all customer orders that should be crossed at that opening price will be crossed, while the balance of orders, if any, will be assigned to participating market-makers if the opening price is at either the AutoQuote bid or offer. If the opening price is between the AutoQuote bid or offer, then no trades will be assigned to participating market-makers. However, any orders that are not executed as part of the opening will remain in the Exchange's Electronic Book and will be reflected in the opening bid or offer improving the AutoQuote bid or offer. Non-bookable orders that were presented to the OBO or DPM prior to the opening in accordance with proposed CBOE Rule 6.2A(a)(ii) will be filled by the market-makers in the crowd at the opening price if the order is deserving of such price. As ROS completes the opening for each class, public customers will receive an electronic fill report for each order traded, quotes and last sales will be disseminated to Options Price Reporting Authority, market-makers will be informed of their participating via an electronic trade notification or a paper notice, and trade match records will be created for clearance.

Surveillance of Market-Maker Procedures. The market-maker participating on ROS will be required to price the contracts fairly, in a manner consistent with their obligations under CBOE Rule 8.7(b)(iv). The Exchange believes that a number of factors including scrutiny by customers and firms representing customer orders will ensure that market-makers adjust the AutoQuote values consistent with their obligations. In addition, if an OBO notices any unusual activity in the setting of AutoQuote values, the OBO will fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's AutoQuote has an audit trail log that details every key stroke employed in the use of AutoQuote. This audit trail report can be studied in the event of any concerns with the way the AutoQuote values were established for ROS.

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b) of the Act in general and further the objectives of Section 6(b)(5) in particular in that they are designed to promote just and equitable principles of trade and to protect investors and the public interest.

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

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

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

No written comments were solicited or received with respect to 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 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 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, N.W., Washington, D.C. 20549. 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 CBOE. All submissions should refer to File No. SR–CBOE–98–48 and should be submitted by January 7, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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at any price in between. The rules, which the system proceeds through in the following order, are:

(1) If there are more contracts to trade at the bid price than at any other price point, then the opening price will be set at the bid price. If the bid equals, 0, then use the zero bid rule. This rule states if there is a net to sell at 0, any buy volume will be crossed at 1⁄16 with the available sell volume. If there is a balance remaining to sell, the sell volume will be booked at 1⁄16. If there is no buy volume, then, as with the current EBook functionality, there are 0 to sell at 1⁄16 and the orders will be booked at 1⁄16.

(2) If there are more contracts to trade at the offer price than at any other price point, then the opening price will be set at the offering price.

(3) If neither (1) nor (2) is satisfied, then look for the other price point at which the maximum number of contracts will be traded.

(4) There may be no contracts to trade at any of the price points.

(5) If there is only one price point at which the maximum number of contracts may be traded, then open at that price point.

(6) If there are multiple price points at which the maximum number of contracts may be traded then follow rules 7 through 10.

(7) If there is only one price point at which the net between number of contracts to buy and sell is 0 and at which the maximum number of contracts can be traded, then open at that price point.

(8) If there are multiple points where the net between buys and sells is 0 and at which the maximum number of contracts can be traded, then calculate what the best quote will be coming out of rotation, and open at the net zero point closest to the midpoint of the best quote.

(9) If there is not a single net zero closest to the midpoint of the best quote, then use the net change rule (discussed below) to determine the opening price.

(10) If there are no points where the net between buys and sells is zero and at which the maximum number of contracts can be traded, then open at a price at which the maximum number of contracts can be traded and where the net between buys and sells is greater than zero but less than or equal to the total buys or sells at that price. Use the net change rule if necessary.

Net change rule: If the direction of the last underlying change is positive and the option is to a call, open at the higher price, and if it is a put, open at the lower price. Similarly, for negative change, if it is a call option open at the lower price and if it is a put option, open at the higher price.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40763; File No. SR–CHX–98–25]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Addition of an Interpretation to the Minimum Variation Rule

December 8, 1998.

I. Introduction

On September 25, 1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an interpretation to the Minimum Variation Rule.

The proposed rule change was published for comment in the **Federal Register** on October 23, 1998.[3] No comments were received on the proposal. This order approves the proposal, as amended.[4]

II. Description of the Proposal

The CHX proposes to add Interpretation and Policy .06 to Article XX, Rule 22 relating to the trading by members in increments smaller than the minimum variation in order to match bids and offers displayed in other markets for the purpose of preventing Intermarket Trading System (''ITS'') trade-throughs.

Over the past 18 months, a number of self regulatory organizations (''SROs''), including the Exchange, the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange (''Amex''), the Nasdaq Stock Market (''Nasdaq''), the New York Stock Exchange (''NYSE'') and the Chicago Board Options Exchange (''CBOE''), have reduced the minimum trading and quotation increments of most equity securities to as little as 1⁄16 of one dollar.[5] Subsequent to the reduction to sixteenths, several third market makers have commenced quoting securities in increments smaller than those approved for trading on the exchanges on which the securities are listed or traded.[6] Several exchanges have responded by permitting their members to execute trades in these finer increments under certain circumstances.[7] Like these other exchanges, the CHX believes that it is important to provide its members with flexibility to effect transactions on the Exchange at a smaller increment than is set forth in its existing interpretations and policies (*i.e.*, 1⁄16 for most securities) for the purpose of matching a displayed bid or offer in another market at such smaller increment (*i.e.*, 1⁄32, 1⁄64 or smaller) for the purpose of preventing ITS trade-throughs. For example, if the best bid on the Exchange is 8 and a bid of 8 1⁄32 is displayed through ITS in another market center, the Exchange specialist or floor broker may execute a market or marketable limit order at 8 1⁄32 in order to match the other market's bid. Limit orders entered on the Exchange, however, will continue to be priced at the current minimum trading increments (*i.e.*, usually 1⁄16), and orders priced in smaller increments will not be accepted. In addition, specialists will not be permitted to quote in these finer increments.

The proposed amendment will allow CHX traders to match prices disseminated by market makers that may better the CHX quote by an increment finer than the current minimum increment (usually 1⁄16). Further, the proposal will enable the Exchange to match prices disseminated by another exchange in the event that another exchange were to reduce its minimum trading increment. Thus, the proposed amendment will assist Exchange members in fulfilling their obligation to obtain the best price for their customers.

While the new interpretation would give members the extra flexibility that they need, the Exchange believes that a member would violate the spirit and intent of this new interpretation and would, most likely, be considered to have engaged in manipulative activity, in the event that the member enters an order in another market in a smaller variation for the express purpose of enabling such member to execute trades on the Exchange at such smaller increment. For example, if floor broker sent to a third market maker a 100 share limit order to buy that is priced 1⁄32 or 1⁄64 better than the current quote solely to enable the floor broker to cross a large block of stock on the Exchange at such better price without a specialist intervention, the Exchange would probably consider the floor broker to have engaged in manipulative activity.[8]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act[9] and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[10] Specifically, the Commission believes the proposal is consistent with Section 6(b)(5) in that it is 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.[11]

Recently, there has been a movement within the industry to reduce the minimum trading and quotation increments imposed by the various SROs. Last year, Amex, Nasdaq, NYSE, PCX and CBOE reduced their minimum increments.[12] Currently, exchange rules provide for trading of most equity securities in increments as small as 1⁄16 of a dollar. The CHX exchange represents that several third market makers have begun quoting securities in increments smaller than those approved for trading on the primary markets. The Exchange's proposed rule change will provide it the limited flexibility it needs to address this development and remain competitive with these third markets.

The size of the minimum trading increment for securities traded through the facilities of the Nasdaq system is determined by the technical limitations of the Nasdaq system. Currently, Nasdaq systems are capable of trading securities priced under $10 in increments as fine

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 40545 (October 13, 1998), 63 FR 56956 (October 23, 1998).

[4] Amendment No. 2 makes a technical word change to the proposed rule change, replacing the word ''that'' with ''than'' in the second line of the proposed Interpretation and Policy .06 to Art. XX, Rule 22. Since this amendment is completely technical in nature, good cause for accelerated approval is not necessary. Letter from Kirsten M. Carlson, Counsel to the CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 14, 1998.

[5] *See* Exchange Act Release Nos. 38780 (June 26, 1997), 62 FR 36087 (July 3, 1997) (approving a PCX rule change to reduce the minimum quotation increment to 1⁄16 for stocks); 38571 (May 5, 1997), 62 FR 25682 (May 9, 1997) (approving an Amex proposal to reduce the minimum trading increment to 1⁄16 for certain Amex-listed equity securities); 38678 (May 27, 1997), 62 FR 30363 (June 6, 1997) (approving a Nasdaq rule change to reduce the minimum quotation increment to 1⁄16 for certain Nasdaq-listed securities); 38897 (August 1, 1997), 62 FR 42847 (August 8, 1997) (approving a NYSE rule change to reduce the minimum quotation increment to 1⁄16 for certain NYSE-listed securities); and 39159 (September 30, 1997), 62 FR 52365 (October 9, 1997) (approving a CBOE rule change to reduce the minimum quotation increment to 1⁄16 for stocks).

[6] For example, Nasdaq systems are capable of trading securities priced under $10 in increments as fine as 1⁄32 of one dollar. Securities priced over $10 may be traded in increments as fine as 1⁄16 of one dollar. As a result, the third market makers may trade Amex listed securities that are traded on CHX and priced at less than $10 in increments finer than sixteenths.

[7] *See* Exchange Act Release Nos. 40199 (July 14, 1998), 63 FR 39336 (July 22, 1998) (approving PCX rule permitting members to trade in increments smaller than 1⁄16, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade-throughs); and 40189 (July 10, 1998), 63 FR 38439 (July 16, 1998) (approving Amex rule permitting members to trade in increments smaller than 1⁄16, in order to match bids and offers displayed in other markets for the purpose of preventing ITS trade- throughs).

[8] The Exchange believes this is consistent with a recent SEC enforcement action brought against two brothers who used the SEC's Limit Order Display Rule to manipulate the quote to their advantage. *See In re Ian Fishman and Lawrence Fishman*. Admin. Proc. File No. 3–9629 (June 24, 1998). In that case, the Commission stated that the brothers used a limit order ''to move the public bid or offer quote, in order to permit [Fishman] to buy or sell a security at a price that otherwise would not have been available in the market,'' and found that such activity violated Exchange Act Rule 10b–5.

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra*, note 5.

as 1⁄32 of one dollar. Securities priced over $10 may be traded in increments as fine as 1⁄16 of one dollar.[13] As a result, the Commission recognizes that third market makers may trade exchange listed securities priced at less than $10 in increments finer than sixteenths. Nasdaq has informed the Commission that third market makers are currently posting quotes for listed securities in increments finer than sixteenths.[14] The proposed amendment to CHX Article XX, Rule 22, will allow CHX traders to match price disseminated by third market makers that may better the CHX quote by an increment finer than the 1⁄16 minimum increment. In addition, the Commission notes that the proposal will enable the Exchange to match prices disseminated by other exchanges in the event that another exchange were to reduce its minimum trading increment.[15] The proposal should assist Exchange members to fulfill their obligation to obtain the best price for their customers. Accordingly, the Commission finds that it is reasonable for the CHX to allow trading in increments finer than 1⁄16 for the limited purpose of preventing an ITS trade-through.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CHX–98–25), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[13] The Commission notes that any change to the minimum increment for securities traded through the facilities of the Nasdaq system would be considered a change in an existing order-entry or trading system of an SRO. Accordingly, the Nasdaq would be required to file a proposed rule change under Section 19(b)(3)(A) of the Act to change its minimum increment.

[14] *See* Exchange Act Release No. 40189 (July 10, 1998), 63 FR 38439 (July 16, 1998).

[15] To change its minimum increment, an exchange would be required to file a proposed rule change that would become immediately effective under Section 19(b)(3)(A).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40771; File No. SR–NASD–98–79]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Responsibilities When Using the Internet; Updating MarketWatch Contact Information and Other Matters

December 10, 1998.

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 October 21, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] 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

Nasdaq is proposing to amend NASD Rule IM–4120–1 with respect to the use of the Internet for dissemination of issuer disclosures. below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

4120. Trading Halts

(a) No Change

(b) Procedure for Initiating a Trading Halt

(1) Nasdaq issuers are required to notify Nasdaq of the release of any material news prior to the release of such information to *appropriate news services*[the press] as required by Rule 4310(c)(16) and 4320[(d)(15)]*(e)(14).*

(b)(2) through (5) No Change

Footnote to 4120(b)(2):

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was received by the Commission on December 3, 1998, the substance of which is incorporated into this notice. Letter from Andrew S. Margolin, Assistant General Counsel, Nasdaq, to Katherine A. England, Division of Market Regulation (''Division''), Commission, dated December 2, 1998 (''Amendment No. 1''). Amendment No. 2 was received by the Commission on December 10, 1998, the substance of which is incorporated into this notice. Letter from Andrew S. Margolin, Assistant General Counsel, Nasdaq, to Katherine A. England, Division, Commission, dated December 9, 1998 (''Amendment No. 2'').

[The current telephone number is 1–800–537–3929, (301) 590–6411, or from 6 p.m. to 8 a.m. Eastern Time, (301) 590–6413. The Stock Watch fax number is (301) 590–6482.] *Notification may be provided to the MarketWatch Department by telephone 1–800–537–3929 and (301) 590–6411. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number. The fax number is (301) 590–6482.*

* * * * *

IM–4120–1. Disclosure of Material Information

Rules 4310(c)(16) and 4320[(d)(15)](e)(14) require that, except in unusual circumstances, Nasdaq issuers disclose promptly to the public through *appropriate*[the] news [media]*services* any material information which would reasonably be expected to affect the value of their securities or influence investors' decisions and that Nasdaq issuers notify Nasdaq of the release of any such information prior to its release to the public through the news [media]*services.* Nasdaq recommends that Nasdaq issuers provide such notification at least ten minutes before such release.* Under unusual circumstances issuers may not be required to make public disclosure of material events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its legitimate corporate objectives. However, Nasdaq issuers remain obligated to disclose this information to Nasdaq upon request pursuant to Rules 4310(c)15) or 4320[(d)(14)]*(e)(13).*

Whenever unusual market activity takes place in a Nasdaq issuer's securities, the issuer normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the issuer becomes known to the investing public, a clear announcement may be required as to the state of negotiations or development of issuer plans. Such an announcement may be required, even though the issuer may not have previously been advised of such information or the matter has not yet been presented to the issuer's Board of Directors for consideration. It may also be appropriate, in certain circumstances, to publicly deny false or inaccurate rumors which are likely to