

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76351; File No. SR-CHX-2015-09)

November 4, 2015

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Business and Disaster Recovery Plans Testing Requirements for Certain Participants in Connection with Regulation Systems Compliance and Integrity

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 October 29, 2015, 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 adopt business continuity and disaster recovery plans (“BC/DR plans”) testing requirements for certain Participants<sup>3</sup> in connection with Regulation Systems Compliance and Integrity (“Regulation SCI”).<sup>4</sup> CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act

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

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

<sup>3</sup> Pursuant to CHX Article 1, Rule 1(s), a Participant is considered a “member” of the Exchange for the purposes of the Act.

<sup>4</sup> See Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (“SCI Adopting Release”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

and Rule 19b-4(f)(6)<sup>6</sup> thereunder and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).<sup>7</sup>

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 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 Change

1. Purpose

As adopted by the Commission, Regulation SCI applies to certain self-regulatory organizations (including the Exchange), alternative trading systems ("ATs"), plan processors, and exempt clearing agencies (collectively, "SCI entities"), and will require these SCI entities to comply with requirements with respect to the automated systems central to the performance of their regulated activities. Among the requirements of Regulation SCI is Rule 1001(a)(2)(v), which requires the Exchange and other SCI entities to maintain "[b]usiness continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that

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

<sup>7</sup> 17 CFR 240.19b-4(f)(6)(iii).

are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption.”<sup>8</sup> The Exchange has put extensive time and resources toward planning for system failures and already maintains robust BC/DR plans consistent with the Rule.<sup>9</sup> As set forth below, in connection with Regulation SCI, the Exchange is proposing to require certain Participants to participate in testing of the operation of the Exchange’s BC/DR plans.

With respect to an SCI entity’s BC/DR plans, including its backup systems, paragraph (a) of Rule 1004 of Regulation SCI requires each SCI entity to: “[e]stablish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.”<sup>10</sup> Paragraph (b) of Rule 1004 further requires each SCI entity to “[d]esignate members or participants pursuant to the standards established in paragraph (a) of [Rule 1004] and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12

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<sup>8</sup> 17 CFR 242.1001(a)(2)(v).

<sup>9</sup> The Exchange notes that it permits the trading of securities at two separate data centers; one in Secaucus, New Jersey (NY4) and the other in Chicago (CH2). Each location serves as the primary matching location for a security traded on the Exchange and no single security is simultaneously traded at both locations, as the Exchange maintains only one book. In the event trading cannot occur at one location, the Exchange may move trading in affected securities to the other location, pursuant to its BC/DR plans.

<sup>10</sup> 17 CFR 242.1004(a).

months.”<sup>11</sup> In order to comply with Rule 1004 of Regulation SCI, the Exchange proposes to adopt Article 3, Rule 21 (Mandatory Participation Testing of Backup Systems) requiring mandatory participation in testing of Exchange backup systems, as described below.

First, in paragraph (a) of Rule 21, the Exchange proposes to include language from paragraph (a) of Rule 1004 of Regulation SCI to summarize the Exchange’s obligation pursuant to such rule. Specifically, the Exchange proposes to state that “[p]ursuant to Regulation SCI and with respect to the Exchange’s business continuity and disaster recovery plans, including its backup systems, the Exchange is required to establish standards for the designation of Participants that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans.” The Exchange further proposes that paragraph (a) indicate that the “Exchange has established standards and will designate Participants according to those standards” as set forth in the proposed Rule. In addition, the Exchange proposes to make clear that all Participants are permitted to connect to the Exchange’s backup systems as well as to participate in testing of such systems. Proposed paragraph (a) is consistent with the Commission’s adoption of Regulation SCI, which encouraged “SCI entities to permit non-designated members or participants to participate in the testing of the SCI entity’s BC/DR plans if they request to do so.”<sup>12</sup>

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<sup>11</sup> 17 CFR 242.1004(b).

<sup>12</sup> See SCI Adopting Release, supra note 4 at 72350.

Second, in paragraph (b) of Rule 21, the Exchange proposes to specify the criteria that will result in a Participant receiving a designation requiring it to connect to the Exchange's backup systems and to participate in functional and performance testing as announced by the Exchange, which shall occur at least once every 12 months. Specifically, proposed paragraph (b)(1) would require all Participants that account for a meaningful percentage of the Exchange's overall trades or volume to connect to the Exchange's backup systems and to participate in functional and performance testing.

The Exchange notes that it encourages all Participants to connect to the Exchange's backup systems and to participate in testing of such systems. In fact, if a Participant executes an average daily volume of 1 million or more provide shares in the Matching System during the month, CHX will impose a cap on logical port charges equal to the greatest number of ports attributable to that Participant in either of CHX's data centers which helps reduce the economic burden of maintaining connectivity to Exchange's data centers.<sup>13</sup> However, in adopting the requirements of proposed Rule 21(b), including both the requirement to maintain connectivity to Exchange backup systems and to participate in mandatory testing of such systems, the Exchange intends to subject to the Rule only those Participants that the Exchange believes are necessary to maintain fair and orderly markets at the Exchange. The Exchange believes that designating Participants to participate in mandatory testing because they account for a meaningful percentage of the Exchange's overall trades or volume is a reasonable means to ensure the maintenance of a fair and orderly market on the Exchange.

In addition to paragraphs (a) and (b) described above, the Exchange also proposes

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<sup>13</sup> See Section D.1 of the CHX Fee Schedule.

to adopt Interpretation and Policy .01, which would provide additional detail regarding the notice that will be provided to Participants that have been designated pursuant to subparagraph (b) of the Rule as well as the Exchange's method for measuring the trades and volume thresholds. As proposed, Interpretation and Policy .01 would state that for purposes of identifying Participants that account for a meaningful percentage of the Exchange's overall trades or volume, the Exchange will measure trades and volume executed on the Exchange on a quarterly basis. The percentage of trades and volume that the Exchange considers to be meaningful for purposes of this Interpretation and Policy .01 will be determined by the Exchange and will be published in a circular distributed to Participants. The Exchange will publish the first circular consistent with this proposal prior to the Regulation SCI compliance date of November 3, 2015. The proposed Interpretation and Policy would also require the Exchange to notify individual Participants quarterly that are subject to proposed paragraph (b) based on the prior calendar quarter's trades and volume. Finally, as proposed, if a Participant has not previously been subject to the requirements of proposed paragraph (b), then such Participant would have until the next calendar quarter before such requirements are applicable. The Exchange believes the proposed notice requirements are necessary to provide Participants with proper advance notice in the event they become subject to proposed Rule 21(b). The proposed timeframes would also provide Participants with adequate time to become compliant with such Rule due to the necessary infrastructure changes it may take to connect to the Exchange's backup systems for a Participant that is not already connected.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

Act<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>15</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove 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 proposal will ensure that the Participants necessary to ensure the maintenance of a fair and orderly market are properly designated consistent with Rule 1004 of Regulation SCI. Specifically, the proposal will adopt criteria with respect to the designation of Participants that are required to participate in the testing of the Exchange's BC/DR plans, as well as appropriate notification regarding such designation. As set forth in the SCI Adopting Release, "SROs have the authority, and legal responsibility, under Section 6 of the Exchange Act, to adopt and enforce rules (including rules to comply with Regulation SCI's requirements relating to BC/DR testing) applicable to their members or participants that are designed to, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove 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."<sup>16</sup> The Exchange believes that this proposal is consistent with such authority and legal responsibility.

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

The Exchange does not believe that the proposed rule change will impose any

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<sup>14</sup> 15 U.S.C. 78f(b).

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

<sup>16</sup> See SCI Adopting Release, supra note 4 at 72350.

burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is not a competitive proposal but rather is necessary for the Exchange's compliance with Regulation SCI.

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 Change and Timing for Commission Action

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6)<sup>18</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)<sup>20</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. The Commission

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 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.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 incorporate changes required under Regulation SCI, such as establishing standards for designating business continuity and disaster recovery plan participants, prior to the November 3, 2015 compliance date. Therefore, the Commission designates the proposed rule change to be operative upon filing.<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 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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2015-09 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities

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

and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File No. SR-CHX-2015-09. 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 Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing will also be available for inspection and copying at the principal office of the 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 available publicly.

All submissions should refer to File No. SR-CHX-2015-09 and should be submitted on or before [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>

Brent J. Fields  
Secretary

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