

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49772; File No. SR-CHX-2004-08)

May 26, 2004

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated to Amend the CHX Membership Dues and Fees Schedule to Provide a Tape Credit of 50% to Specialists Trading Tape A and Tape B Securities

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 January 30, 2004, the Chicago Stock Exchange, Incorporated ("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. On May 18, 2004, the CHX filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective February 1, 2004, to provide a tape credit of 50% to specialists trading Tape A and Tape B securities. The text of the proposed rule change is available at the CHX and at the Commission.

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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> Amendment No. 1 completely replaced and superseded the original proposed rule change.

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 its proposal and discussed any comments it received regarding the proposal. 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

Under the Exchange's current Fee Schedule, the Exchange provides tape credits to specialists trading Tape A and Tape B securities.<sup>4</sup> Specifically, under the Tape A credit program, the Exchange provides credits of 18% (for market share less than 7%), 45% (for market share between 7 and 12%) and 70% (for market share above 12%). A similar structure applies to the Tape B credit program, where the Exchange provides credits of 18% (for market share less than or equal to 5.75%) and 50% (for market share greater than 5.75%). These credits are expressed in marginal rates, however, so that no specialist receives the top level of credit for all trading in a particular security.<sup>5</sup> Specialists may also receive additional transaction credits under the Fee Schedule.<sup>6</sup>

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<sup>4</sup> "Tape A Securities" are securities reported on Tape A of the Consolidated Tape Association. "Tape B Securities" are securities reported on Tape B of the Consolidated Tape Association.

<sup>5</sup> For example, if a specialist trades a Tape A security and had a 15% market share in that security, the Exchange would provide a credit of 18% on the trades that make up the first 7% of that market share, a credit of 45% on the trades that make up between 7 and 12% of that market share and a credit of 70% only on those trades that exceed 12% of market share.

The Exchange now proposes to amend the Fee Schedule, effective February 1, 2004, by providing a flat, not marginal, 50% tape credit to specialists trading Tape A and Tape B securities.<sup>7</sup> This tape credit program is designed to provide credits to specialist firms that trade Tape A and Tape B securities in a manner that rewards them for their trading on the Exchange.

The Exchange's proposal is substantially similar to tape credit or rebate programs that have been approved for other market centers.<sup>8</sup> As a result, the Exchange believes that the Commission would not be breaking new ground in approving this proposal; instead, it would only be allowing the Exchange to operate a market data revenue-sharing program that could compete on substantially similar footing with programs of other markets.

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<sup>6</sup> The Exchange implemented a program, effective May 1, 2003, to provide additional tape revenue to specialists from certain incremental increases in the Exchange's share of Tape A and Tape B volume. See Securities Exchange Act Release No. 48477 (September 4, 2003), 68 FR 53625 (September 11, 2003)(SR-CHX-2003-15).

<sup>7</sup> In the instant filing, the Exchange also (a) confirms that the specialist tape credits do not include any tape credits that might be paid to the Exchange's floor brokers under a separate tape program; and (b) deletes the provision currently in the Fee Schedule that relates to specialist credits available for trading that occurs during the E-Session, a trading session that no longer is held.

<sup>8</sup> See e.g., Securities Exchange Act Release Nos. 46911 (November 26, 2002), 67 FR 72251 (December 4, 2002)(SR-BSE-2002-10)(approving proposal to (a) share 50% of Tape A revenues, in excess of a threshold amount, with eligible member firms; and (b) share 50% of net Tape B revenue per trade with member firms that route business to the BSE); 48106 (June 27, 2003), 68 FR 40318 (July 7, 2003)(SR-PCX-2002-62)(approving an ArcaEx revenue sharing program that shared 50% of gross Tape A revenues with eligible users of the ArcaEx facility); and 46938 (December 3, 2002), 67 FR 72993 (December 9, 2002)(SR-NASD-2002-149)(approving a transaction credit program for the Nasdaq InterMarket that shared 50% of Tape A and Tape B revenues with eligible members, based on the members' pro rata share of transactions in those securities).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act<sup>9</sup> 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CHX consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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:

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<sup>9</sup> 15 U.S.C. 78(f)(b)(4).

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-2004-08 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-2004-08. 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-2004-08 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>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).