

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51465; File No. SR-CHX-2005-04)

April 1, 2005

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Stock Exchange, Inc. to Clarify that Specialists May Not Charge Commissions with Respect to the Execution of CHXpress Orders

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 March 1, 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 Exchange. On March 21, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.³ On March 30, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.⁴ 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 Exchange proposes to amend its rules to clarify that a specialist is not permitted to charge a commission on the execution of CHXpress™ orders. The text of the proposed rule change is included below. Italics indicate new text; brackets indicate deletions.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4, dated March 20, 2005 (“Amendment No. 1”), which replaced the original filing in its entirety.

⁴ See Form 19b-4, dated March 30, 2005 (“Amendment No. 2”), which corrected an inadvertent reference to filing pursuant to Section 19(b)(3)(A) instead of Section 19(b)(2).

ARTICLE XX

Regular Trading Sessions

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Guaranteed Execution System and Midwest Automated Execution System

Rule 37. (a) No change to text.

(b) No change to text

(1) – (10) No change to text.

(11) CHXpress Orders. This section applies to the execution and display of orders through CHXpress, an automated functionality offered by the Exchange. All other rules of the Exchange are applicable, unless expressly superseded by this section.

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(H) A CHX specialist may not charge a commission for execution of a CHXpress order.

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ARTICLE XXX

Specialists

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Precedence to Orders in Book

RULE 2. The specialist, co-specialist and relief specialist shall at all times give precedence to orders in the book for purchase or sale of securities over the orders which

originate with him or it as a dealer, provided, his or its orders and those of his or its customer are market orders, or limited orders at the same price. Notwithstanding the foregoing, whenever a specialist, co-specialist or relief specialist elects to accept a professional order for the book which is not required to be accepted by such specialist, co-specialist or relief specialist pursuant to the rules and polices of the Exchange, such specialist, co-specialist or relief specialist is not required to relinquish precedence to such order over the orders which originate with him or it as dealer, provided (a) his or its orders and those of his or its customer are limited orders at the same price and (b) the specialist, co-specialist or relief specialist is displaying his or its order, including its size, through the quotation system. [No specialist, co-specialist or relief specialist may charge a Participant a commission in any transaction in which he or it is a principal.]

· · · *Interpretations and Policies:*

.005 No specialist, co-specialist or relief specialist may charge a Participant a commission in any transaction in which such specialist, co-specialist or relief specialist is a principal, or for execution of any CHXpress order.

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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 is rolling out a new, automated functionality for the handling of CHXpress orders. 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.⁵ 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 CHXpress is available).⁶ If a CHXpress order cannot be immediately executed, it will be placed in the specialist's book for display or later execution.⁷ A CHX specialist may not cancel or place a CHXpress order on hold or otherwise prevent the order-sending firm from canceling the order. In addition, CHX specialists do not provide CHXpress orders with the execution guarantees that might otherwise be available

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

⁶ If the execution of a CHXpress order would cause an improper trade-through of another ITS market, the CHXpress order would be automatically cancelled. If trading in an issue has been halted, all CHXpress orders in that issue would be automatically cancelled. See CHX Article XX, Rule 37(b)(11)(C).

⁷ 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 another ITS market. A CHXpress order that would improperly lock or cross the NBBO will be cancelled. Because CHXpress orders will be automatically displayed, there is no mechanism to allow them to be excluded from the CHX's quote.

to agency limit orders.⁸ Specifically, these orders are not eligible for automated price improvement, or execution based on quotes in the national market system or prints in the primary market for a security. CHX specialists also would not be required to seek liquidity for CHXpress orders in other markets.

Through this filing, the Exchange seeks to clarify that a CHX specialist would not be permitted to charge a commission in connection with the execution of a CHXpress order. The Exchange believes that this clarification is appropriate for several reasons. First, as noted above, the handling of these orders within the Exchange's systems is entirely automatic – orders can execute automatically and be displayed automatically. Moreover, CHX specialists would not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders. Specifically, these orders would not be eligible for automated price improvement, or execution based on quotes in the national market system or prints in the primary market for a security. A CHX specialist also would not act as agent for the orders in other markets.

2. Statutory Basis

The Exchange 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) of the Act.⁹ The Exchange believes the

⁸ See CHX Article XX, Rule 37(b)(11)(E)-(F).

⁹ 15 U.S.C. 78f(b).

proposal is consistent with Section 6(b)(5) of the Act,¹⁰ in that the proposal 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 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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Exchange 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.

¹⁰ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-2005-04 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-2005-04. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. 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-2005-04 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.¹¹

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).