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Via email to www.rule-comments@sec.gov

July 22, 2003

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Chicago Stock Exchange Market Data Rebates
File No. SR-CHX-2003-15; Release No. 34-48076

Dear Mr. Katz:

The Chicago Stock Exchange (“CHX”) proposes to increase the size of its monetary inducements to specialists for transactions in listed securities. Under CHX’s complicated revenue-sharing program, CHX currently provides transaction credits to its specialists based on the market data and other revenues associated with transactions that its specialists execute on CHX. Under the proposed rule change, CHX would supplement those transaction credits with rebates of additional market data revenues for certain specialist trades in listed stocks.

CHX proposes that, in any month that CHX's aggregate share of Tape A or Tape B trade volume exceeds the CHX's aggregate share of Tape A or Tape B trade volume for the first quarter of 2003, CHX will distribute to specialists 50 percent of the tape revenue that CHX generates as a result of the increase. CHX plans to distribute this amount to CHX specialist firms in proportion to each firm's share of that month's incremental growth in Tape A or Tape B trade volume.

In calculating the amounts of such distributions, CHX would first subtract all direct CTA costs and the transaction credits that CHX otherwise pays in respect of the increased trade volume. CHX specifies that no specialist firm will receive credits relating to trades in Tape B securities that exceed 50 percent of the market data revenue that CHX receives as

a result of trades in those securities. It does not make the same representation for credits relating to trades in Tape A securities.

In calculating transaction credits applicable to trades in Tape A and Tape B securities, CHX applies tiered rate schedules, one for Tape A and one for Tape B. Under the two schedules, CHX pays a higher percentage of revenues for Tape A order flow than for Tape B order flow. For instance, the top rate for the Tape A program is currently 70 percent, compared with 50 percent for the Tape B program.

As the Commission is aware, NYSE has long opposed all market data rebates and other forms of payment for order flow as inconsistent with the Securities Exchange Act of 1934 (the “1934 Act”) and the protection of investors. In abrogating various pilot market data rebate programs a year ago, the Commission itself stated that those market data rebate programs raise “serious questions as to whether they are inconsistent with the 1934 Act and with the protection of investors.”¹ Thus, NYSE opposes CHX’s sharing of market data revenues with its specialists both under its current program and its proposed supplemental rebate program.

CHX’s proposed supplemental rebate program is particularly insidious because of the way it exploits the anomalies that the Abrogation Order created across the three networks. NYSE understands that, subsequent to the Abrogation Order, the Commission informally determined:

- (1) not to permit markets to share market data revenues for trades in securities registered for trading on the Nasdaq Stock Market;
- (2) to permit markets to share up to 50 percent of their market data revenues for trading in Tape B stocks; and
- (3) to permit markets to share more than 50 percent of their market data revenues for trading in Tape A stocks.

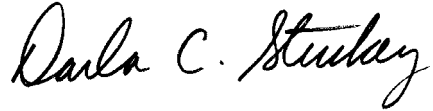
Following these “rules,” CHX currently rebates nothing for trades in Nasdaq securities, rebates as much as 50 percent of market data revenues for trades in Tape B securities, and rebates more than 50 percent of market data revenues for certain trades in Tape A securities. Its proposed supplemental rebate program would exacerbate this disparity, permitting CHX to provide greater economic incentives to specialist firms to purchase Tape A order flow than to purchase Nasdaq and Tape B order flow. The CHX provides no rationale for different rebate levels based on the market on which a security is listed.

Thus, NYSE urges the Commission to institute section 19(c) proceedings with respect to CHX’s existing transaction credit programs and to institute disapproval proceedings with respect to its proposed supplemental rebate program.

¹ See Order of Summary Abrogation, Release No. 46159 (July 2, 2002; the “Abrogation Order”).

We thank you for this opportunity to comment and would be pleased to respond to any questions that you may have.

Sincerely yours,

A handwritten signature in black ink that reads "Paula C. Sturley". The signature is written in a cursive, flowing style.

cc: Chairman William H. Donaldson
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Harvey J. Goldschmid
Annette L. Nazareth
Lawrence E. Harris
Robert L.D. Colby
Stephen Williams
Kate Boege (CHX)