rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

The Exchange's RAES system was created to allow for the automatic execution of retail customer options orders against CBOE market makers at their disseminated prices. In 1999, the Exchange expanded the RAES system to allow incoming RAES orders to execute against customer limit orders on the CBOE book when such booked orders constitute the CBOE's best bid/offer.[3] Recently, the Exchange has allowed broker-dealer orders to be executed on RAES in classes/series designated by the appropriate Floor Procedure Committee.[4]

The Exchange now proposes to allow broker-dealer orders that are eligible for execution on RAES pursuant to CBOE Rule 6.8, Interpretation and Policy .01 to automatically execute against customer limit orders on the CBOE's book in classes designated by the appropriate Floor Procedure Committee.

2. Statutory Basis

Because the proposed rule change will expand the number of orders eligible to trade automatically with booked customer limit orders, the Exchange believes the proposed rule change is consistent with section 6(b)[5] of the Act in general, and furthers the objectives of section 6(b)(5)[6] of the Act in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and 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 believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 CBOE 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. SR–CBOE–2003–42 and should be submitted by November 28, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–28078 Filed 11–6–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (SR–CBOE–99–29).

[4] *See* Securities Exchange Act Release Nos. 45967 (May 20, 2002), 67 FR 37888 (May 30, 2002) (SR–CBOE–2002–22); 46113 (June 25, 2002), 67 FR 44486 (July 2, 2002) (SR–CBOE–2002–35); and 46598 (October 3, 2002), 67 FR 63478 (October 11, 2002) (SR–CBOE–2002–56).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48734; File No. SR–CHX–2003–31]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Shareholder Approval of Equity Compensation Plans and the Voting of Proxies

October 31, 2003.

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 6, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 30, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange proposes to amend certain provisions of its rules to strengthen listing standards relating to shareholder approval for equity compensation plans.[4]

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces the Exchange's original Rule 19b-4 filing in its entirety.

[4] The Commission notes that the Exchange is proposing to adopt listing standards relating to shareholder approval of equity compensation plans that are similar to those that the Commission recently approved for the New York Stock Exchange, Inc. (''NYSE'') and the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''). *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140). *See also* Securities Exchange Act Release No. 48627 (October 14, 2003), 68 FR 60426 (October 22, 2003) (notice of filing and order granting accelerated approval to File No. SR–NASD–2003–130, incorporating amendments to the NASD's recently approved shareholder approval rules for equity compensation plans applicable to Nasdaq quoted securities). The Commission also published a correction to the notice of File No. SR–NASD–2003–130. *See* Securities Exchange Act Release No. 48627A (October 22, 2003), 68 FR 61532 (October 28, 2003).

Continued

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

Chicago Stock Exchange Rules

ARTICLE XXVIII

Listed Securities

Tier I Corporate Governance and Disclosure Standards

Corporate Governance

RULE 19. The following Rule 19 applies [only] to Tier I issuers: (a)–(i)No change to text.

(j) *Shareholder Approval.* Each issuer shall require shareholder approval [of a plan or arrangement under (i) below, or] prior to the issuance of securities under *(1), (2), (3) or (4)*[(ii), (iii) or (iv)] below[, when]:

(1) *Equity Compensation Plans. When an equity compensation plan, pursuant to which options or stock may be acquired by officers, directors, employees or consultants, is established or materially amended, except for:*

(A) Warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan); or

(B)(i) Tax qualified, non-discriminatory employee benefit plans or parallel non-qualified plans, provided such plans are approved by the issuer's independent compensation committee or a majority of the issuer's independent directors; or (ii) plans that provide non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to U.S. employees, but for features necessary to comply with applicable foreign tax law; or (iii) plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or

(C) Plans or arrangements relating to an acquisition or merger where: (i) The issuer is converting, replacing or adjusting outstanding options or other equity compensation awards to reflect the transaction; or (ii) the issuer is using shares available under certain plans acquired in acquisitions or mergers for certain post-transaction grants, as set out in Interpretation and Policy .06; or

(D) Issuances to a person not previously an employee or director of the company, or following a bona fide period of non-employment or non-service, as an inducement material to the individual's entering into employment with the issuer, provided such issuances are approved by the issuer's independent compensation committee or by a majority of the issuer's independent directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares.

(E) Each issuer must notify the Exchange, in writing, when it uses one of the exemptions set forth in paragraphs (A) through (D) above.

[(i) A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (*e.g.*, ESOPs). In a case where the shares or options are to be issued to a person not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company, provided that the potential issuance of shares pursuant to the options does not exceed 5% of the company's outstanding stock, shareholder approval will generally not be required.]

[In the case of the establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares of common stock outstanding, 1% of the voting power outstanding or 25,000 shares, shareholder approval will generally not be required, provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of outstanding common stock or voting power outstanding. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included).]

([ii]*2* No change to text.

([iii]*3* No change to text.

([iv]*4* No change to text.

([v]*5* No change to text.

([vi]*6* No change to text.

([vii]*7* No change to text.

* * * * *

*** * * Interpretations and Policies**

.01 No change to text.

.02–.05 Reserved.

.06 Shareholder approval of equity compensation plans.

(1) An ''equity compensation plan'' is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any officer, director, employee or consultant as compensation for services. Even a compensatory grant of options or other equity securities that is not made under a formal plan is an equity compensation plan, for purposes of this rule.

(2) A ''material revision'' of an equity compensation plan includes, but is not limited to:

(a) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(b) Any material increase in benefits to participants, including any material change that (i) permits a repricing (or decrease in exercise price) of outstanding options (ii) reduces the price at which shares or options to purchase shares may be offered or (iii) extends the duration of a plan;

(c) Any material expansion of the class of participants eligible to participate in the plan; and

(d) Any expansion in the types of options or awards provided under the plan.

(3) In general, if a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula''), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), the plan cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, if a plan does not contain a formula and does not impose a limit on the number of shares available for grant, each grant under the plan must be approved by shareholders. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate the shareholder approval requirements set out in this paragraph.

(4) When preparing-plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. Plans meant to permit repricing should use explicit terminology to make this intent clear.

The Commission notes that these additional amendments by Nasdaq make the NYSE and Nasdaq proposals more consistent and uniform. *See also infra* note (regarding the Commission's recent approval of a similar proposal by the American Stock Exchange LLC (''Amex'')).

(5) An issuer is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

(6) Rule 19(j)(1)(C)(ii) provides that plans or arrangements relating to an acquisition or merger do not require shareholder approval where the issuer is using shares available under certain plans acquired in acquisitions or mergers for certain post-transaction grants. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders that meet the requirements of Rule 19(j). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or under another plan, without further shareholder approval, provided (a) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (b) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. A plan adopted in contemplation of the merger or acquisition is not considered a pre-existing plan for purposes of this exception. Any shares available for issuance under an equity compensation plan acquired in connection with a merger or acquisition would be counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder requirements under Rule 19(j)(3)(b).

(7) A ''tax qualified, non-discriminatory employee benefit plan'' is one that meets the requirements of Section 401(a) or 423 of the Internal Revenue Code and applicable Treasury Department regulations.

(8) A ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. § 1002, that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (a) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may be enacted); (b) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and (c) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

(9) The Exchange precludes its member organizations from giving a proxy to vote on equity compensation plans unless the beneficial owner of the shares has given voting instructions. This prohibition is codified in Article XXXIII, Rule 3 and will become effective for any meeting of shareholders that occurs on or after the 90th day following Commission approval of the change.

* * * * *

Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

([1]*a*) No change to text.

(b) Each issuer shall comply with the shareholder approval requirements relating to equity compensation plans set out in Rule 19(j) of this Article and is subject to Interpretation .06 of that rule.

([2]*c*) No change to text.
([3]*d*) No change to text.
([4]*e*) No change to text.
([a]*1*) No change to text.
([b]*2*) No change to text.
([c]*3*) No change to text.
([d]*4*) No change to text.
([e]*5*) No change to text.
([f]*6*) No change to text.
([g]*7*) No change to text.
([h]*8*) No change to text.
([i]*9*) No change to text.
([j]*10*) No change to text.
([k]*11*) No change to text.
([l]*12*) No change to text.
([m]*13*) No change to text.
([n]*14*) No change to text.
([o]*15*) No change to text.
([p]*16*) No change to text.
([q]*17*) No change to text.
([r]*18*) No change to text.

* * * * *

ARTICLE XXXIII

Proxies

* * * * *

Instructions of Beneficial Owner

RULE 3. A member organization shall give a proxy for stock registered in its name, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

A member organization may give a proxy to vote any stock registered in its name if such organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member organization which was transmitted proxy soliciting material to the beneficial owner of stock and solicited voting instructions in accordance with the provisions of Rule 2, and which has not received instructions from the beneficial owner by the date specified in the statement accompanying such material may give a proxy to vote such stock, *except for voting on equity compensation plans as set forth below,* provided the person signing the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action does not include authorization for a merger, consolidation or any other matter which may affect substantially the legal rights or privileges of such stock.

A member organization may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not shareholder approval of such plan is required by Article XXVIII, Rules 19 or 21). The provision will become effective for any meeting of shareholders that occurs on or after the 90th day following Commission approval of the change.

* * * * *

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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item III below. The Exchange 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

The Exchange proposes to amend certain provisions of the Exchange's rules to strengthen listing standards relating to shareholder approval for equity compensation plans.

Current CHX Article XXVIII, Rule 19, generally requires issuers to seek shareholder approval of stock option or purchase plans pursuant to which officers or directors might acquire stock. The Rule, however, contains an exception for broadly based plans or arrangements that include other employees, as well as for plans that meet a specific *de minimis* standard. To enhance investor confidence and to ensure that the Exchange's requirements for shareholder approval of equity compensation plans are not less stringent than those of other markets, the Exchange now proposes to delete both the *de minimis* exception and the exception for broadly based plans and proposes to expand the rule to require that shareholder approval be obtained whenever an equity compensation plan is established or materially amended, unless a specifically-defined exception applies.[5] The Exchange proposes to make these requirements applicable to both its Tier I and Tier II issuers.[6]

Exceptions. The Exchange's revised rule would provide exceptions for: (1) Warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders; [7] (2) certain tax qualified, non-discriminatory employee benefit plans, parallel non-qualified plans, plans that provide non-U.S. employees with the same benefits as tax qualified, nondiscriminatory employee benefit plans or parallel non-qualified plans or plans that merely provide a convenient way to purchase shares on the open market or from the issuer; [8] (3) certain plans or arrangements relating to an acquisition or merger; [9] and (4) certain issuances given as material inducements to a person's decision to become an employee of the issuer, so long as the issuances are approved by the issuer's independent compensation committee or by a majority of its independent directors.[10] Under the Exchange's proposal, as amended, each issuer must notify the Exchange, in writing, when it uses one of these exceptions.[11]

The Exchange believes that these exceptions are narrowly-tailored and appropriate. The Exchange believes that shareholder approval should not be separately required under the Exchange's listing standards for tax qualified, nondiscriminatory employee benefit plans because those plans are regulated under the Internal Revenue Code and Treasury Department regulations, which may already contain provisions requiring shareholder approval. Where that approval is not required, the Exchange believes that the additional protections from any inappropriate use of these plans and parallel non-qualified plans is provided through the requirement that these plans be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. Similarly, the Exchange believes that shareholder approval of inducement grants to new employees and directors is not appropriate because of the impracticality of seeking shareholder approval during the recruiting process and because these transactions occur when the company has an arm's-length relationship with the new employee and its interests are directly aligned with the interests of its shareholders. The Exchange believes that the exceptions associated with mergers and acquisitions are appropriate because they do not result in any increase in the aggregate potential dilution of the combined enterprise.

In its proposed rules, the Exchange includes a definition of the types of ''material revisions'' of a plan that would cause shareholder approval to be required. Specifically, the rules confirm that a material revision includes, but is not limited to, a material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger or similar transaction); a material increase in benefits to participants; a material expansion of the class of participants eligible to participate in the plan; and an expansion in the types of options or awards provided under the plan.[12] Additional provisions of the proposed rules provide issuers with further guidance about situations that require (or do not require) shareholder approval.[13]

As a final change, the Exchange proposes to amend CHX Article XXXIII, Rule 3, to mirror requirements now set out in NYSE Rule 452 to prohibit a member from giving a proxy to vote on a matter that establishes or materially amends an equity compensation plan, unless the member has instructions from the beneficial owners of those shares.

Effective date. The Exchange proposes that the changes to CHX Rules 19 and 21 become effective upon Commission approval and that existing equity compensation plans be grandfathered. Any material modifications to existing (*i.e.*, grandfathered) plans would be subject to applicable shareholder approval requirements of these rules. The Exchange proposes that its changes to Article XXXIII, Rule 3, take effect for any meeting of shareholders that occurs on or after the 90th day following Commission approval of the change.

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[5] Under the Exchange's proposal, as amended, an equity compensation plan is any plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any officer, director, employee or consultant as compensation for services. *See* proposed Interpretation and Policy .06(1) to CHX Rule 19(j).

[6] Tier II governance standards are set out in CHX Rule 21.

[7] This exception exists in the current CHX rule.

[8] Sections (7) and (8) of proposed new Interpretation and Policy .06 to CHX Rule 19(j) contain definitions of the terms ''tax qualified, non-discriminatory employee benefit plan'' and ''parallel nonqualified plan.'' *See* proposed CHX Rule 19(j)(1)(B).

[9] This exception applies to plans or arrangements where an issuer is converting, replacing or adjusting outstanding options or other equity compensation awards to reflect a merger or acquisition or where the issuer is using shares available under certain plans acquired in acquisitions or mergers for certain post-transaction grants, as set out in proposed Interpretation and Policy .06(6) to CHX Rule 19(j). *See* proposed CHX Rule 19(j)(1)(C).

[10] These issuances only qualify for the exception if they are made to a person not previously an employee or director of the issuer or following a bona fide period of non-employment or non-service. If an issuer uses this exception, it must promptly disclose, in a press release, the material terms of the grant, including the recipient of the grant and the number of shares included in the grant. *See* proposed CHX Rule 19(j)(1)(D).

[11] *See* proposed CHX Rule 19(j)(1)(E).

[12] *See* proposed Interpretation and Policy .06(2) to CHX Rule 19(j).

[13] For example, proposed Interpretation and Policy .06(3) to CHX Rule 19(j) confirms that where a plan contains an evergreen formula (for automatic increases in the shares available) or an automatic grant pursuant to a dollar-based formula, the plan cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Other provisions confirm that issuers should strive to make plan terms easy to understand when preparing plans and presenting them for shareholder approval and that an issuer is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval. *See* proposed Interpretation and Policy .06(4) and (5) to CHX Rule 19(j). The Commission notes that if a plan permits a specific action without further shareholder approval, it must be clear and specific enough to provide meaningful shareholder approval of those provisions.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(5) of the Act,[15] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that its proposal, as amended, is intended to be essentially identical to those submitted by the NYSE and Nasdaq and approved by the Commission.[16]

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received. The Exchange, however, did notify its issuers of the types of proposed rule changes that it was contemplating and has not received any objections to those proposals.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2003–31 and should be submitted by November 28, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval to the Proposed Rule Change, As Amended

After careful review, the Commission finds that the Exchange's proposal, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[17] Specifically, the Commission finds that approval of the Exchange's proposal, as amended, is consistent with Section 6(b)(5) of the Act [18] in that it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and does not permit unfair discrimination among issuers.

The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, restore investor confidence in the national marketplace. The Commission believes that the Exchange's amended proposal, which requires shareholder approval of equity compensation plans and which follows the Commission's approval of similar proposals by the NYSE, Nasdaq, and Amex [19] is the first step under this directive because it should have the effect of safeguarding the interests of shareholders, while placing certain restrictions on Exchange-listed companies.[20]

In addition, the Commission notes that the Exchange's proposal, as amended, is similar and almost identical to proposals by NYSE and Nasdaq requiring shareholder approval of equity compensation plans that have previously been approved by the Commission.[21] The Commission believes that it has already considered and addressed the issues that may be raised by the Exchange's amended proposal when it approved these proposals. The Commission notes that approval of the Exchange's proposal, as amended, will conform the Exchange's shareholder approval requirements for equity compensation plans with those of the NYSE and Nasdaq, and will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. The adoption of these standards by the Exchange is an important step to ensure that issuers will not be able to avoid shareholder approval requirements for equity compensation plans based on their listed marketplace.

A. Exception From Shareholder Approval for Inducement Grants

The Commission believes that the requirement that the issuance of all inducement grants be subject to review by either the issuer's independent compensation committee or a majority of the board's independent directors, under the Exchange's amended proposal, should prevent abuse of this exception from shareholder approval. In addition, the Exchange proposes to limit its exception for inducement grants to new employees or to previous employees being rehired after a bona fide period of interruption of employment, and to new employees in connection with an acquisition or merger. The Commission believes that these limitations should help to prevent the inducement exception from being used inappropriately.

The Commission notes that the Exchange is proposing to include a requirement, similar to the requirement under the NYSE and Nasdaq's recently approved shareholder approval rules, that, promptly following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.[22] The

[14] 15 U.S.C. 78f(b).

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

[16] *See supra* note 4.

[17] 15 U.S.C. 78f(b). In approving the Exchange's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See supra* note 4. The Commission notes that it has recently approved similar rules requiring shareholder approval of equity compensation plans for the Amex on an accelerated basis. The Amex's proposal is almost identical to, and based on, the NYSE and Nasdaq proposals. *See* Securities Exchange Act Release No. 48610 (October 9, 2003), 68 FR 59650 (October 16, 2003).

[20] The Commission notes that these new listing standards will apply to all companies listed on the CHX and will include both CHX's Tier I and Tier II designations.

[21] *See supra* notes 4 and 19.

[22] This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S–K [17 CFR 229.201(d)] and Item 201(d) of Regulation S–B [17 CFR 228.201(d)] require issuers to present—in their annual reports on Form 10—K or Form 10–KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by

Continued

Commission notes that the Exchange is also proposing a requirement, similar to the requirements under the NYSE and Nasdaq's recently approved shareholder approval rules,[23] that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that these disclosure and notification requirements will provide transparency to investors and should reduce the potential for abuse of this exception for inducement grants.

B. Exception From Shareholder Approval for Mergers and Acquisitions

The Commission notes that the Exchange's exception from shareholder approval for mergers and acquisitions contains safeguards that should prevent abuse in this area. First, only pre-existing plans that were previously approved by the acquired company's shareholders would be available to the listed company for post-transactional grants. In addition, shares under those previously approved plans could not be granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or its subsidiaries. The Commission also notes that, under the Exchange's amended proposal, any shares reserved for listing in connection with a merger or acquisition pursuant to this exception would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thereby requiring shareholder approval under CHX Rule 19(j)(3)(B). Finally, the Commission notes that the Exchange proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. Based on the above, the Commission believes that the Exchange has provided measures to ensure that the exception for mergers and acquisitions is only used in limited circumstances, which should help reduce the potential for dilution of shareholder interests.

C. Exception From Shareholder Approval for Tax Qualified and Parallel Nonqualified Plans

The Commission believes that, given the extensive government regulation—the Internal Revenue Code and Treasury regulations—for tax qualified plans and the general limitations associated with parallel nonqualified plans, shareholders should not experience significant dilution as a result of this exception. In addition, the Commission notes that the Exchange proposes to add a limitation under this exception that a plan would not be considered a nonqualified parallel plan under its proposal if employees who are participants in such a plan receive employer contributions under the plan in excess of 25% of the participants' cash compensation. The Commission further notes that the Exchange proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that, taken together, these limitations should reduce concerns regarding abuse of this exception from the shareholder approval requirements.

In addition, the Commission notes that, similar to the exceptions in the NYSE and Nasdaq's recently approved shareholder approval rules, the Exchange proposes to adopt an exception from the shareholder approval requirements for an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law. The Commission believes that this change will conform the Exchange's shareholder approval rule to that of the NYSE and Nasdaq and will provide greater clarity for issuers regarding tax qualified, non-discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

D. Material Revisions to Plans

The Commission notes that the Exchange proposes to provide a non-exclusive list, similar to lists found in the NYSE and Nasdaq's shareholder approval rules,[24] as to what constitutes a material revision to a plan. As noted above, material revisions to plans will require shareholder approval under Exchange rules. A material revision under the Exchange's amended proposal would include, but is not limited to: A material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction); a material increase in benefits to participants, including any material change to (1) permit a repricing (or decrease in exercise price) of outstanding options, (2) reduce the price at which shares or options to purchase shares may be offered, or (3) extend the duration of the plan; a material expansion of the class of participants eligible to participate in the plan; and an expansion of the type of options or awards available under the plan. The Exchange's proposal, as amended, also describes what would constitute a material revision for plans containing a formula for automatic increases (such as evergreen plans) and automatic grants requiring shareholder approval.

The Commission believes that the Exchange's non-exclusive list of what would constitute a material revision to a plan provides companies with clarity and guidance for when certain amendments and revisions to plans would require shareholder approval. The Commission also believes that the Exchange's proposal to conform its non-exclusive list with the NYSE and Nasdaq's rules on material amendments/revisions should help to ensure that the concept of material amendments/revisions is consistent among the markets so that differences between the markets cannot be abused.

E. Repricing of Plans

The Commission notes that, under the Exchange's proposal, as amended, if a plan is amended to permit repricing, such an amendment would be considered a material amendment to a plan requiring shareholder approval. In addition, the Exchange recommended in its proposal that plans meant to permit repricing should explicitly and clearly state that repricing is permitted.

The Commission believes that the Exchange's proposal, as amended, should benefit shareholders by ensuring that companies cannot do a repricing of options, which can have a dilutive effect on shares, without explicit shareholder approval of such provisions and their terms. The Commission also believes that the Exchange's approach to repricings is similar to the NYSE and Nasdaq's respective approaches to repricings, and should offer companies clarity and guidance as to when a change in a plan regarding the repricing of options would trigger a shareholder approval requirement.

F. Evergreen or Formula Plans and Plans Without a Formula or Limit on the Number of Shares Available

The Commission notes the Exchange's proposal, as amended, provides guidance for the treatment of evergreen/formula plans. More specifically, under the Exchange's proposal, as amended, if a plan contains a formula for automatic

shareholders and equity compensation plans that have not been approved by shareholders.

[23] *See* Section 303A(8) of the NYSE's *Listed Company Manual* and NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A).

[24] *See supra* note 4; *see also supra* note 19.

increases in the shares available or for automatic grants pursuant to a formula, such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, under the Exchange's proposal, as amended, if a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval. Furthermore, the Exchange's proposal, as amended, provides that a requirement that grants be made out of treasury or repurchased shares will not alleviate the need for shareholder approval for additional grants.

The Commission believes that these provisions should help to ensure that certain terms of a plan cannot be drafted so broad as to avoid shareholder scrutiny and approval. The Commission also believes that the Exchange's proposed rules relating to the treatment of evergreen/formula plans and plans that do not contain a formula or place a limit on the number of shares available should provide more clarity and transparency to issuers as to when shareholder approval would be required for such plans. Finally, the Commission believes that the provision ensuring that treasury and repurchased shares cannot be used to avoid these additional shareholder approval requirements strengthens the proposal and ensures that companies cannot avoid compliance with the rule.

G. Miscellaneous Provisions

The Commission notes that the Exchange's amended proposal—similar to the NYSE and Nasdaq's recently approved shareholder approval rules [25]—incorporates the term ''equity compensation'' and proposes that plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market price on equal terms to all security holders would not require shareholder approval. The Commission believes that the Exchange's proposal, as amended, is consistent with the NYSE and Nasdaq's rules in this area and should provide greater clarity with respect to which plans would and would not require shareholder approval.

The Commission notes that the Exchange's proposal, as amended, provides that pre-existing plans, which were adopted prior to the SEC's approval of the Exchange's amended proposal, would essentially be ''grandfathered'' and would not require shareholder approval unless the plans were materially amended. Under the Exchange's amended proposal, however, shareholder approval is required for each grant made pursuant to any pre-existing plans that were not approved by shareholders and that do not have an evergreen formula or a specific number of shares available under the plan. This is consistent with the NYSE, Nasdaq, and Amex shareholder approval rules on this matter. The Commission believes that this clarification should provide companies with guidance as to which plans would be subject to the Exchange's new shareholder approval requirements.

H. Elimination of Broker-Dealer Voting on Equity Compensation Plans

The Commission believes that the Exchange's proposed amendment to CHX Article XXXIII, Rule 3, to preclude broker voting on equity compensation plans is consistent with the Act. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from issuances under such plans, shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that NASD rules do not provide for broker voting on any matters and NYSE rules prohibit broker voting on equity compensation plans.[26] Therefore, the Exchange's proposed provision would be consistent with NASD and NYSE rules regarding broker voting on equity compensation plans. The Commission has considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments on this issue.[27] The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote.

The Commission also notes that the Exchange proposes to implement a transition period that would make the new rule eliminating broker voting on equity compensation plans applicable only to shareholder meetings that occur on or after the 90th day from the effective date of the Exchange's proposal.

I. Summary

Overall, the Commission believes that the Exchange's proposal, as amended, is similar to the NYSE and Nasdaq's recently approved shareholder approval rules.[28] The Commission therefore believes that the Exchange's proposal, as amended, should provide for more clear and uniform standards for shareholder approval of equity compensation plans. The Commission notes that, even with the availability of the proposed limited exceptions from shareholder approval under the Exchange's amended proposal, shareholder approval under the new standards would be required in more circumstances than under existing Exchange rules. The Commission further notes that the Exchange proposes to adopt a requirement that an issuer must notify it in writing when it uses one of the exceptions from the shareholder approval requirements. The Commission believes that such a requirement, coupled with the additional disclosure requirements for inducement grants, should reduce the potential for abuse of any of the exceptions.[29] In addition, the Exchange's proposed amendment to CHX Article XXXIII, Rule 3, which would preclude broker-dealers from voting on equity compensation plans without explicit instructions from the beneficial owner, is consistent with the standard under current NYSE and NASD rules.

The Commission believes that the Exchange's proposal, as amended, which is similar to the NYSE and Nasdaq's shareholder approval rules,[30] sets a consistent, minimum standard for shareholder approval of equity compensation plans. The Commission believes that the Exchange's proposal, as amended, should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans and should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the Exchange's proposal, as amended, should help to protect investors, is in the public interest, and does not unfairly discriminate among issuers, consistent with Section 6(b)(5) of the Act.[31] The Commission therefore finds the Exchange's proposal, as amended, to be consistent with the Act and the rules and regulations thereunder.

V. Accelerated Approval of the Exchange's Proposal and Amendment No. 1

The Commission finds good cause for approving the Exchange's proposal and

[25] *See supra* note 4; *see also supra* note 19.

[26] *See* NASD Rule 2260; NYSE Rule 452; and Section 402.08 of the NYSE's *Listed Company Manual*.

[27] *See supra* notes 4 and 26.

[28] *See supra* note 4; *see also supra* note 19.

[29] *See also supra* note 22 and accompanying text.

[30] *See supra* note 4; *see also supra* note 19.

[31] 15 U.S.C. 78f(b)(5).

Amendment No. 1 thereto prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Exchange's proposal, as amended, is similar to the NYSE and Nasdaq's proposals requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq's proposals were published for comment in the **Federal Register** and recently approved by the Commission.[32] The Commission believes that it already considered and addressed the issues that may be raised by the Exchange's proposal in its approval of the NYSE and Nasdaq's proposals.[33]

The Commission believes that accelerated approval of the Exchange's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans among the markets. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Exchange's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on the Exchange's issuers as those imposed upon NYSE, Nasdaq, and Amex issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[34] to approve the Exchange's proposal and Amendment No. 1 thereto on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–CHX–2003–31) and Amendment No. 1 thereto are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Jill M. Peterson,

Assistant Secretary.

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[32] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. *See* Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). *See* Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). *See supra* note 4; *see also supra* note 19.

[33] Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Exchange, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. *See supra* note 4; *see also supra* note 19.

[34] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48738; File No. SR–CSE–2003–11]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange Relating to Shareholder Approval of Equity Compensation Plans

October 31, 2003.

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 1, 2003, the Cincinnati Stock Exchange (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On October 29, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal and Amendment No. 1 thereto on an accelerated basis.

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

The Exchange is proposing to implement changes to its listing standards to adopt requirements related to shareholder approval of equity compensation plans and to amend its rules related to the voting of proxies. The Exchange represents that this proposed rule change is part of an ongoing review of the Exchange's listing standards aimed at helping to restore investor confidence by strengthening corporate governance practices.

Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deleted language is [bracketed].

* * * * *

Rule 13.3 Proxies

(a)–(c) No change to text.

(d) Notwithstanding the provisions of this Rule 13.3, a member may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required pursuant to Rule 13.6). This provision will be effective for any meeting of shareholders that occurs on or after the 90th day following the effective date of this provision.

* * * * *

Rule 13.6 Shareholder Approval of Equity Compensation Plans

Equity compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with limited exemptions identified in this rule.

(a) Definition of Equity Compensation Plan. An ''equity compensation plan'' is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. A compensatory grant of options or other equity securities that is not made under a plan is considered an ''equity compensation plan'' for purposes of these rules.

(b) Exceptions to Equity Compensation Plan Definition. The following are not equity compensation plans, even if the brokerage and other costs of the plan are paid for by the listed company:

(1) Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;

(2) Plans that merely allow employees, directors or other service

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jennifer M. Lamie, Assistant General Counsel and Secretary, CSE, to Sapna C. Patel, Special Counsel, Division of Market Regulation, Commission, dated October 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made a technical correction to its proposed rule language to fix two typographical errors in proposed CSE Rule 13.6(e)(2). Because this is a technical amendment, it is not subject to notice and comment.