

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-64937; File No. SR-CHX-2011-17)

July 20, 2011

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Notice of Filing of Proposed Rule Change Regarding the Submission by the Exchange of Clearing-Related Information for Trades Executed on the Exchange as well as for Trades Executed Otherwise than on the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 7, 2011, the Chicago Stock Exchange, Incorporated (“Exchange” or “CHX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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.

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

The Exchange proposes to add new Rule 6 to Article 21 (Clearance and Settlement) to set forth the terms upon which the Exchange shall submit information for clearing and settlement, and to amend Article 1, Rule 1 (Definitions), and Article 21, Rule 1 (Trade Recording with a Qualified Clearing Agency) to define certain relevant terms. The text of this proposed rule change is available on the Exchange’s website at (www.chx.com), at the Exchange’s Office of the Secretary 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 change and discussed any comments it received regarding the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to add new Rule 6 to Article 21 (Clearance and Settlement) to set forth the terms upon which the Exchange shall submit information for clearing and settlement, and to amend Article 1, Rule 1 (Definitions), and Article 21, Rule 1 (Trade Recording with a Qualified Clearing Agency) to define certain relevant terms. New Article 21, Rule 6 provides for the submission of clearing related information to a Qualified Clearing Agency (currently, the National Securities Clearing Corp. or NSCC).³ Proposed Rule 6(a) addresses the submission to NSCC of clearing information for trades executed on the Exchange and is based upon the provisions of CBOE Rule 6.50 (Submission for Clearance).⁴ Proposed Rule 6(a) specifies that all transactions executed on the Exchange shall be submitted for

³ In proposed Article 1, Rule 1 (ff), a Qualified Clearing Agency is defined a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of the Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services. CHX is proposing to delete the existing, but somewhat outdated, definitions of the terms Qualified Clearing Agency, Registered Clearing Agency and Fully Interfaced Clearing Agency from the Interpretations and Polices [sic] section of Article 21, Rule 1 and replace them with the definition of Qualified Clearing Agency in Article 1, Rule 1 in order to update its rules and ensure that the definition applies concurrently to proposed new Rule 6.

⁴ The Exchange notes that existing Article 21, Rule 1(d) provides that the Exchange shall submit trade data regarding every transaction that is executed on, and reported to, the Exchange to a Qualified Clearing Agency for recording. We propose to add Rule 6(a) in order to provide absolute clarity regarding the nature and scope of the Exchange's activity regarding clearing submissions.

clearance to a Qualified Clearing Agency, and all such transactions shall be subject to the rules of the Qualified Clearing Agency.⁵ The Clearing Participant shall be responsible for the clearance of the Exchange transactions of such Clearing Participant and of each Participant who gives up such Clearing Participant's name pursuant to either a Letter of Guarantee filed under Article 7, Rule 10 with the Exchange or other authorization given by such Clearing Participant to such Participant.⁶ These provisions are typical in the clearance and settlement of exchange transactions and fairly place the responsibility for paying for, or delivery of, securities on the Participant in which name the trades are submitted for clearance and settlement.

Proposed new Rule 6(b) addresses clearing submissions made via CHX systems for transactions executed on another trading center or in the over-the-counter marketplace and is based upon Nasdaq Rule 7038 (Step-Outs and Sales Fee Transfers). Such submissions may be made by the Exchange only on behalf of a CHX-registered Institutional Broker acting as an authorized agent of a Clearing Participant.⁷ The Institutional Broker may submit a clearing-only entry into the Exchange's systems for the purpose of transferring securities from one Clearing Participant to another provided that the trade has been properly reported for transaction reporting purposes. Once all of the final clearing allocations have been entered into the Exchange systems for submission to NSCC, the submissions are deemed to be "locked in" for purposes of comparison and settlement.

⁵ The CHX submits clearing information to NSCC through the Regional Interface Operation ("RIO") system.

⁶ We proposed to define the term Clearing Participant in Article 1, Rule 1(ee) as a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency.

⁷ CHX-registered Institutional Brokers are an elective sub-category of Exchange Participants requiring registration with the Exchange and are subject to the obligations of Article 17 of the CHX rules, in addition to the other provisions of Exchange rules.

These submissions of non-Exchange executions may occur in several circumstances. First, an Institutional Broker may buy or sell securities on another trading center as a correspondent of a clearing member of that trading center. Any resulting execution report would be “flipped” from the executing clearing member via entries in the Exchange’s systems to the trading account of the Institutional Broker or the CHX Clearing Participant on whose behalf it is acting. Second, an Institutional Broker may instruct a third party broker-dealer (which is not an Institutional Broker) to execute a cross transaction in the over-the-counter market and report the transaction to a Trade Reporting Facility (“TRF”) using its trading symbol or the symbol of its clearing firm for purposes of reporting it to the Consolidated Tape. The Institutional Broker may then enter the transaction information into the Exchange’s systems, and transfer the positions from its own trading account (or the account of its clearing firm) to the accounts of ultimate beneficiaries of the trade. Once all components of the transaction are properly allocated, the information will be forwarded to the National Securities Clearing Corp. (“NSCC”) via the Exchange’s systems for clearance and settlement. Third, transactions may be executed on another trading center by a third party broker-dealer, which then utilizes an Institutional Broker as its agent for handling the allocation of the clearing information. These third party transactions may include both cross transactions executed in the over-counter-market [sic] and reported to a TRF by the third party broker-dealer, as well as purchases or sales of securities by the third party broker-dealer on another exchange or other trading center.⁸ The third party broker-dealer instructs an Institutional Broker to handle any substitution of Clearing Participants and allocation of the trade. Clearing information for third party cross trades and single-sided purchases or sales

⁸ The Institutional Broker may be instructed to allocate the trades at an average price of the transactions executed by the third party broker-dealer.

is then processed within the CHX Brokerplex[®] system⁹ and submitted to NSCC in the same manner as if the trades had been executed by an Institutional Broker as described above.

In order to ensure that the actions of the Institutional Broker are fully authorized by the Clearing Participant, proposed Rule 6(b) requires that Institutional Brokers making such submissions must be a party to an agreement with the Clearing Participant in which name the entries are submitted under which the Institutional Broker has received authorization from the Clearing Participant to act on its behalf.¹⁰ Copies of these agreements shall be filed by the Institutional Broker with the Exchange. The Exchange represents that it will monitor clearing submissions made pursuant to Rule 6(b) to ensure that the Institutional Brokers involved in those transactions have the appropriate agreements in place, and will take disciplinary action to enforce this requirement in appropriate circumstances.

The Exchange notes that while the systems used by the CHX in making such clearance submissions do not contain fully-automated comparison features, there are procedural safeguards which occur as part of these submissions to ensure that the manual comparison is valid. For example, many of these transactions represent the cash equities component of combination stock-options orders or a hedge on a derivatives position. The Institutional Broker entering into Brokerplex the clearing information it receives from its customer is responsible for ensuring that all of the final allocations made via the step-out process are accurate and complete. Clearing information will not normally be forwarded to the Clearing Agency until all of the allocations are confirmed with the order sender. Institutional Brokers shall be required to maintain agreements

⁹ The Brokerplex[®] system is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers.

¹⁰ In addition, the Exchange requires Clearing Participants to sign a clearing agreement by which the latter accepts responsibility for non-Exchange transactions submitted to NSCC through the auspices of an authorized Institutional Broker.

with both Clearing Participants and any non-Participant customers which authorize the Institutional Broker to make the clearing-only submissions and bind the Parties to the trade. Furthermore, the Institutional Broker normally communicates the allocation information to the Clearing Participant in which name the submissions are made to NSCC in order to prevent breaks or disputes regarding the allocations.

A Participant is prohibited from using a non-tape, clearing-only submission for the purpose of effecting a transaction required to be trade reported and that has not been trade reported or reporting a trade for regulatory purposes.¹¹ Submission of non-tape, clearing-only records to the Exchange by a Participant does not satisfy any obligation such members may have to report transactions as required by the applicable rules of other self-regulatory organizations. New Interpretation and Policy .01 to Rule 6 will require that an Institutional Broker submitting an entry for a transaction executed otherwise than on the Exchange obtain documentary evidence of the non-Exchange trade execution no later than the close of trading. This will ensure that, irrespective of historical practices described above, the Institutional Broker will have to receive written evidence of the non-Exchange trade it submitted for clearing, thus strengthening the safeguards imbedded in the process of submitting such trades for comparison. New Interpretation and Policy .02 reinforces the implied requirement that .02 [sic] when an Institutional Broker enters a non-tape, clearing-only record, the Institutional Broker shall be responsible for ensuring that all clearing information is accurate and complete prior to its submission.

¹¹ The Exchange plans to monitor the activity of Participants which make clearing-only submissions for compliance with applicable trade reporting rules.

Section (c) of Proposed Rule 6 governs non-tape riskless submissions.¹² These provisions would permit an Institutional Broker registered with the Exchange to make non-tape submissions into the Exchange's systems for submission to clearing to facilitate riskless transactions taking place on other national securities exchanges, or the over-the-counter market. For riskless transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker may submit, for the offsetting "riskless" portion of the transaction, a clearing-only report. The Exchange will also obtain and keep a record identifying transactions which are handled as "riskless principal." The Exchange believes that the provisions of Section (c) of proposed Rule 6 would govern the activity of Institutional Brokers when they buy or sell securities on another national securities exchange, or in the over-the-counter marketplace, on behalf of another client and when the addition of new Clearing Participants via the step-in process as described above is not required. Nothing in the provisions of Section (c) of proposed Rule 6 relieves any Participant or other party from its obligation to fully and properly report transactions as required by the applicable rules of other self regulatory organizations.

Proposed Section (d) of Rule 6 provides that the Exchange shall not be responsible or liable in any way whatsoever to any member, member organization, clearing member organization, Qualified Clearing Agency or securities depository for compared trades, the failure to compare trades or for any delays, errors or omissions in the comparison process or for the production and delivery of or for the failure to produce and deliver lists and reports.

¹² Article 9, Rule 14 (Reporting Riskless Principal Transactions) describes the manner in which Exchange Participants are required to report riskless principal transactions for trade reporting purposes.

Each Clearing Participant which is a party to a non-tape, clearing-only submission under this rule will pay a Trade Processing Fee in the amount specified in the Exchange's Fee Schedule.¹³ As part of this filing, we propose to retain the Trade Processing Fee charged to Participants for the clearing submission service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,¹⁴ and furthers the objectives of Section 6(b)(5) in particular,¹⁵ 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 interest by setting forth the rules and principles governing the submission of clearing information to a Qualified Clearing Agency. By facilitating the submission for both CHX and non-CHX executed trades, the Exchange is providing a safe, reliable means of submitting such information to a Qualified Clearing Agency, responding to the preferences of certain Participants to have CHX make such clearing-related submissions, and introducing competition with other exchanges, such as Nasdaq, which provide similar services.

B. Self-Regulatory Organization's Statement of 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.

¹³ Proposed Article 21, Rule 6(e). The Trade Processing Fees are specified in Section E.7. of the CHX Schedule of Fees and Assessments.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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-2011-17 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-2011-17. 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 website (<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 website viewing and printing 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 CHX. 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-2011-17 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.¹⁶

Elizabeth M. Murphy
Secretary

¹⁶ 17 CFR 200.30-3(a)(12).