

solicit comments on the proposed rule change from interested persons.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System ("ITS") Plan with respect to certain transactions in the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDS"), and the Standard & Poor's 500 Index ("SPDRs").<sup>3</sup> The Commission's original exemption expired on June 4, 2003. The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.<sup>4</sup> The Commission recently extended the effectiveness of the exemption to March 4, 2004.<sup>5</sup> In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from June 5, 2003 until March 4, 2004.

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

In response to the Commission's extension of a *de minimis* exemption for transactions in certain exchange-traded funds ("ETFs") from the trade-through provisions of the ITS Plan to March 4, 2004,<sup>6</sup> the Exchange proposes to amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through.<sup>7</sup> The text of the proposed rule change is available at the Commission and at the CHX.

### **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 the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item III 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**

Article XX, Rules 37(a)(3) and 37(b)(6) of the CHX Rules, which govern execution of limit orders in a CHX specialist's book, provide for the execution of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market.

With continued effectiveness of the ITS Exemption Order until March 4, 2004, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would continue to permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

##### **2. Statutory Basis**

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).<sup>8</sup> The CHX believes the proposal is consistent with section 6(b)(5) of the Act<sup>9</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 does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying 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 No. SR-CHX-2003-20 and should be submitted by August 18, 2003.

### **IV. Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act<sup>11</sup> because it is designed to facilitate transactions in securities; to remove impediments to

<sup>3</sup> See Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

<sup>4</sup> See Securities Exchange Act Release No. 46760 (November 1, 2002), 67 FR 68219 (November 8, 2002)(order approving SR-CHX-2002-29).

<sup>5</sup> See Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

<sup>6</sup> *Id.*

<sup>7</sup> An Exempted Trade-Through is a trade-through in one of the three ETFs designated in the ITS Exemption Order when the transaction is executed at a price that is no more than three cents lower than the highest bid displayed in QQS and no more than three cents higher than the lowest offer displayed in QQS.

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

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(5).