

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-69552; File No. SR-CHX-2013-09)

May 10, 2013

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule Governing the Anti-Money Laundering Compliance Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on May 2, 2013, the Chicago Stock Exchange, Inc. (“CHX” or the “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 its Anti-Money Laundering Compliance Program (the “AMLCP”), effective May 2, 2013. The proposed rule change would clarify the frequency with which a Participant Firm must conduct independent testing of its AMLCP and would establish the qualifications of the person designated to perform AMLCP testing as well as provide guidelines for establishing the independence of the person performing the test. The text of this proposed rule change is available on the Exchange’s website at [http://www.chx.com/rules/proposed\\_rules.htm](http://www.chx.com/rules/proposed_rules.htm), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 17 CFR 240.19b-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, CHX 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 may be examined at the places specified in Item IV 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 Changes

1. Purpose

Financial institutions, including broker-dealers, must develop and implement Anti-Money Laundering (“AML”) programs pursuant to the Bank Secrecy Act (“BSA”),<sup>3</sup> as amended by Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“PATRIOT Act”).<sup>4</sup> Consistent with Department of Treasury regulation 31 CFR 103.120 under the BSA, Exchange Article 6, Rule 12 requires that each Participant Firm develop and implement a written AMLCP that specifies the minimum requirement for these programs.

The AMLCP must include the development of internal policies, procedures and controls; the designation of a person to implement and monitor the day-to-day operations and internal controls of the program (commonly referred to as an “AML Officer”);

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<sup>3</sup> 31 U.S.C. 5311 et seq.

<sup>4</sup> Pub. L. No. 107-56, 115 Stat. 272 (2001).

ongoing training for appropriate persons; and an independent testing function for overall compliance.

The Exchange proposes to change CHX Article 6, Rule 12 to clarify the language governing the frequency with which a Participant Firm must conduct independent testing of its AMLCP. Additionally, the Exchange proposes to add a new interpretation and policy to Article 6, Rule 12 that establishes qualifications of the person designated to perform AMLCP testing and guidelines for establishing the independence of the person performing the test.

#### Timeframes for Independent Testing

The proposed rule change would require that independent testing of AMLCPs be conducted, at a minimum, on an annual (calendar-year) basis by Participant Firms, unless the Participant Firm does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers), in which case such independent testing is required every two years (on a calendar-year basis). The Exchange believes that these timeframes are reasonable in that they require more frequent testing of AMLCPs designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers. Furthermore, the one-year time frame for testing is consistent with standard industry practice in that it is similar to generally accepted guidelines for conducting tests in the context of, for instance, general audits and branch office visits. The proposed rule change establishes only a minimum requirement, and makes clear that Participants should

undertake more frequent testing when circumstances warrant (e.g., should the business mix of the Participant or Participant Firm materially change; in the event of a merger or acquisition; in light of systemic weaknesses uncovered via testing of the AMLCP; or in response to other “red flags”).

#### Qualification and Independence Standards for Testing

Additionally, the Exchange proposes to add interpretations and policies .01 to Article 6, Rule 12 in order to establish qualifications for the person designated to perform AMLCP testing as well as guidelines for establishing the independence of the person performing the test. The proposed rule change would require the person conducting the independent test to have a working knowledge of the applicable BSA requirements and related regulations. Such person need not be an employee of the Participant or Participant Firm since the responsibility being delegated is essentially an auditing function and, as such, it would not be unusual or ineffective for it to be performed by an independent outside party.

The proposed rule change does not preclude an employee of the Participant or Participant Firm from conducting the required independent testing of the AMLCP; however the proposed “independence” standard would prohibit testing from being conducted by a person who performs the functions being tested, or by the designated AML Officer, or by a person that reports to either.

#### AML Officer

The proposed rule change would also clarify that the person responsible for implementing and monitoring the day-to-day operations and controls of the program must be an associated person of the Participant. This would not prohibit a Participant that is

part of a diversified financial institution from designating an AML Officer that is employed by the Participant's parent company, sister company, or other affiliate. However, if such a person is designated as a Participant's AML Officer, the Exchange will consider that person to be an associated person of the Participant with respect to those activities performed on behalf of the Participant.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>6</sup> in particular, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments 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 Exchange believes that the proposed rule change is designed to accomplish these ends by requiring Participants to conduct periodic tests of their AMLCPs and preserve the independence of their testing personnel.

### B. Self-Regulatory Organization 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. The rule change is designed to implement the amended AML policy in an equitable and non-discriminatory way, and in furtherance of the Bank Secrecy Act. The rule change requires Participant Firms that execute trades for customers or hold customer

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

accounts conduct AML testing on an annual basis while other Participant Firms that engage solely in proprietary trading, or conduct business only with other broker-dealers may conduct an AML test on a biennial basis. However, the Exchange believes that the rule change does not impose a disparate burden on competition either among or between classes of market participants. The Exchange believes that these timeframes are reasonable in that they require more frequent testing of AMLCP designed to monitor a business with customers from the general public, which may be more susceptible to money laundering schemes than a strictly proprietary business involving transactions with other broker-dealers.

In addition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review its rules to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment by clearly outlining Participant Firms' obligations for AML testing while protecting investors with defined AML oversight in the specified scenarios.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>8</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 for 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 and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>9</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>10</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to provide the Commission with 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>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to immediately begin requiring Participants to conduct periodic tests of their AMLCP and preserve the independence of their testing personnel, and by making the Exchange's program requirements generally consistent with those at other exchanges and self-regulatory organizations.<sup>11</sup> For these reasons, the Commission designates the proposed rule change to be operative upon filing.<sup>12</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 proposal 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

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<sup>11</sup> See e.g., NYSE Arca Equities Rule 6.17, CBOE Rule 4.20 and FINRA Rule 3310.

<sup>12</sup> For purposes 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).



- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2013-09 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-2013-09. 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 Section, 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 the filing will also be available for inspection and copying at the CHX's principal office and on its Internet website at [www.chx.com](http://www.chx.com). 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-2013-09 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>13</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).