

to each class, except that the NAV and expenses of each class will reflect distribution fees, service fees (including transfer agency fees), and any other incremental expenses of that class. Expenses of a Feeder Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Each Feeder Fund may create additional classes of shares in the future that may have different terms from the Original Class, Class A, Class B, and Class C shares. Applicants state that each Feeder Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

#### Applicants' Legal Analysis

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of a Feeder Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants request an exemptive order to the extent that the proposed issuance and sale of multiple classes of shares of the Feeder Funds might be deemed (a) to result in the issuance of a "senior security;" within the meaning of section 18(g) of the Act and thus be prohibited by section 18(c) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Feeder Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Feeder Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert

that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Feeder fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

#### Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 12b-1, 17d-3, 18f-3, and 22d-1 under the Act, as amended from time to time, as if those rules applied to closed-end investment companies, and will comply with NASD Conduct rule 2830(d), as amended from time to time.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00-24610 Filed 9-25-00; 8:45 am]

BILLING CODE 8010-01-M

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43304; File No. SR-CHX-00-26]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated to Make Its After-Hours Trading "E-Session" a Permanent Part of its Operations

September 19, 2000

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> notice is hereby given that on September 12, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> 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 Proposal

On October 13, 1999, the Securities and Exchange Commission approved, on a pilot basis through March 1, 2000, a new Article XXA and amendments to existing rules that allowed the Exchange to implement a new extended trading hours session (the "E-Session").<sup>6</sup> On February 28, 2000, the CHX extended the operation of the E-Session through October 1, 2000.<sup>7</sup> The CHX now proposes to make the operation of the E-Session permanent.

#### 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 its proposal and discussed any comments it received regarding the proposal. 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

In September 1999, the Exchange proposed new Article XXA and several related rule changes to implement the E-Session. The E-Session was designed to meet the needs of market participants and CHX members who had demanded that the Exchange begin trading in hours that extend beyond the then-current trading day. The Exchange continues to believe that investors are best served if registered securities exchanges are participants in the burgeoning after-hours trading market and submits this proposal to make the operation of the E-Session permanent. The Exchange does not propose to make any additional changes to the E-Session at this time; this proposal seeks only to make the E-

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Exchange provided the Commission with written notice of its intent to file the proposal on September 6, 2000, pursuant to Rule 19b-4(f)(6). 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR-CHX-99-16).

<sup>7</sup> See Securities Exchange Act Release No. 42463 (February 28, 2000), 65 FR 11817 (March 6, 2000) (SR-CHX-00-02).

Session a permanent part of the CHX's current operations.

*The operation of the E-Session.* The E-Session began operating on October 29, 1999. It currently operates from 3:30 p.m. (immediately following the close of the CHX's post primary trading session) to 5:30 p.m., Central Time, Monday through Friday.<sup>8</sup>

Trading during the E-Session is conducted, in some respects, as it is during the CHX's primary trading session; however, new features more fully automate the transmission of orders and provide additional protections to investors who trade during the session. Only unconditional limit orders and immediate or cancel limit orders are eligible for execution in the E-Session, and each limit order must be appropriately designated for trading in the E-Session.<sup>9</sup> Any orders remaining unexecuted at the end of the session are automatically canceled and do not carry over to any other trading session. Specialist firms continue to make two-sided, continuous markets in E-Session eligible stocks, generally the more active stocks assigned to them during the existing trading sessions, at their posts on the floor of the CHX (unless a specialist firm has transferred its assignment, for the E-Session only, to another specialist firm with the approval of the Committee on Specialist Assignment and Evaluation).

During the E-Session, in most cases (subject to an exception described below), limit orders must be electronically and directly transmitted, via the MAX<sup>TM</sup> electronic order routing system, to the specialist's limit order book. Floor brokers may route limit orders to the specialist's limit order book via MAX or may transmit the orders to another market. In addition, a floor broker may route orders to buy and sell equivalent quantities of the same security eligible to be executed at the same price through MAX to the specialist's limit order book or may execute those orders as a crossing transaction at the specialist's post in

accordance with existing Exchange rules.

Except as described in Article XXA or in other E-Session rule amendments, execution, reporting, clearance and settlement of transactions that occur during the E-Session follow the procedures currently in place for those activities in the Exchange's primarily trading session.<sup>10</sup> Among other things, this general principle means that the National Securities Clearing Corporation clears the transactions that take place during this session, and the Securities Industry Automation Corporation and Nasdaq, Inc. disseminate CHX quotations and trade data. Three exceptions to this general rule arise from either the Exchange's desire to more fully automate the E-Session, or from the fact that no primary market of the kind that operates under the same terms and conditions during traditional trading hours is available during the E-Session.<sup>11</sup>

*Securities eligible for trading during the E-Session.* The CHX's Committee on Floor Procedure identifies, from time to time, the securities eligible for trading during the E-Session. In general, the securities listed on the Standard & Poor's 100 Stock Index<sup>TM</sup> (OEX) and on the Nasdaq-100 Index<sup>®</sup> (NDX), as well as other securities that rank among the 100 most active listed and 100 most active Nasdaq/NM securities at the end of each quarter trade during the E-Session. Currently, 303 securities are eligible for trading during the E-Session.

*Members eligible to participate in the E-Session.* All CHX members have access to the E-Session, in accordance with applicable CHX rules.

*Mandatory disclosures to non-members.* Because the E-Session operates in a manner, and at a time, that is different from the CHX's primary trading session, members must provide specific disclosures to non-members before accepting orders for execution in the E-Session. These disclosures are designed to ensure that participants in the after-hours market understand the potential risks of that participation.

*Surveillance and oversight.* The Exchange conducts surveillance of E-

Session trading using many of the same surveillance programs it uses to monitor trading during the primary trading session. E-Session order delivery, quoting and matching is almost entirely controlled by the Exchange's electronic systems. These systems reduce the possibility for intentional or inadvertent mishandling of orders and enhance the effectiveness of the surveillance programs. The CHX believes that E-Session surveillance has operated effectively during the first ten months of after-hours trading.

*Procedures for reviewing capacity, security and contingency planning.* The CHX uses many of the same review procedures for systems security, capacity management, and recovery and contingency planning that it employs for the systems that support the primary trading session.

## 2. Statutory Basis

The CHX believes the proposal is consistent with Section 6(b)(5) of the Act<sup>12</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 of Burden on Competition

The Exchange believes that no burden will be placed on competition as a result of its proposal to make the E-Session a permanent part of the Exchange's current operations.

### 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 foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> At any time within 60 days of the filing

<sup>8</sup> The amendments to Article IX, Rule 10(b) (Business Days and Hours of Trading) and Article XX, Rule 2 (Hours of Floor Dealing) confirm the existence of this new trading session.

<sup>9</sup> The CHX proposed a rule change to allow its members to accept immediate or cancel limit orders during the E-Session so that the Exchange could participate in an anticipated linkage with a group of electronic communications networks who accept this type of order. Although the Commission has approved the rule change needed to allow the CHX to accept these orders (See Securities Exchange Act Release No. 42916 (June 9, 2000), 65 FR 38015 (June 19, 2000) (SSR-CHX-00-17)), the CHX is still working to develop the linkages with other market centers through which those orders will be transmitted.

<sup>10</sup> The amendments to Article XX, Rule 1 (Application [of Article] and Article XXI, Rule 1 (Reporting of Transaction) confirm that these rules encompass transactions that occur during the E-Session.

<sup>11</sup> The amendments to Article XX, Rule 37 (confirming that the Best System and the automatic execution features of the Midwest Automated Execution System do not operate during the E-Session), Article XXXI, rules 6 and 9 (confirming that odd-lot order execution occurs differently than during the primary trading session) and Article XXXIV (confirming that market makers do not participate in the E-Session) reflect these exceptions.

<sup>12</sup> U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become operative immediately because such designation is consistent with the protection of investors and the public interest. The Commission believes that the E-Session provides retail investors with an additional means to trade after traditional trading hours, and that the operation of the E-Session is consistent with Section 6(b)(5) of the Act<sup>15</sup> in that it is designed to remove impediments to, and to perfect the mechanism of, a free and open market. The Commission believes the availability of the E-Session may enhance competition in the after-hours market. Currently, electronic trading systems provide retail investors the opportunity to trade after-hours. The continued presence of a national securities exchange in the after-hours market will provide retail investors with an alternative forum through which to conduct after-hours transactions. The CHX has been operating the E-Session on a pilot basis. The Commission believes there is no particular benefit to investors if the CHX is required to wait 30 days before its proposal to make the E-Session a permanent part of its operations becomes operative. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.<sup>16</sup>

#### 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, D.C. 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 the CHX. All submissions should refer to file number SR-CHX-00-26 and should be submitted by October 17, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-24641 Filed 9-25-00; 8:45 am]

BILLING CODE 8010-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43302; File No. SR-NASD-00-56]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend the Operation of Certain Nasdaq Services and Facilities Until 6:30 P.M. Eastern Time

September 19, 2000.

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> notice is hereby given that on September 14, 2000, 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 and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Commission agreed to waive the 5-day pre-filing notice requirement. The Commission also finds good cause to waive the 30-day pre-operative waiting period. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend, through March 1, 2001, its pilot program extending the availability of several Nasdaq services and facilities until 6:30 p.m. Eastern Time. Nasdaq has designated this proposal as non-controversial, and requests that the Commission waive both the 5-day pre-filing notice and the 30-day pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act,<sup>6</sup> to allow the proposal to be both effective and operative immediately upon filing with the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Nasdaq proposes to extend, through March 1, 2001, its current pilot program that makes available certain Nasdaq systems and facilities until 6:30 p.m. Eastern Time. The Commission originally approved the pilot on October 13, 1999.<sup>7</sup> The pilot will continue to operate under its current terms and conditions, including mandating 90-second trade reporting until 6:30 p.m. Eastern Time.

###### 2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>7</sup> See Securities Exchange Act Release No. 42003 (October 13, 1999), 64 FR 56554 (October 20, 1999) (SR-NASD-99-57).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>16</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).