

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64319; File No. SR-CHX-2011-04)

April 21, 2011

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add the CHX Only Order Type

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 19, 2011, the Chicago Stock Exchange, Inc. (“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. 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 CHX Article 1, Rule 2 (Order Types and Conditions) and Article 20, Rules 4 (Eligible Orders) and 8 (Operation of the Matching System) to add the CHX Only order type. The text of this proposed rule change is available on the Exchange’s Web site at ([www.chx.com](http://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 [sic] and discussed any comments it received regarding the 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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 CHX Article 1, Rule 2 (Order Types and Conditions) and Article 20, Rules 4 (Eligible Orders) and 8 (Operation of the Matching System) to add the CHX Only order type. CHX Only orders are designed to encourage displayed liquidity on the Exchange and reduce automatic cancellations by the Exchange's core trading facility, the Matching System, for orders which lock or cross the best displayed quotes in the National Market System. CHX Only orders will be automatically repriced by the Exchange, if necessary as discussed below, to reside in the Matching System and be displayed to the national market system at prices which are in conformity with Regulation NMS and the short sale price test restrictions of Rule 201 of Regulation SHO. An order sender can enter instructions to have all limit orders default to "CHX Only" and therefore be subject to the repricing process. In addition, an order sender can enter instructions to only use the repricing process if the CHX Only order locks the NBBO at the time of order entry, and not if it crosses the NBBO. Such instructions can be submitted on either an order-by-order or global basis by the order sending firm. If such instructions are given and the order crosses the NBBO, it will be rejected from the Matching System.

As a general matter, CHX Only orders are limit orders which are ranked and executed on the Exchange according to the provisions of Rule 8 of Article 20. By their nature, CHX Only orders are not eligible for routing away by the Exchange to another trading center.<sup>3</sup>

In addition to the foregoing, a CHX Only order which, at the time of entry to the

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<sup>3</sup> The CHX Only order type is therefore similar to the "Do Not Route" order defined in Article 20, Rule 4.b(10), which also cannot be routed to another destination. The repricing process defined in this filing does not apply, however, to Do Not Route orders.

Matching System, would cross a Protected Quotation, as defined in Regulation NMS Rule 600(b)(58), will be automatically repriced by the Exchange to the locking price and ranked at such price in the Matching System. A CHX Only order that, if at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation will be displayed by the Matching System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (the “NMS repricing process”).<sup>4</sup> In the event that the NBBO changes such that the CHX Only order at the original locking price would not lock or cross a Protected Quotation, the order subject to NMS repricing will receive a new timestamp, and will be displayed at the original locking price.<sup>5</sup>

In order to promote compliance with recent amendments to Regulation SHO,<sup>6</sup> CHX Only sell short orders will only execute at one minimum increment above the current NBB if the short sale price test restrictions of Rule 201 of Regulation SHO are in effect for the covered security, and no exemption to such restrictions is applicable. A CHX Only order that, at the time of entry,

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<sup>4</sup> Such orders will be ranked at the locking price at the time they are received by the Matching System. As noted above, an order sender is permitted to submit an instruction that only orders which lock the NBBO at the time of order entry be subject to the repricing process. Orders which cross the NBBO would be rejected back to the order sender.

<sup>5</sup> Any ranking, display or acceptance will be in compliance with applicable rules regarding minimum pricing increments. See, Regulation NMS Rule 612.

<sup>6</sup> See Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) (adopting amendments to Rule 201 and Rule 200(g) of Regulation SHO). Among other things, Rule 201 requires a trading center to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its previous day’s closing price. The amendment to Rule 200(g) provides a “short exempt” marking requirement. The compliance date for the amendments to Regulation SHO was February 28, 2011. See, Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). See also, Division of Trading & Markets, Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO.

could not be executed or displayed based on Rule 201 of Regulation SHO will be repriced by the Matching System at one minimum price variation above the current NBB (“short sale repricing” and together with NMS repricing, the “repricing process”) if the short sale price test restriction under Rule 201 of Regulation SHO is in effect for the covered security.<sup>7</sup> A CHX Only order subject to short sale repricing will not be readjusted downward even if it could be displayed at a lower price without violation of Rule 201 of Regulation SHO. Neither CHX Only orders marked “short exempt” nor CHX Only orders displayed by the Matching System at a price above the then current NBB at the time of initial display shall be subject to short sale repricing. If a CHX Only order is eligible for the repricing process, it will be subject to both NMS repricing and short sale repricing.

An example illustrates how the CHX Only order type would function. Suppose that the prevailing market for security XYZ (which is a security subject to the provisions of Regulation NMS and Regulation SHO) is \$30.25 (bid) – \$30.26 (offered) and the best priced bid in the Matching System is priced at \$30.23. A CHX Only order to sell 100 shares of XYZ at \$30.24 is submitted to the Matching System.<sup>8</sup> Since the order is not immediately executable within our system and the display of the sell order at \$30.24 would result in an impermissible crossed market, the inbound sell would normally be cancelled and rejected back to the order sender or routed to another destination according to each Participant’s instructions pursuant to the provisions of Article 20, Rule 8(h). Pursuant to the NMS repricing process, a CHX Only sell order would be repriced at the locking price (*i.e.*, \$30.25 in this instance) for purposes of ranking

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<sup>7</sup> See 17 CFR 242.201(a)(1). Under Rule 201, the term “covered security” means any “NMS stock,” as defined in Rule 600(b)(47) of Regulation NMS. See, 17 CFR 242.600(b)(47).

<sup>8</sup> This example assumes the order to sell is either long or short, when the short sale price test restriction is not in effect.

within the CHX book. The Matching System would publicly display the sell order at \$30.26 in order to avoid locking the market in violation of Rule 6 of Article 20 (Locked and Crossed Markets). If a buy order was submitted which could be executed against the resting CHX Only order (i.e., the buy order was priced at \$30.25 or above), it would execute at the price at which the CHX Only sell order was ranked within the Matching System, or \$30.25 in this example.

If the CHX Only order was a non-exempt sell short order and the short sale price test restrictions of Rule 201 of Regulation SHO were in effect for that security, then the order would have been ranked and displayed at one minimum increment above the current NBB at the time of receipt, in this case \$30.26. Thus, the subsequent submission of a buy limit order priced at \$30.25 would not result in a match, and the buy order would normally be displayed in the Matching System at \$30.25. Only a buy order priced at \$30.26 or above would result in a transaction by matching against the displayed CHX Only sell short order.

By submitting CHX Only orders, Participants will be able to avoid the risk that their orders will be routed away or rejected because of changes in the state of the national market system during the process of order transmission. In addition, the use of the CHX Only order type in connection with a sell short order will promote compliance with Rule 201 of Regulation SHO since non-exempt CHX Only sell short orders priced at or below the current NBB would be repriced to one increment above the current NBB.<sup>9</sup> Moreover, the execution of CHX Only orders in certain circumstances (such as the example noted above) will result in price improvement above the displayed bid or offer for inbound orders. CHX notes that order types

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<sup>9</sup> Non-CHX Only sell short orders submitted with a limit price at or below the current NBB at the time received by the Matching System and which are not marked as sell short exempt shall be cancelled and rejected back to the order sender.

similar to the CHX Only order are already in use by other market centers.<sup>10</sup>

The Exchange is also amending Rule 8 of Article 20 to describe how the Matching System will process sell short orders in light of the recent adoption of the short sale price test restrictions of Regulation SHO. For any execution or display of a short sale order in a covered security to occur on the Exchange when a short sale price test restriction is in effect, the price must be above the current NBB, unless the sell order was initially displayed by the Matching System at a price above the then-current NBB or is marked “short exempt” pursuant to Regulation SHO.<sup>11</sup> A short sale order, other than a CHX Only order (which will be repriced), will be cancelled back to the order sender if, based on Rule 201 of Regulation SHO, such order is not executable, cannot be routed to another trading center pursuant to Article 20, Rule 8(h) below and cannot be posted to the Matching System. These provisions apply to all orders submitted to the Matching System.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>12</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>13</sup> 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

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<sup>10</sup> See, e.g., BATS Rule 11.9(c)(4) (BATS Only order) and EDGX Rule 11.5(c)(4) (EDGX Only order). See also, Exchange Act Release No. 63948 (Feb. 23, 2011), 76 FR 11303 (Mar. 1, 2011) (adopting the short sale price sliding process for BATS Only orders). See also, BATS Rule 11.9(c)(4), (g); EDGX Rule 11.5(c)(4)(B).

<sup>11</sup> Do Not Display sell short orders will not be accepted by the Matching System if at the time of receipt the limit price is at or below the current NBB, and no exception applies.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

interest by allowing CHX to amend its rules to add the CHX Only order types based on similar rules already in effect at other exchanges.

As noted above, CHX Only orders are designed to encourage displayed liquidity on the Exchange and reduce automatic cancellations by the Exchange's core trading facility, the Matching System, for orders which lock or cross the best displayed quotes in the National Market System. CHX Only orders will be automatically repriced by the Exchange's systems on behalf of order senders. Participants will not have to reenter orders which otherwise would have been cancelled and rejected by the Exchange's systems to avoid prohibited locked or crossed markets and trade throughs, therefore reducing messaging traffic and facilitating the speedy representation of such orders in the national market system. The use of the CHX Only order will also facilitate compliance with the short sale price test restrictions of Regulation SHO. Again, Participants will not have to reenter sell short orders which would have been rejected by the Matching System if they were at or below the current NBB at the time when they were received, and no exception to the short sale price test restrictions applied. The Exchange notes that other market centers, such as the BATS exchanges and Direct Edge exchanges, have order types which make use of the repricing process. The addition of these order types is intended to benefit Exchange customers by reducing message traffic and improving fill rates and promote competition among market centers offering similar products and services.

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 Regarding 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>18</sup> normally may not become operative prior to 30 days after the date of filing.<sup>19</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Other national securities exchanges have adopted similar order types,<sup>20</sup> and this proposal does not raise any novel issues.

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> Id.

<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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.

<sup>20</sup> See BATS Rule 11.9(c)(4) (BATS Only order), (g) (price sliding); EDGX Rule 11.5(c)(4) (EDGX Only order).



For these reasons, the Commission designates the proposed rule change to be operative upon filing with the Commission.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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:

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2011-04 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-2011-04. 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

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<sup>21</sup> For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the 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 available publicly. All submissions should refer to File Number SR-CHX-2011-04 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.<sup>22</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).