

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-49900; File No. SR-CHX-2004-16)

June 22, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. Relating to Minimum Price Variation for Issues Customarily Trading at a Per Share Price of \$100,000 or Greater

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 June 16, 2004, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. The CHX submitted Amendment No. 1 to the proposal on June 17, 2004.<sup>3</sup> The CHX filed the proposal pursuant to Section 19(b)(3)(A) under the Act,<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposal effective upon filing with the Commission.<sup>6</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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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> See letter from Kathleen M. Boege, Vice President and Associate General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation, Commission, dated June 17, 2004 ("Amendment No. 1"). In Amendment No. 1, the CHX stated that it had requested a waiver of the 30-day operative delay to help to avoid possible investor confusion by eliminating any inconsistency in the minimum price variation used by the primary market and the CHX. For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 17, 2004, the date the CHX filed Amendment No. 1. See Rule 19b-4(f)(6), 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>6</sup> The CHX has asked the Commission to waive the 30-day operative delay. See Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii).

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

The CHX proposes to amend CHX Article XX, Rule 22, "Minimum Variations," which governs minimum variations for bids and offers. Specifically, the CHX seeks to add Interpretation and Policy .02, which provides that for issues that customarily trade at a per share price of \$100,000 or greater, the minimum variation will be \$.10. The text of the proposed rule change appears below; additions are italicized.

**ARTICLE XX**

**Regular Trading Sessions**

\* \* \* \* \*

**Minimum Variations**

RULE 22. Bids and offers in specific securities or classes of securities traded on the Exchange shall not be made in variations less than the minimum variation of \$.01, or such other minimum variation as may be established for a security or class of security by the Board of Governors from time to time.

● ● ● ***Interpretations and Policies:***

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.02 With respect to bids and offers for any issue that customarily trades at a per share price of \$100,000 or greater, the minimum variation shall be \$.10.

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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 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 CHX 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 proposed rule change would add Interpretation and Policy .02 to CHX Article XX, Rule 22. Interpretation and Policy .02 provides that for issues that customarily trade at a per share price of \$100,000 or greater, the minimum variation will be \$.10.

In 2000, the securities industry made the transition to decimal pricing. In connection with “decimalization,” the Exchange and all other national securities exchanges amended their rules to provide for a minimum variation of \$.01.

Recently, the New York Stock Exchange (“NYSE”) amended NYSE Rule 62, “Variations,” to establish a minimum price variation of \$.10 for issues that trade at a per share price of \$100,000 or greater.<sup>7</sup> The CHX believes that the principal purpose of this change was to accommodate the NYSE’s trading system technology. As of the date of this submission, the CHX is informed that only one issue is affected.

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<sup>7</sup> See Securities Exchange Act Release No. 49374 (March 8, 2004), 69 FR 11923 (March 12, 2004) (notice of filing and immediate effectiveness of File No. SR-NYSE-2004-10). (“NYSE Notice”).

The CHX believes that to preserve consistency, and avoid potential investor confusion, the CHX should institute a similar interpretation. Accordingly, the language of the CHX's new Interpretation and Policy is substantially identical to the NYSE interpretation.<sup>8</sup>

## 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).<sup>9</sup> The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>10</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

### 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.

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<sup>8</sup> To provide for further clarification, the CHX interpretation makes reference to issues that "customarily" trade at per share prices of \$100,000 or greater. This reference contemplates the possibility that on a given trading day, an issue might spike above \$100,000 per share; in such case, the CHX would not deem such an issue eligible for a minimum variation of \$.10. As a corollary, to the extent that an issue customarily traded at a per share price of above \$100,000 but dipped below \$100,000 on a given trading day, the CHX would not reduce the minimum variation from \$.10 to \$.01 (the CHX's standard minimum variation) based on atypical share prices.

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

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

The CHX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>12</sup> Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Rule 19b-4(f)(6)(iii) also requires a self-regulatory organization to provide the Commission with written notice of its intent to file a proposed rule change pursuant to Rule 19b-4(f)(6), along with a brief description and text of the proposed rule change, at least five business days prior to filing the proposed rule change, or such shorter time as the Commission designates. The CHX provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposed rule change.

The CHX has asked the Commission to waive the 30-day operative delay. The CHX believes that waiving the 30-day operative delay will help to avoid possible investor confusion

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

by eliminating any inconsistency in the minimum price variation utilized by the NYSE and the CHX.<sup>13</sup>

Although the Commission ordinarily would expect a proposed rule change to modify the minimum price variation to be filed pursuant to Section 19(b)(2) of the Act,<sup>14</sup> the Commission believes that, under the narrow circumstances presented by the current proposal, it is appropriate for the CHX to file the proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. In this regard, the Commission notes that the proposed ten-cent minimum price variation would apply solely to issues that customarily trade at a per share price of \$100,000 or greater. In addition, the proposal is substantially identical to a rule adopted previously by the NYSE.<sup>15</sup> For the same reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission designates the proposal to be operative upon filing with the Commission.<sup>16</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.

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<sup>13</sup> See Amendment No. 1, *supra* note 3.

<sup>14</sup> 15 U.S.C. 78s(b)(2).

<sup>15</sup> See NYSE Notice, *supra* note 7.

<sup>16</sup> For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

#### 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 E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2004-16 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-2004-16. 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 Room. 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-2004-16 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>13</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).