance with CHX Article XX, Rule 37(a)(2), to obtain the best available price in the national marketplace.<sup>6</sup> According to the Exchange, many CHX specialists utilize

<sup>6</sup> The Exchange states that CHX systems do not currently permit CHX specialists to act as agent for odd-lot orders—the systems simply execute such orders automatically against the CHX specialist as principal, priced at the NBBO. The CHX believes that modification of its systems to permit agency execution of odd-lot orders is amply warranted because it is consistent with the execution rules applicable to round-lot orders.

remote pricing facilities, which take into account current market information, to help them price such orders.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,<sup>7</sup> in general, and with Section 6(b)(5) of the Act,<sup>8</sup> in particular, in that 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 general, to protect investors and the public interest.

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

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

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

The foregoing proposed rule change is subject to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder<sup>10</sup> because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the CHX has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

CHX satisfied the five-day pre-filing requirement. In addition, CHX has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will

ensure consistency in specialist pricing of odd-lot orders and round lot orders. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>11</sup> At any time within 60 days of the filing of such 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.<sup>12</sup>

**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. 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-CHX-2005-11 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 20549-0609.

All submissions should refer to File Number SR-CHX-2005-11. 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

<sup>11</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>12</sup> See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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

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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

Room. Copies of the 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-2005-11 and should be submitted on or before June 29, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E5-2936 Filed 6-7-05; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51775; File No. SR-ISE-2005-24]

### Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

June 2, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2005, the International Securities Exchange, Inc. ("ISE" 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 ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> 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 ISE is proposing to amend its Schedule of Fees to extend two fee waivers. The text of the proposed rule change is available on the ISE's Web site (<http://www.iseoptions.com/legal/>

*proposed\_rule\_changes.asp*), at the principal office of the ISE, and at the Commission's Public Reference Room.

#### 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 ISE 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 ISE 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

The ISE states that the purpose of this proposed rule change is to amend the ISE's Schedule of Fees to extend two fee waivers. First, the ISE's current waivers on certain customer transaction fees are set to expire on June 30, 2005.<sup>5</sup> According to the ISE, in order for it to remain competitive in the market place, the ISE is proposing to extend these waivers for an additional year, through June 30, 2006. Second, the ISE is proposing to extend a fee waiver regarding its CLICK terminal, which is the front-end order-entry terminal the ISE provides to its members. Currently, the ISE waives software license and maintenance fees, as well as API/Session fees (based on member log-ins), for an ISE member's second and subsequent CLICK terminals. This waiver also is scheduled to expire on June 30, 2005. The ISE believes that this waiver program encourages firms to install and use multiple CLICKs, and therefore it proposes to extend this waiver for an additional year.

<sup>5</sup> The Commission notes that the ISE's Schedule of Fees provides for, among other things: (1) Execution Fees on certain customer orders (other than options on certain indices listed in the ISE's Schedule of Fees) of \$0.05 per contract/side per transaction, and (2) Comparison Fees of \$0.03 per contract/side per transaction. The Execution Fees are currently waived except for transactions in options on certain indices listed in the ISE's Schedule of Fees. The Commission further notes that the Comparison Fee applies to P Orders and P/A Orders for a pilot period expiring on July 31, 2005, and is subject to a fee waiver for Public Customer Orders except for transactions in options on certain indices listed in the ISE's Schedule of Fees. See ISE Rule 100(32) (defining "Public Customer" as a person who is not a broker or dealer in securities); and ISE Rule 1900(10) (for a definition of P Orders and P/A Orders).

###### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, in that it will permit the Exchange to maintain an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the ISE states that this proposed rule change would extend current waivers, thus effectively maintaining low fees.

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

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such 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. Comments may be submitted by any of the following methods:

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

<sup>7</sup> 15 U.S.C. 78f(b)(4).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>9</sup> 17 CFR 19b-4(f)(2).

<sup>13</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> 15 U.S.C. 78s(b)(3)(A)(ii).

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