

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53194; File No. SR-CHX-2006-01)

January 30, 2006

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Bidding and Offering in Sub-penny Increments

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 January 17, 2006, 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 CHX has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 confirm that, beginning with the compliance date for Rule 612 of Regulation NMS,⁵ Exchange participants (a) may bid or offer in sub-penny increments in the trading of Nasdaq/NM securities where those bids or offers are less than \$1.00, and (b) may bid or offer in sub-penny increments in the trading of other securities where an exemption from the provisions of Rule 612 is granted by the Commission and where the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 242.612.

Exchange's Board of Directors agrees to allow that sub-penny quoting. The text of this proposed rule change is available on the Exchange's Web site

(http://www.chx.com/rules/proposed_rules.htm), at the principal office of the Exchange, and in 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 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

Under the Exchange's existing trading rules, the Exchange's participants generally may not bid or offer in increments below \$0.01.⁶ Through this filing, the Exchange seeks to amend its rules to confirm that, beginning with the compliance date for Rule 612,⁷ Exchange participants (a) may bid or offer in sub-penny increments in the trading of Nasdaq/NM securities where those bids or offers are less than \$1.00, and (b) may bid or offer in sub-penny increments in the trading of other securities where an exemption from the provisions of Rule 612 is granted

⁶ The Exchange does not currently have a rule that sets a minimum increment at which trades can occur. Its rule relating to minimum variations specifically refers to variations at which bids or offers may be made on the Exchange. See CHX Article XX, Rule 22.

⁷ The compliance date for Rule 612 is January 31, 2006. See Securities Exchange Act Release No. 52196 (Aug. 2, 2005), 70 FR 45529 (Aug. 8, 2005).

by the Commission and where the Exchange's Board of Directors agrees to allow that sub-penny quoting.⁸

As noted above, the proposed rule change first would confirm that an Exchange participant may submit bids or offers, for Nasdaq/NM securities, in sub-penny increments of at least \$0.0001 where the bids or offers are less than \$1.00. Sub-penny quoting at prices less than \$1.00 is permitted, but not required, by the provisions of Rule 612, and the Exchange believes that it would be appropriate to allow its participants to engage in this practice in the trading of Nasdaq/NM securities.⁹

Additionally, the proposed rule change would permit an Exchange participant to bid or offer in sub-penny increments in the trading of any securities where an exemption from the provisions of Rule 612 is granted by the Commission and where the Exchange's Board of Directors agrees to allow that sub-penny quoting. The Exchange, however, currently does not intend to more generally permit its participants to bid or offer in sub-penny increments in the trading of listed securities.

The Exchange's MAX system will reject any orders in minimum variations that cannot be displayed as bids or offers on the Exchange pursuant to CHX Rule 22.¹⁰

⁸ The Exchange has filed a separate proposal to permit its participants to execute trades in sub-penny increments. See Securities Exchange Act Release No. 52953 (Dec. 14, 2005) 70 FR 76088 (Dec. 22, 2005) (noticing SR-CHX-2005-36).

⁹ The Exchange currently permits its participants to send sub-penny-priced orders, in Nasdaq/NM securities, to the Exchange. These orders are rounded to a penny increment for quoting purposes pursuant to exemptive relief from the Commission that will expire on the compliance date of Rule 612. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37556-57 n. 547 (June 29, 2005) ("Regulation NMS Adopting Release").

¹⁰ The MAX system, however, will accept inbound ITS commitments that are priced in variations smaller than the minimum variation set out in CHX Rule 22, and its specialists

This proposed rule change would apply only in the Exchange's current trading model. The Exchange will re-address issues associated with sub-penny trading as part of the soon-to-be-filed package associated with its new trading model.

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).¹¹ The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹² because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by permitting Exchange participants to bid and offer in sub-penny increments in the trading of specific groups of securities.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

may execute those commitments, so long as the minimum variation is permitted by Rule 612 and so long as the specialist adheres to all other Exchange rules in executing the commitment. A specialist, among other things, should be cognizant when executing an inbound sub-penny-priced ITS commitment of its obligations under CHX Article XXX, Rule 2, Interpretation and Policy .06 with regard to "stepping ahead" of orders resting on the specialist's book. However, as of January 30, 2006, the CHX understands that no ITS participant intends to display, rank, or send commitments via ITS priced in sub-pennies. Telephone conversation between Ellen Neely, President and General Counsel, CHX, and Michael Gaw, Assistant Director, and Sara Gillis, Attorney, Division of Market Regulation, Commission, dated January 30, 2006.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change: (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 for 30 days after the date of the 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to become operative on January 31, 2006, the compliance date for Rule 612. The Commission hereby grants that request.¹⁵ The Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest. The Commission previously has considered whether, for NMS stocks, quoting below \$1.00 in sub-penny increments should be permitted. The Commission determined that it should and codified that view in Rule 612(b) of Regulation NMS.¹⁶ The CHX's proposal to permit its participants to make bids or offers – in NMS stocks that are listed on Nasdaq – priced below

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). As required by Rule 19b-4(f)(6)(iii) under the Act, the Exchange also provided with the Commission with written 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 the proposed rule change.

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

¹⁶ See Regulation NMS Adopting Release, 70 FR at 37555.

\$1.00 in increments as small as \$0.0001 is consistent with Rule 612(b) and raises no new regulatory issues.

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.

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. Please include File Number SR-CHX-2006-01 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2006-01. 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 will also 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-2006-01 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.¹⁷

Nancy M. Morris
Secretary

¹⁷ 17 CFR 200.30-3(a)(12).