

**SECURITIES AND EXCHANGE COMMISSION**  
**(Release No. 34-51639; File No. SR-CHX-2005-12)**

**April 29, 2005**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Participant Fees and Credits**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on April 21, 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, II, and III, below, which Items have been prepared by the CHX. The proposed rule change has been filed by the CHX as establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, 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 rules to amend its Participant Fee Schedule to allow the Exchange to extend the fixed fee exemption for CHXpress<sup>™</sup> securities to new securities during the course of a month. Below is the text of the proposed rule change.

Proposed new language is in *italics*; proposed deletions are in [brackets].

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<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).

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## PARTICIPANT FEES AND CREDITS

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### E. Specialist Fixed Fees

Except in the case of Tape B Exemption Eligible Securities (as defined above in Section D), and Designated CHXpress Securities (as defined below), which shall be exempt from assessment of fixed fees, specialists will be assigned a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

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“Designated CHXpress Securities” are those issues which have been designated by the Exchange [on a monthly basis] as fixed-fee exempt at the beginning of each month, or which have been added by the Exchange to the list of exempt securities during the month, with the consent of the specialist assigned to trade the issue.

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### 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

The Exchange stated that it is rolling out a new, automated functionality for the handling of particular orders, called CHXpress.<sup>™</sup> According to the Exchange, the CHXpress functionality is designed to provide additional opportunities for the Exchange's participants to seek and receive liquidity through automated executions of orders at the Exchange.<sup>5</sup> With a few exceptions, CHXpress orders will be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist's quote (when that functionality is available).<sup>6</sup> If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for instantaneous display or later execution.<sup>7</sup> A CHX specialist may not cancel or place a CHXpress order on hold or otherwise prevent the order-sending firm from canceling the order.

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<sup>5</sup> See Securities Exchange Act Release No. 50481 (Sept. 30, 2004), 69 FR 60197 (Oct. 7, 2004) (SR-CHX-2004-12).

<sup>6</sup> CHXpress orders will not be executed if those executions would improperly trade-through another ITS market or if trading in the issue had been halted. CHXpress orders that would improperly trade through an ITS market or that are received during a trading halt will be cancelled. If trading in an issue has been halted, CHXpress orders in the book will be cancelled.

<sup>7</sup> A CHXpress order will be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. See CHX Article XX, Rule 37(b)11(D). CHXpress orders, like all other orders at the Exchange, will not be eligible for automated display if that display would improperly lock or cross the NBBO. A CHXpress order that would improperly lock or cross the NBBO will be cancelled. CHXpress orders cannot be excluded from the CHX's quote.

The Exchange stated that this new functionality currently is available in select issues, and the Exchange plans to extend the use of this functionality to additional issues in upcoming weeks. Last month, the Exchange began exempting, from the specialist fixed fees, securities in which CHXpress orders are processed by the Exchange.<sup>8</sup> The Exchange stated that it had planned to identify these securities, on a monthly basis, at the beginning of each month, based on business factors including the interest demonstrated by order-sending firms in trading a particular security. The Exchange also stated that the CHXpress functionality was to have been enabled for these designated CHXpress securities throughout the month.

The Exchange, however, has determined that it is not efficient, from a business perspective, to try to designate the CHXpress securities on a monthly basis, unless the Exchange has the authority to add to the list when necessary. The Exchange believes that it is important to be able to respond to potential new order flow during a month by allowing the Exchange to extend CHXpress functionality to additional issues, so long as the specialist in the security agrees to the addition.<sup>9</sup>

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<sup>8</sup> See Securities Exchange Act Release No. 51430 (Mar. 24, 2005), 70 FR 16540 (Mar. 31, 2005) (SR-CHX-2005-03). According to the CHX, the fee exemption was designed to address concerns of CHX specialist firms, who have noted that they will be best able to handle issues associated with the automatic execution of CHXpress orders when two systems projects – to automatically execute inbound ITS commitments and to allow them to display (and have automatically executed) their manual proprietary quotes – have been completed.

<sup>9</sup> The Exchange believes that it is appropriate to consult with the specialist firm assigned to an issue before extending CHXpress functionality to that issue because of the potential double liability associated with the handling of ITS commitments when CHXpress orders are automatically executing against displayed bids and offers and because of the specialist's inability to manually post bids and offers in CHXpress-eligible securities until the two system projects described in note 8, supra, have been completed.

## 2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4) of the Act,<sup>11</sup> 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 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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>12</sup> and Rule 19b-4(f)(2)<sup>13</sup> 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.

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

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

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

#### 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-2005-12 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-2005-12. 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-2005-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland  
Deputy Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).