

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61173; File No. SR-CHX-2009-16)

December 16, 2009

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Modifying the Definition of Cross and Cross with Size Order Types

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 15, 2009, Chicago Stock Exchange, Inc. (“Exchange” or “CHX”) 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. CHX has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

CHX proposes to amend its rules to change the definition of Cross and Cross with Size order types. The text of this proposed rule change is available on the Exchange’s Web site at www.chx.com and in the Commission’s Public Reference Room.

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 changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

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

The Exchange is proposing to amend its definitions of the “cross” and “cross with size” order types to eliminate a latent ambiguity about the processing of such orders in the Exchange’s Matching System.⁴ A cross order is an order to buy and sell the same security at a specific price which is better than the best bid and offer displayed in the Matching System. A cross with size order type is a cross order which also has a limited exception to the priority rules of the exchange. Generally, where there are multiple orders to be executed at the same price, the first order received by the Matching System is the first to be executed.⁵ Certain large cross orders submitted to the Matching System may be executed notwithstanding the fact that a bid or offer at the same price as the proposed cross transaction and with time priority may reside in our trading facility.⁶

The current definitions of the cross and cross with size order types also requires that the price of the proposed trade be “equal to or better than the NBBO [National Best Bid or Offer].”⁷ We propose to delete this reference for both order types and substitute the requirement that the price of the cross transaction “which would not constitute a trade-through under Reg NMS

⁴ The Matching System is our core trading facility.

⁵ See Article 20, Rule 8(b)(1), (d)(1).

⁶ Such cross orders must be for at least 5,000 shares and \$100,000 in total value to qualify for “cross with size” treatment. Article 1, Rule 2(g); Article 20, Rule 4(b)(6).

⁷ “NBBO” is defined as “the size and price associated with the best protected bid and best protected offer that are calculated and disseminated in an NMS security during regular trading hours.” Article 1, Rule 1(o).

(including all applicable exceptions and exemptions).” This proposed formulation better comports with the history of the cross and cross with size provisions and removes any possible confusion over the proper application of our rules.

The cross and cross with size order provisions have existed in our rules in number of different forms.⁸ The current cross and cross with size order types were defined as part of our transition to the New Trading Model (“NTM”) in 2006 and 2007.⁹ As originally written, the NBBO limitation as to cross and cross with size orders only applied to transactions in securities listed on the NYSE, Amex or any other exchange except Nasdaq. The NBBO limitation applied to Nasdaq-listed securities only upon the implementation of Reg NMS. The apparent purpose of this formulation was to ensure that the then-existing trade-through provisions of the Intermarket Trading System (“ITS”) applied to the cross transactions.¹⁰

While the Exchange believes that most transactions can and should be executed at or within the NBBO, we note that the Commission has authorized a number of exemptions to the trade-through provisions of Reg NMS. For example, trade through exemptions are provided within Rule 611 of Reg NMS for, inter alia, non-regular way settlements, certain single-priced opening, reopening and closing transactions, when the NBBO is crossed, for Intermarket Sweep

⁸ See former Article XX, Rule 23 (cross orders) and Interpretation and Policy .02 thereto (cross with size).

⁹ The New Trading Model was designed to be a fully electronic exchange in order to qualify as an automated trading center under Reg NMS and thereby, inter alia, qualify for trade through protection.

¹⁰ See SR-CHX-2006-05 (Sept. 26, 2006) (approving the NTM-related rule changes), at notes 27-30 and accompanying text. The ITS trade-through provisions applied only to securities listed on a national securities exchange and not to stocks listed on the Nasdaq Stock Market. Once Reg NMS Rule 611 became effective (supplanting the ITS rules), the trade through restriction applied equally to exchange-listed and Nasdaq securities.

Orders (“ISOs”), and where the better-priced market was satisfied.¹¹ Moreover, the Commission has issued exemptive orders to the trade-through prohibition for certain transactions in non-convertible preferred securities,¹² qualified contingent trades,¹³ certain error correction transactions¹⁴ and certain print protection transactions.¹⁵ To the extent that a Participant can submit a cross or cross with size order which is also exempt from Reg NMS trade-through prohibition, the Exchange believes that such orders should be eligible for execution notwithstanding the fact that they are priced outside the NBBO, assuming all other requirements are satisfied. In evaluating whether any applicable exemption applied to a cross or cross with size order, the CHX would require Participants to indicate in its order submission the nature of the exemption relied upon.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,¹⁶ and furthers the objectives of Section 6(b)(5) in particular,¹⁷ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public

¹¹ Reg NMS Rule 611(b).

¹² Order Exempting Non-Convertible Preferred Securities from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34-57621, April 4, 2008).

¹³ Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34-54389, Aug. 31, 2006), modified, (Rel. No. 34-57620, April 4, 2008).

¹⁴ Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34-55884, June 8, 2007).

¹⁵ Order Exempting Certain Print Protection Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (Rel. No. 34-55883, June 8, 2007).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

interest. In this case, the proposed change in the definition of the cross and cross with size order types will remove any potential confusion among Participants over the proper handling and treatment of such orders. The changes should also provide Participants with additional options in seeking trade executions on our trading facilities by allowing them to more fully utilize existing exemptions to the Reg NMS trade through restrictions.

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

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)²¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may immediately provide participants the benefits of the clarified order types. The Commission believes that waiving the 30-day operative delay²² is consistent with the protection of investors and the public interest because it will allow the Exchange to immediately modify the rules relating to the cross and cross-with-size order types to account for the exceptions and exemptions with respect to Rule 611 of Regulation NMS.²³ For this reason, the Commission designates that the proposed rule change become operative upon filing.

At any time within 60 days of the filing 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6).

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²³ Rule 611 of Regulation NMS includes various exceptions. See 17 CFR 242.611(b). In addition, the Commission has issued exemptive orders relating to Rule 611 of Regulation NMS. See supra notes 12-15.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2009-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2009-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

information that you wish to make publicly available. All submissions should refer to File Number SR-CHX-2009-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).