

1. The Proposed Exchange will comply with the terms of rule 17a-7(b) through (f).

2. The Proposed Exchange will not occur unless and until the Board (including a majority of the Independent Trustees) finds that participation by the ARK Portfolios in the Proposed Exchange is in the best interests of each ARK Portfolio and that the interests of existing shareholders of the ARK Portfolio will not be diluted as a result of the transaction. These findings, and the basis upon which they are made, will be recorded fully in the minute books of ARK Funds.

3. The Proposed Exchange will not occur unless and until AIA, as investment manager and fiduciary of the Allfirst Plan, has determined in accordance with its fiduciary duties that the Proposed Exchange is in the best interests of the Allfirst Plan.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42372; File No. SR-CHX-99-27]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

January 31, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that on December 27, 1999, 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 and II below, which Items have been prepared by the Exchange. On January 31, 2000, the CHX submitted to the Commission 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 to grant accelerated approval of the proposed rule change.

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

The Exchange has requested a three-month extension of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program proposes to amend Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The current pilot expires on January 31, 2000. The Exchange proposes to extend the rules governing trading of Nasdaq/NM securities on the Exchange through May 1, 2000.⁴

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 regarding 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

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.⁵ Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the

Exchange's Midwest Automated Execution System (the "MAX" system).⁶

On January 3, 1997, the Commission approved,⁷ on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to Exchange Act Rule 11Ac1-1 (the "NBBO"). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.⁸ The Exchange submitted the report to the Commission on January 30, 1998. Subsequently, the Exchange requested another three-month extension, to give the Commission adequate time to approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.⁹ On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.¹⁰ On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June

⁶ The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. See CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, by MAX system handling rules remain applicable.

⁷ See Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

⁸ See Securities Exchange Act Release No. 39512 (December 31, 1997), 63 FR 1517 (January 9, 1998).

⁹ See Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

¹⁰ See Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

Boege, Associate General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated January 28, 2000.

⁴ See Amendment No. 1, *supra* note 3.

⁵ See Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR-MSE-87-2); *see also*, Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1,000).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the CHX requested that the Commission approve extension of the pilot program through May 1, 2000 instead of December 31, 2000 as initially proposed. Amendment No. 1 also removed proposed rule language that is currently being considered in another Exchange filing (SR-CHX-99-27). *See* letter from Kathleen M.

30, 1999.¹¹ On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.¹² The Exchange now requests another extension of the current pilot program, through May 1, 2000.¹³ On December 22, 1999, the Exchange also submitted to the Commission a report identical in format to the Exchange's report of January 30, 1998, to enable the Commission to continue its review of the pilot program.

Under the pilot program, specialists must continue to accept agency¹⁴ market orders or marketable limit orders, but only for orders of 100 to 1,000 shares of Nasdaq/NM securities rather than the 2,099 share limit previously in place. Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from 100 up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The pilot program requires the specialists to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities.¹⁵ When a CHX specialist is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold designated by the specialist are executed automatically (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time

to time, for either 100 or 1,000 shares, depending on the issue.¹⁶

When the specialist is not quoting a Nasdaq/NM security at the NNBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialist does not elect manual execution, MAX market and marketable limit orders in that security that are of a size equal to or less than the auto-execution threshold will automatically be executed at the NBBO, provided that the auto-execution threshold is less than or equal to the NBBO. If the specialist elects manual execution, the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule 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).¹⁷ In particular, the proposed rule is consistent with Section 6(b)(5)¹⁸ of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments 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.

The CHX's proposal is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide executions reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities

without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

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

The Exchange does not believe that the proposed rule change will impose any unnecessary or inappropriate burden on competition.

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

Written comments were neither solicited nor received.

III. 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 submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, 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 filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-99-27 and should be submitted by March 1, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5)²⁰ of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove

¹¹ See Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

¹² See Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

¹³ See Amendment No. 1, *supra* note 3.

¹⁴ The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rules, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

¹⁵ The Exchange currently is seeking Commission approval of a rule amendment that would lower the auto-execution minimum to 300 shares in the case of Nasdaq/NM securities. See SR-CHX-99-21.

¹⁶ Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with Exchange Act Rule 11Ac1-4 on or prior to February 24, 1997 to 1,000 shares for other issues.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

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 Commission also believes that the proposal is consistent with section 11A(a)(1)(C)²¹ and 11A(a)(1)(D)²² of the Act. The proposal is consistent with section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.²³ In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 report using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovement. The Commission is extending the pilot program for 90 days so that the Exchange may compile this data for the Commission's review.

At the conclusion of this pilot's extension, the Commission requests that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Additionally, the Commission requests that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. Thus, the

Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register.

It Is Therefore Ordered, pursuant to section 19(b)(2)²⁴ of the Act that the proposed rule change (SR-CHX-99-27) be, and hereby is, approved through May 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42374; File No. SR-MSRB-99-11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board to Amend Rule G-36

February 2, 2000.

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 December 10, 1999, the Municipal Securities Rulemaking Board ("MSRB" or the "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Board has filed with the Commission a proposed rule change to amend Rule G-36, on delivery of official statements, advance refunding documents and Forms G-36(OS) and G-36(ARD) to the Board or its designee. The text of the proposed rule change is set forth below. Deletions are in brackets; additions are in italics.

Rule G-36—Delivery of Official Statements, Advance Refunding Documents and Forms G-36(OS) and G-36(ARD) to Board or its Designee

(a)-(b) No Change.

(c) Delivery Requirements for Issues not Subject to Securities Exchange Act Rule 15c2-12.

(i) Subject to paragraph (iii) below, each broker, dealer, or municipal securities dealer that acts as an underwriter in a primary offering of municipal securities not subject to Securities Exchange Act Rule 15c2-12 for which an official statement in final form is prepared by or on behalf of the issuer shall send to the Board or its designee, by certified or registered mail, or some other equally prompt means that provides a record of sending, [within] *by the later of* one business day [of] *after* delivery of the securities by the issuer to the broker, dealer, or municipal securities dealer *or one business day after receipt of the official statement in final form from the issuer or its designated agent*, the following documents and written information: two copies of the official statement in final form[, if prepared by or on behalf of the issuer]; and[, if an official statement in final form is prepared,] two copies of completed Form G-36(OS) prescribed by the Board, including the CUSIP number or numbers for the issue.

(ii)-(iii)³ No change.

(d)-(f) No change.

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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 MSRB 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

³ Filing amended to clarify text of proposed rule change by including (iii). Phone conversation between Ernesto A. Lanza, Associate General Counsel, MSRB, and Melinda R. Diller, Attorney, Division of Market Regulation, Commission on January 24, 2000.

²¹ 15 U.S.C. 78k-1(a)(1)(C).

²² 15 U.S.C. 78k-1(a)(1)(D).

²³ See 1997 Order, *supra* note 7.