

the transition to a decimal pricing environment because the premium needed to secure the increased liquidity (the minimum price variation) has been reduced to a penny.

The proposed rule change would provide that before a limit order in the specialist's book is automatically executed following a price penetration in the primary market, the limit order must have resided in the specialist's book for a time period of 0–15 seconds (as designed by the specialist).<sup>3</sup> This requirement is intended to preclude order-senders from taking advantage of the time latency between a primary market execution and the reporting of the execution to the tape.

## 2. Statutory Basis

The Exchange believes that the proposed rule change 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>4</sup> In particular, the proposed rule is consistent with section 6(b)(5) of the Act<sup>5</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments to 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 my inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor 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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2001-17 and should be submitted by December 26, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45117; File No. SR-CHX-2001-08]

### **Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Amending Its Minor Rule Violation Plan**

November 29, 2001.

On April 23, 2001, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change that would amend CHX Article XII, Rule 9(h), Minor Rule Violations, to include CHX Article XX, Rule 43(d), Trading in Nasdaq/NM Securities/Manual Executions, in the Exchange's Minor Rule Violation Plan ("Plan"). Specifically, a member who fails to manually execute a Nasdaq/NM market or marketable limit order at the national best bid or offer or better at the time of its receipt or at the best price available in another market place may be fined under the Plan. Notice of the proposed rule change was published for comment in the **Federal Register** on October 10, 2001.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange<sup>4</sup> and, in particular, the requirements of section 6 of the Act<sup>5</sup> and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act<sup>6</sup> because it will help prevent fraudulent and manipulative acts and practices, as well as promote just and equitable principles of trade. The Commission finds the proposal is consistent with section 6(b)(6) of the Act,<sup>7</sup> because the proposal provides a mechanism for the appropriate discipline for violations of certain rules and regulations.

In addition, the Commission finds the proposal is consistent with section 6(b)(7) of the Act<sup>8</sup> because the proposal provides a fair procedure for the disciplining of members and persons associated with members. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d-1(c)(2)<sup>9</sup> that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with this rule, and all other rules subject to the imposition of fines under the Plan. The Commission believes that the violation

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 44900 (October 2, 2001), 66 FR 51694.

<sup>4</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> 15 U.S.C. 78f(b)(6).

<sup>8</sup> 15 U.S.C. 78f(b)(7).

<sup>9</sup> 17 CFR 240.19d-1(c)(2).

<sup>3</sup> A specialist might choose a lesser time as a competitive inducement to attract order flow.

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

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

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the CHX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Plan, on a case by case basis, or if a violation requires formal disciplinary action.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act<sup>10</sup>, that the proposed rule change (SR-CHX-2001-08), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45109; File No. SR-NASD-2001-19]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc., Relating to Reporting Requirements for Clearing Members

November 27, 2001.

On March 21, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposed rule change relating to reporting requirements for members that are clearing firms. The proposed rule change was published for comment in the **Federal Register** on May 9, 2001.<sup>3</sup> The Commission received five comment

letters on the proposed rule change.<sup>4</sup> On June 6, 2001, NASD Regulation filed Amendment No. 1 to the proposed rule change.<sup>5</sup> On November 1, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.<sup>6</sup> This order approves the proposed rule change as amended.

### I. Description of the Proposed Rule Change

NASD Regulation is developing a new business model regarding the surveillance and examination of NASD members. The new program's official title is Integrated National Surveillance and Information Technology Enhancements (commonly referred to as "INSITE"). INSITE will allow NASD

<sup>4</sup> See Letters to Jonathan G. Katz, Secretary, Commission, from D. Stuart Bowers, Senior Vice President, Legg Mason Wood Walker, Inc., John H. Haynie, Managing Director, Wachovia Securities, Inc., Thomas F. Grabowski, Vice President, BNY Clearing Services, LLC, Douglas W. Noll, First Vice President, Stifel, Nicolaus & Company, Incorporated, Michael D. Duffy, Director of Operations, U.S. Bancorp Piper Jaffray, and Ken Cameranesi, Senior Vice President, Wells Fargo Investments, dated May 17, 2001 ("The Firms' Letter"); Harry D. Frisch, Esq., Senior Vice President, iClearing LLC, dated June 7, 2001 ("iClearing Letter"); Gregory P. Vitt, Senior Vice President, A.G. Edwards & Sons, Inc., dated June 28, 2001 ("A.G. Edwards Letter"); and W. Leo McBlain, Chairman and Cindy Foster, Chair, FIF Service Bureau Committee, Financial Information Forum, dated June 28, 2001 ("FIF Letter").

<sup>5</sup> See Letter from Shirley H. Weiss, Office of General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, Commission (June 4, 2001) ("Amendment No. 1"). Amendment No. 1 responds to the Firms' letter by reiterating the commitment of NASD Regulation to work with its member firms to facilitate reporting requirements under proposed Rule 3150. Further, NASD Regulation represented that it conducted and would continue to conduct a series of meetings with the service bureaus and member clearing firms to explain and modify data element requirements. Moreover, NASD Regulation amended the proposed rule text to include both clearing and self-clearing member firms.

<sup>6</sup> See Letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, Inc., to Jonathan G. Katz, Secretary, Commission (November 1, 2001) ("Amendment No. 2"). Amendment No. 2 responds to comment letters received by the Commission, as well as comment letters received by NASD Regulation from Harris Schwartz, Nordea Securities, Inc., dated June 8, 2001 ("Nordea Letter"); Bonnie K. Wachtel, CEO and Wendie L. Wachtel, COO, Wachtel & Co., Inc., dated June 29, 2001 ("Wachtel Letter"); and Michael Viviano, Chairman, Operations Committee, Christopher R. Franke, Chairman, Self-Regulatory and Supervisory Practices Committee, and Gerard McGraw, Chairman, Clearing Firms Committee, Securities Industry Association, dated July 19, 2001 ("SIA Letter"). In particular, Amendment No. 2 clarifies that only clearing and self-clearing firms that are members (not non-members) will be required to report the prescribed data. Amendment No. 2 provides additional information on the data element requirements, and proposes a phase-in schedule for the implementation of reporting requirements. Last, Amendment No. 2 amends the rule text to include an exemptive provision from the reporting requirements, pursuant to the Rule 9600 Series.

Regulation to concentrate its examinations on the higher-risk segments of the industry; focus the content of each examination on higher-risk topics; streamline the examination process for the examiners and members; better coordinate regulatory findings with other NASD Regulation departments; and provide specialized training to enhance and maintain examiner's competency levels.

According to NASD Regulation, the surveillance component of the INSITE program will produce reports that identify member "exceptions" based on historical and current comparisons of member data. Further, the exceptions will trigger follow-up reviews and possible member examinations. To facilitate the surveillance component of INSITE, NASD Regulation proposed to adopt Rule 3150 to require all members that are clearing firms (both those that are self-clearing and those that clear for other firms) to report certain data (*i.e.*, data elements) to the NASD Regulation Department of Member regulation ("Member Regulation").<sup>7</sup> Under the NASD's proposal, a clearing firm member may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the clearing firm's obligations under proposed Rule 3150. Notwithstanding the existence of such an agreement, NASD Regulation proposed that each member that is a clearing firm would be responsible for complying with the requirements of the proposed rule change.

The text of proposed Rule 3150 does not specify the data that must be reported to NASD Regulation. Initially, the data elements that NASD Regulation will require its members that are clearing firms to submit to the Association pursuant to proposed Rule 3150 included items such as trade cancellations (T+1 forward) and as-of trades, aggregate net liquidating equity in each firm's correspondents' proprietary accounts, and unsecured customer debits. NASD Regulation represented that it would continue to work its clearing firm members and the SEC staff in identifying the data that is needed in order to operate the surveillance component of INSITE. NASD Regulation would also provide its clearing firm members with advance notice through the NASD Notice to Members process (or similar guidance) of any changes to the required data

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 44251 (May 3, 2001), 66 FR 23750 (SR-NASD-2001-19)

<sup>7</sup> The Association anticipates requesting members that are clearing firms to submit data electronically. Telephone conversation between Shirley W. Weiss, Office of General Counsel, NASD Regulation, and Heidi Pilpel, Special Counsel, and Lisa Jones, Attorney, Division of Market Regulation, Commission (May 2, 2001).