

### 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 such 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 proposal 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. CBOE-2002-46 and should be submitted by October 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46533; File No. SR-CHX-2002-05]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Stock Exchange, Incorporated Requesting Permanent Approval of Pilot Rules Relating to the Securities Industry Transition to Decimal Pricing

September 23, 2002.

On March 1, 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 requesting permanent approval of pilot rules relating to decimal pricing. The **Federal Register** published the proposed rule change for comment on February 2, 2001.<sup>3</sup> The Commission received no comments on the proposal.

Specifically, the Exchange proposes permanent approval of changes to Article XX, Rule 37 which (1) allow specialists to elect, on an issue by issue basis, to either manually or automatically execute limit orders when a trade-through occurs in the primary market; (2) remove the "pending auto-stop" functionality from the Exchange's systems; and (3) allow a specialist, on an issue by issue basis, to establish an auto execution guarantee that is not dependent on the ITS Best Bid or Offer ("ITS BBO") or National Best Bid or Offer ("NBBO") size. The Exchange also proposes permanent approval of the pilot rule change to Article XX, Rule 23 of the Exchange's rules, which governs participation in crossing transactions in Nasdaq/NM securities effected on the floor of the Exchange. On August 24, 2000, the Commission originally approved the pilots<sup>4</sup> and, by a series of subsequent submissions, each pilot was

extended to September 30, 2002.<sup>5</sup> The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>6</sup> Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.<sup>8</sup> The Commission believes that the proposal is reasonably designed to limit the impact on the Exchange of the change to a decimal pricing environment. The Commission notes that no comments have been received since the proposed rule change was approved on a pilot basis over two years ago.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (SR-CHX-2002-05) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>5</sup> See Securities Exchange Act Release Nos. 43974 (February 16, 2001), 66 FR 11621 (February 26, 2001) (SR-CHX-2001-03) (extending Omnibus Decimal Pilot through July 9, 2001); 44488 (June 28, 2001), 66 FR 35684 (July 6, 2001) (SR-CHX-2001-13) (extending Omnibus Decimal Pilot through November 5, 2001); 45059 (November 15, 2001), 66 FR 58543 (November 21, 2001) (SR-CHX-2001-20) (extending Omnibus Decimal Pilot through January 14, 2002), 45481 (February 27, 2002), 67 FR 10244 (March 6, 2002) (SR-CHX-2002-01) (extending Omnibus Decimal Pilot through April 15, 2002); and 45819 (April 24, 2002), 67 FR 21787 (May 1, 2002) (extending the Omnibus Decimal Pilot until September 30, 2002); see also, Securities Exchange Act Release Nos. 44000 (February 23, 2001), 66 FR 13361 (March 5, 2001) (extending Crossing Rule Decimal Pilot through July 9, 2001), 45010 (November 1, 2001), 66 FR 56585 (November 8, 2001) (SR-CHX-2001-22) (extending Crossing Rule Decimal Pilot through January 14, 2002), 45482 (February 27, 2002), 67 FR 10243 (March 6, 2002) (SR-CHX-2002-03) (extending Crossing Rule Decimal Pilot through April 15, 2002); and 45819 (April 24, 2002), 67 FR 21787 (May 1, 2002) (extending the Crossing Rule Decimal Pilot until September 30, 2002).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> In approving this rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

<sup>10</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> Securities Exchange Act Release No. 43882 (January 24, 2001), 66 FR 8819.

<sup>4</sup> These changes were proposed in two separate CHX submissions, the second of which dealt solely with decimal-related changes to the Exchange's crossing rule, Article XX, Rule 23. See Securities Exchange Act Release No. 43204 (August 24, 2000), 65 FR 53065 (August 31, 2000) (SR-CHX-00-22) (approving changes to various CHX rules on a pilot basis ("Omnibus Decimal Pilot")); see also Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR-CHX-00-13) (approving changes to the CHX crossing rule on a pilot basis ("Crossing Rule Decimal Pilot")).

<sup>4</sup> 17 CFR 200.30-3(a)(12).