

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77527; File No. SR-CHX-2016-04)

April 5, 2016

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Rules of the Exchange Related to Market Makers

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 March 30, 2016, 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 III 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 the Rules of the Exchange (“CHX Rules”) related to Market Makers. CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6)<sup>4</sup> thereunder and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).<sup>5</sup>

The text of this proposed rule change is available on the Exchange’s website at [www.chx.com](http://www.chx.com) and in 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.

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

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

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 on the proposed rule change. 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 Changes

1. Purpose

The Exchange proposes to amend various CHX Rules related to Market Makers. The proposed rule change primarily addresses Market Maker application, registration and securities assignment procedures. Specifically, the Exchange proposes to consolidate and/or clarify certain rules under Article 16 (Market Makers); to adopt new rules under Article 16 that are similar to rules of other national securities exchanges; to make corresponding amendments to various CHX Rules impacted by the proposed amendments to Article 16; and to make other clarifying amendments throughout the CHX Rules, as described below. Notwithstanding the proposed amendments, the Exchange proposes to largely maintain the current requirements regarding Market Maker responsibilities (Article 16, Rule 8); limitation on dealings (Article 16, Rule 9); and reporting of positions (Article 16, Rule 10).

Current Article 16 (Market Makers)

Current Article 16 consists of the following rules:

- Rule 1. Registration and Appointment
- Rule 2. Initial Registration of Market Makers

- Rule 3. Approval by the Exchange
- Rule 4. Temporary Appointment of Market Maker
- Rule 5. Identification of Securities Traded as Market Maker
- Rule 6. Voluntary De-Registration as Market Maker
- Rule 7. Involuntary De-Registration as Market Maker
- Rule 8. Responsibilities
- Rule 9. Limitation on Dealings
- Rule 10. Reporting of Position Information

Currently, a Participant may act as a Market Maker in a particular security only if it has registered with, and been approved by, the Exchange to act in that capacity, and is in good standing.<sup>6</sup> A Participant who wishes to register as a Market Maker must complete a Market Maker application,<sup>7</sup> which will be reviewed by the Exchange.<sup>8</sup>

The Exchange will announce the names of all successful Participant applicants.<sup>9</sup> However, if the Exchange denies a Participant's Market Maker application, it will provide the Participant with a summary of the Exchange's reasons for the denial.<sup>10</sup> A Participant may seek review of its denied Market Maker application.<sup>11</sup> The Exchange also reserves the right to expedite the Market Maker application process and appoint a Market Maker on a temporary

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<sup>6</sup> See CHX Article 16, Rule 1(a).

<sup>7</sup> See CHX Article 16, Rule 2(b).

<sup>8</sup> See CHX Article 16, Rule 3.

<sup>9</sup> See CHX Article 16, Rule 2(d).

<sup>10</sup> See id.

<sup>11</sup> See id.

basis.<sup>12</sup> A Participant's registration as a Market Maker may be -1- involuntarily terminated or suspended by the Exchange<sup>13</sup> or -2- voluntarily terminated at the request of Participant.<sup>14</sup>

Once approved, a Market Maker may then select securities in which it seeks to act as Market Maker by notifying the Exchange in a manner prescribed by the Exchange.<sup>15</sup> Any decision to add or drop securities from its existing selection must be communicated to the Exchange no later than 9 a.m. on the trading day immediately preceding the date on which the change is to take effect, unless the Exchange permits a later date and/or time.<sup>16</sup> A Market Maker's decision to voluntarily add or drop securities from its existing selection are effective without approval; provided a Market Maker must seek prior Exchange approval for an initial request to trade more than 500 securities and each request to trade each increment of an additional 100 securities after that threshold is reached.<sup>17</sup> Except for temporary and/or partial de-registrations approved by the Exchange, a Market Maker may not re-select a security from which it voluntarily withdrew for twenty (20) calendar days after such withdrawal.<sup>18</sup> A Market Maker's assignment to one or more selected securities may be involuntarily terminated or suspended by the Exchange<sup>19</sup> or voluntarily terminated<sup>20</sup> or suspended at the request of the Participant.<sup>21</sup>

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<sup>12</sup> See CHX Article 16, Rule 4.

<sup>13</sup> See CHX Article 16, Rule 7.

<sup>14</sup> See CHX Article 16, Rules 5 and 6.

<sup>15</sup> See CHX Article 16, Rule 5.

<sup>16</sup> See id.

<sup>17</sup> See paragraph .01 of CHX Article 16, Rule 5.

<sup>18</sup> See paragraph .02 of CHX Article 16, Rule 5.

<sup>19</sup> See CHX Article 16, Rule 7.

<sup>20</sup> See CHX Article 16, Rules 5 and 6.

<sup>21</sup> See paragraph .01 of CHX Article 16, Rule 6.

Also, a Market Maker may request that the Exchange approve one or more individuals as Market Maker Traders who would be authorized to enter bids and offers and execute transactions on behalf of a Market Maker.<sup>22</sup> Prior to the Exchange approving such a request, the prospective Market Maker Trader must successfully complete the Market Maker Exam, as well as meet the Exchange's general registration requirements for associated persons.<sup>23</sup>

In addition to the aforementioned registration procedures, a Market Maker has certain responsibilities, including quotation requirements and obligations,<sup>24</sup> limitation on dealings (including information barrier requirements)<sup>25</sup> and position reporting obligations.<sup>26</sup>

#### Proposed Article 16 (Market Makers)

The Exchange now proposes to reorganize Article 16 as follows:

- Proposed Rule 1. Registration of Market Makers
- Proposed Rule 2. Assignment of Securities to Market Makers
- Proposed Rule 3. Obligations of Market Maker Authorized Traders
- Proposed Rule 4. Obligations of Market Makers
- Proposed Rule 5. Limitation on Dealings of Market Makers
- Proposed Rule 6. Reporting of Position Information by Market Makers

In sum, proposed Rules 1 – 2 consolidate, restate, clarify and/or update current Rules 1 – 7, whereas proposed Rule 3 significantly expands the registration requirements for Market Maker Traders in a manner consistent with the rules of another national securities exchange, as

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<sup>22</sup> See paragraph .01 of CHX Article 16, Rule 1.

<sup>23</sup> See generally CHX Article 6.

<sup>24</sup> See CHX Article 16, Rule 8.

<sup>25</sup> See CHX Article 16, Rule 9.

<sup>26</sup> See CHX Article 16, Rule 10.

described below. As such, the Exchange proposes to delete current Rules 1 – 7, but to reincorporate relevant provisions throughout amended Article 16. Moreover, proposed Rules 4 – 6 are largely identical to current Rules 8 – 10, with certain amendments.

Initially, the Exchange proposes to adopt two terms that are already in use throughout the CHX Rules, but are not currently defined. Proposed Article 1, Rule 1(tt) defines “Market Maker” as a Participant that is registered as a Market Maker pursuant to Article 16, Rule 1.

Correspondingly, the Exchange proposes to amend various CHX Rules to capitalize the term “market maker” or “market makers.”<sup>27</sup> Incidentally, the Exchange proposes to amend Article 11, Rule 3(e) to capitalize the term “institutional broker,” as it is currently defined under Article 1, Rule 1(n).

The Exchange also proposes to replace all references to “Market Maker Trader” and “MMT” throughout CHX Rules with the terms “Market Maker Authorized Trader” and “MMAT,”<sup>28</sup> respectively, which are currently used by other national securities exchanges.<sup>29</sup> Proposed Article 1, Rule 1(uu) defines MMAT as an individual trader authorized to enter bids and offers and execute transactions on behalf of a Market Maker and requires that an MMAT be registered with the Exchange pursuant to current Article 6 and proposed Article 16, Rule 3. The proposed definition is a restatement of current paragraph .01 under Article 16, Rule 1.<sup>30</sup>

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<sup>27</sup> See amended CHX Article 9, Rule 23(b); amended CHX Article 11, Rule 3(e); proposed Article 16, Rule 4(d)(2)(A) and (B); proposed CHX Article 16, Rule 4(e) - (f); proposed CHX Article 16, Rule 5(a) – (d); and proposed CHX Article 16, Rule 6.

<sup>28</sup> See amended CHX Article 1, Rule 1(s); amended CHX Article 3, Rule 2(a); amended paragraph .01(b) of CHX Article 6, Rule 3; amended CHX Article 6, Rule 6; proposed paragraph .02 of CHX Article 16, Rule 5.

<sup>29</sup> See BYX Rule 11.6; see also NYSEArca Equities Rule 7.21.

<sup>30</sup> The portion of current paragraph .01 of Article 16, Rule 1 prohibiting an MMT from also being registered as an Institutional Broker Representative is restated under proposed Article 16, Rule 3(b)(6).

Proposed Article 16, Rule 1 (Registration of Market Makers)

Proposed Article 16, Rule 1 is largely a restatement of the current application procedure for a Participant to become registered<sup>31</sup> as a Market Maker, with some minor changes to harmonize with similar procedures of other national securities exchanges.<sup>32</sup> Specifically, proposed Rule 1(a) provides as follows:

Application process. A Participant may only act as a Market Maker in a particular security if it is properly registered as a Market Maker, assigned to securities and remains in good standing pursuant to this Article 16. A Participant that wishes to register as a Market Maker shall file an application in writing on such form as the Exchange may prescribe. Applications shall be reviewed by the Exchange, which shall consider such factors including, but not limited to, the Participant's capital, operations, personnel, technical resources and disciplinary history.

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<sup>31</sup> In the context of proposed Article 16, the Exchange proposes to utilize the term "registered" in reference to either a Participant's general registration as a Market Maker or an MMAT's registration with a Market Maker. Currently, the term "registered" is also used in the context of securities assigned to a Market Maker. For clarity, the Exchange now proposes to refer to such securities as being "assigned" to Market Makers.

<sup>32</sup> Incidentally, the Exchange proposes to amend current CHX Article 12, Rule 8(h)(1) to update the cross-reference to CHX Article 16, Rule 1 and to adopt an additional cross-reference to proposed CHX Article 16, Rule 3 regarding the Registration of Market Maker Authorized Traders, as the Exchange proposes to break out rules regarding Market Maker Authorized Traders under proposed CHX Article 16, Rule 3, as discussed below. The Exchange propose to make a corresponding cross-reference amendment to the Minor Rule Violation Plan chart under the CHX Fee Schedule.

Notably, proposed Rule 1(a):

- consolidates and simplifies current Article 16, Rules 1(a), 2(b), 2(c) and 3<sup>33</sup> concerning the Market Maker application requirements by utilizing broader language that contemplates the current requirements;<sup>34</sup>
- is similar to BYX Rule 11.5(a) in that both rules would require applications be in writing on a form prescribed by the exchange and provide identical factors to be considered by the exchanges in reviewing such applications, except that under CHX Rules, the language requiring that Market Makers maintain minimum net capital in compliance with Rule 15c3-1 under the Exchange Act<sup>35</sup> may be found under proposed Article 16, Rule 4(e); and
- omits language under current Article 16, Rule 2(b) requiring the applicant to indicate the number of securities in which it wants to make a market, as that requirement is more accurately a part of the securities assignment process, described under proposed Rule 2.<sup>36</sup>

Proposed Rule 1(b) provides as follows:

Approval of application. In the event a Participant's application to become a Market Maker has been approved by the Exchange, Participant's registration as a Market Maker shall become effective upon receipt by the Participant of a notice of approval by the Exchange. Thereafter, a Market Maker shall only be permitted to make markets in securities to which it has been assigned, pursuant to Rule 2 below.

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<sup>33</sup> Current paragraph .01 of Article 16, Rule 3 has been restated as proposed paragraph .01 of Article 16, Rule 2, as discussed below.

<sup>34</sup> While the factors listed under current Article 16, Rule 3 and proposed Article 16, Rule 1(a) largely overlap, current Article 16, Rule 3, in some respects, provide more detailed and/or different factors than those stated under proposed Article 16, Rule 1(a).

<sup>35</sup> 17 CFR 240.15c3-1.

<sup>36</sup> See supra note 31.



Notably, proposed Rule 1(b):

- is similar to BYX Rule 11.5(b) regarding the effectiveness of an approval of a Market Maker application, as both rules require that an applicant's registration shall become effective upon receipt by the applicant of a notice of approval by the exchange.
- omits language under current Article 16, Rule 2(d) providing that a list of successful applicants would be announced by the Exchange, as the Exchange does not propose to continue this practice moving forward; and
- clarifies that the process of registering as a Market Maker is distinct from the process for assignment of securities to Market Makers, which is detailed under amended Rule 2.<sup>37</sup>

Proposed Rule 1(c) provides as follows:

Denial of application. In the event a Participant's application to become a Market Maker has been denied by the Exchange, the Exchange shall communicate the denial in writing to Participant, which will include a summary of the Exchange's reasons for the denial. An unsuccessful Participant applicant may seek review of the Exchange's decision pursuant to this paragraph (c) under the provisions of Article 15.<sup>38</sup>

Notably, proposed Rule 1(c):

- restates the portion of current Article 16, Rule 2(d) addressing the denial of a Market Maker application.

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Id.

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Correspondingly, the Exchange proposes to amend Article 15, Rule 1(a) to eliminate specific cross-references to various CHX Rules and to replace such cross-references with language providing that decisions that may be reviewed pursuant to Article 15 shall be noted in the relevant CHX rule.

Proposed Rule 1(d) provides as follows:

Suspension or termination of registration. The Exchange may suspend, terminate or otherwise limit a Participant's registration as a Market Maker upon a determination of any substantial or continued failure by the Market Maker to engage in dealings in accordance with Rule 4 below or failure to meet any other obligations as set forth in CHX Rules. Nothing in this paragraph (d) will limit any other power of the Exchange to discipline a Participant pursuant to CHX Rules.

A Participant may terminate its status as a Market Maker voluntarily by completing the appropriate form and submitting it to the Exchange. A Participant that terminates its status as a Market Maker that wishes to re-register as a Market Maker must submit a new application pursuant to paragraph (a) above.

A Participant whose Market Maker registration has been involuntarily suspended, terminated or otherwise limited pursuant to this paragraph (d) may seek review under the provisions of Article 15.

The Exchange may involuntarily withdraw a Participant from one or more assigned securities pursuant to Rule 2(e) below without suspending or terminating the Participant's registration as a Market Maker pursuant to this paragraph (d).

Notably, proposed Rule 1(d):

- restates current Article 16, Rule 1(b), current Article 16, Rules 6 (Voluntary De-Registration as Market Maker) and 7 (Involuntary De-Registration as Market Maker), while clarifying that the Exchange may terminate a Participant's registration as a Market Maker pursuant to the Participant's failure to meet any of its obligations as set forth in

CHX Rules generally in addition to any failure to meet Market Maker specific obligations provided under Article 16;

- restates current Article 15, Rule 1(a)(3) that a Participant whose Market Maker registration that has been involuntarily cancelled by the Exchange may review such a decision pursuant to current Article 15; and
- clarifies that the Exchange also has the power to involuntarily withdraw a Participant from one or more assigned securities pursuant to proposed Rule 2(e), discussed below, without affecting Participant’s general status as a Market Maker, which is currently implied by current Article 16, Rule 7.<sup>39</sup>

Proposed Rule 1(e) provides as follows:

Emergency registration and/or assignment. Where emergency circumstances require the expedited registration of a Market Maker and/or assignment of securities thereto, the Exchange may make such registrations and/or assignments of securities on a temporary basis, at the Exchange’s discretion, in the interests of maintaining fair and orderly markets.

Notably, proposed Rule 1(e):

- restates current Article 16, Rule 4 (Temporary Appointment of Market Maker), with a clarification that the Exchange’s authority includes both the ability to temporarily register Participants as Market Makers and temporarily assign securities to Market Makers.<sup>40</sup>

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<sup>39</sup> Current CHX Article 16, Rule 7 permits the Exchange to, among other things, “limit” a Market Maker’s registration. One way a Market Maker’s registration could be limited would be for the Exchange to involuntarily withdraw a Market Maker from certain securities, but otherwise permit the Market Maker to continue making markets in other securities to which it is registered.

<sup>40</sup> See supra note 31.

Proposed Rule 1(f) provides as follows:

Market Maker as dealer. A Market Maker is designated as a dealer for all purposes under the Exchange Act and the rules and regulations thereunder. Market Makers may trade only on a proprietary basis and may not handle any agency orders, subject to Rule 5 below. A Market Maker shall establish at least one separately designated CHX Market Maker Trading Account through which all and only market making activities in securities assigned to the Market Maker shall originate. To the extent that a Participant wishes to act as a Market Maker and also handle orders from customers, it must create and strictly enforce information barrier procedures pursuant to Rule 5 below. Since Exchange-registered Market Makers are not permitted to handle agency orders, the Matching System will reject any cross orders that originate from a CHX Market Maker Trading Account.

Notably, proposed Rule 1(f):

- restates and updates current Article 16, Rule 1(c) and paragraph. 02 thereunder, with a clarification that a Market Maker shall conduct all and only market making activities through one or more CHX Market Maker Trading Accounts.

Proposed CHX Article 16, Rule 2 (Assignment of Securities to Market Makers)

Proposed Article 16, Rule 2 is a restatement of the current procedures for the assignment of securities to Market Makers with some minor changes to harmonize with similar procedures of other national securities exchanges.<sup>41</sup> Specifically, proposed Rule 2(a) provides as follows:

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<sup>41</sup> Id.

Assignment of securities. The Exchange will post on its website a list of all issues that are, or soon will be, trading on the Exchange and that are available for assignment to a Market Maker. Prior to beginning any market making activities in a security on the Exchange, Market Maker shall communicate its selected securities and the date on which the Market Maker intends to begin market making activities in the selected securities (“effective date”), to the Exchange in writing, on a form prescribed by the Exchange, by no later than 9 a.m. on the trading day immediately preceding the effective date; provided the Exchange may, at its discretion, (1) delay the assignment date in one or more selected securities; and/or (2) deny assignment in one or more selected securities.

In the event the Exchange delays and/or denies assignment of securities pursuant to paragraph (a)(1) and/or (2) above, the Exchange shall notify the Market Maker in writing of such action(s). If the Exchange does not delay and/or deny assignment of securities pursuant to paragraph (a)(1) and/or (2) above, the selected securities shall be deemed assigned to the Market Maker as of the relevant effective date(s); provided prior written approval of assignment by the Exchange shall be required for -1- a Market Maker’s initial selection of 500 or more securities or -2- each request to add 100 or more securities if the Market Maker is already assigned 500 securities.

Notably, proposed Rule 2(a):

- restates the portion of paragraph .01 of current Article 16, Rule 1 providing that a Participant may seek registration as a Market Maker in an issue; and
- restates current Article 16, Rule 5 and paragraph .01 thereunder, while clarifying that written approval of selected securities by the Exchange prior to assignment is not always required, as the assignment of securities to a Market Maker that does not meet the

numerical thresholds of current Rule 5 and proposed Rule 2(a) could be effected without prior Exchange approval, and that the Exchange has the power to delay or deny assignment of securities, which is implied by current Article 16, Rules 2 and 3.<sup>42</sup>

Proposed Rule 2(b) provides as follows:

Relevant factors. In considering whether to deny, delay and/or approve the assignment of securities pursuant to paragraph (a) above, the Exchange may consider, among other things, the:

- (1) financial resources available to the Market Maker;
- (2) Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;
- (3) Market Maker's operational capability;
- (4) maintenance and enhancement of competition among Market Makers in each security in which they are registered;
- (5) Existence of satisfactory arrangements for clearing the Market Maker's transactions; and
- (6) character of the market for the security, e.g., price, volatility, and relative liquidity.

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<sup>42</sup> Current Article 16, Rule 2(d) provides procedures in the event the Exchange approves or denies a market maker registration application, whereas current Article 16, Rule 3 provides factors that the Exchange may consider when considering a market maker registration application, including the overall best interest of the Exchange. Thus, in light of these provisions, it logically flows that the Exchange may also delay approval of registration if, for example, the Exchange believes that such delay is in the best interest of the Exchange.

Notably, proposed Rule 2(b):

- is similar to current BYX Rule 11.7(a), in that both rules articulate the same factors that may be considered by the exchange in considering the assignment of securities to Market Makers, except that unlike BYX, the Exchange has a different Market Maker securities selection process, which is described under proposed Article 16, Rule 2(a).

Proposed CHX Article 16, Rule 2(c) provides that:

Voluntary withdrawal in assigned securities. A Market Maker may voluntarily withdraw from an assigned security by providing the Exchange with written notice of such withdrawal, which must be received by the Exchange no later than 9 a.m. on the trading day immediately preceding the date on which the change is to take effect or as otherwise permitted by the Exchange. The Exchange may place such other conditions on voluntary withdrawal and subsequent reassignment of a security following withdrawal as it deems appropriate in the interests of maintaining fair and orderly markets.

A Market Maker that voluntarily withdraws in a security may not make markets in that security for twenty (20) calendar days. A Market Maker that fails to give advanced written notice of voluntary withdrawal to the Exchange may be subject to formal disciplinary action.

The Exchange may terminate a Participant's registration as a Market Maker, pursuant to Rule 1(d) above if a Market Maker voluntarily withdraws from all of its assigned securities.

Notably, proposed Rule 2(c):

- restates the portion of current Article 16, Rule 5 that addresses the removal of securities from a Market Maker's selection of securities;

- restates paragraph .02 of current Article 16, Rule 5 regarding the twenty (20) calendar days re-assignment prohibition period after voluntary withdrawal from the security;
- restates current Article 16, Rule 6 by permitting the Exchange to terminate a Participant’s registration as a Market Maker if it is not assigned to any securities pursuant to proposed Article 16, Rule 1(d); and
- is similar to BYX Rule 11.7(b) with respect to following proposed provisions:
  - Market Maker may voluntarily withdraw with prior written notice.
  - The Exchange may place other conditions as it deems appropriate in the interests of maintaining fair and orderly markets.
  - Failure to give advanced written notice of voluntary withdrawal to the Exchange may result in Market Maker being subject to formal disciplinary action.

Proposed Rule 2(d) provides as follows:

Temporary withdrawal in assigned securities. A Market Maker may receive Exchange approval for a temporary withdrawal as a Market Maker in one or more securities in the following circumstances:

- (1) Software, hardware, connectivity or other problems interfere with the Market Maker's ability to appropriately send bids or offers to the Exchange or otherwise act as a Market Maker;
- (2) Legal or regulatory considerations temporarily prevent the Participant from acting as a Market Maker in an assigned security; or
- (3) Other circumstances, including, but not limited to, those that are beyond a Market Maker's control or that interfere with the Participant's ability to act as a Market Maker in an assigned security.



Each request for a temporary withdrawal by a Market Maker must be made in writing in a form prescribed by the Exchange and, whenever practicable, must be made prior to the condition that causes a Market Maker to be unable to continue in that role. The Exchange may grant a request for a temporary withdrawal for up to sixty (60) days, which may be extended by the Exchange at its discretion.

A Participant that was denied a temporary withdrawal pursuant to this paragraph (d) may seek review under the provisions of Article 15.

Notably, proposed Rule 2(d):

- is virtually identical to paragraph .01 of current Article 16, Rule 6, with the clarification that a Participant that is denied a temporary withdrawal pursuant to this paragraph (d) may seek review under the provisions of Article 15.

Proposed Rule 2(e) provides as follows:

Involuntary withdrawal in assigned securities. The Exchange may suspend or terminate a Market Maker's assignment to one or more securities whenever the Exchange determines that:

- (1) Market Maker has not met any of its obligations as set forth under CHX Rules, including Rule 4 below; or
- (2) Market Maker has failed to maintain fair and orderly markets.

A Participant whose assignment to one or more securities has been suspended or terminated pursuant to this paragraph (e) may seek review under the provisions of Article 15.

Notably, proposed Rule 2(e):

- is virtually identical to BYX Rule 11.7(c), both of which permit the exchanges to involuntarily withdraw Market Makers from assigned securities in the same manner; and
- clarifies the Exchange's implied authority under current Article 16, Rule 7 to involuntarily withdraw a Market Maker from a security.

Proposed paragraph .01 of proposed Article 16, Rule 2 provides as follows:

There may be more than one Market Maker assigned to a security traded on the Exchange. The Exchange may limit the number of Market Makers assigned to any security at its discretion.

Notably, proposed paragraph .01:

- restates paragraph .01 of current Article 16, Rule 3, with a clarification that the Exchange may limit the number of Market Makers assigned to any security at its discretion.

Proposed CHX Article 16, Rule 3 (Obligations of Market Maker Authorized Traders)

Proposed Article 16, Rule 3 provides rules regarding obligations of MMATs and significantly expands the registration requirements for Market Maker Traders in a manner consistent with the rules of another national securities exchange. Generally, proposed Rule 3 restates paragraph .01 of current Article 16, Rule 1 and provides additional detail as to MMAT registration and obligations.<sup>43</sup> Specifically, proposed Rule 3 provides as follows:

- (a) General. MMATs are permitted to enter orders only for the Market Maker Trading Account(s) of the Market Maker for which they are registered.

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<sup>43</sup> See supra note 32.

(b) Registration of MMATs. The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a person as an MMAT, consistent with the following minimum requirements:

(1) MMATs may be officers, partners, employees or other associated persons of Participants that are registered with the Exchange as Market Makers pursuant to Rule 1 above.

(2) To be eligible for registration as a MMAT, a person must be registered with the Exchange as provided in Article 6 and complete any other training and/or certification programs as may be required by the Exchange.

(3) The Exchange may require a Market Maker to provide any and all additional information the Exchange deems necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as an MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that an MMAT is properly qualified to perform market making activities, including, but not limited to, ensuring the MMAT has met the requirements set forth under paragraph (b)(2) of this Rule.

(6) A person cannot be registered both as an MMAT and as an Institutional Broker Representative, as defined under Article 1, Rule 1(gg).

(c) Suspension or Termination of Registration.

(1) Pursuant to Article 13, Rule 2, the Exchange may suspend or terminate the registration previously given to a person to be an MMAT if the Exchange determines that the:

(A) person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules and procedures of the Exchange;

(B) person is not properly performing the responsibilities of an MMAT;

(C) person has failed to meet the conditions set forth under paragraph (b) above; or

(D) MMAT has failed to maintain fair and orderly markets.

(2) If the Exchange suspends or terminates the registration of an individual as an MMAT, the Market Maker must not allow the individual to submit orders into the Matching System.<sup>44</sup>

(3) The registration of an MMAT will be terminated upon the written request of the Participant for which the MMAT is registered. Such written request shall be submitted on a form prescribed by the Exchange.

Notably, proposed Rule 3 is substantively similar to BYX Rule 11.6, in that both rules set forth similar obligations of MMATs, except that:

- under proposed paragraph (b)(2), the Exchange proposes to continue to require MMATs to be registered with the Exchange pursuant to current Article 6, which includes a

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<sup>44</sup> Current CHX Article 13, Rule 2(c) permits an appeal of any decision made under Rule 2 pursuant to current CHX Article 15.

requirement that an MMAT take and pass the Exchange-administered Market Maker Authorized Trader Exam, pursuant to paragraph .01(b) of Article 6, Rule 3,<sup>45</sup>

- under proposed paragraph (b)(6), an MMAT cannot be also registered as an Institutional Broker Representative, which is currently prohibited under paragraph .01 of current Article 16, Rule 1; and
- under proposed paragraph (c)(1), the Exchange’s authority to suspend or terminate the registration of an MMAT is based on current CHX Article 13, Rule 2.<sup>46</sup>

Proposed CHX Article 16, Rule 4 (Obligations of Market Makers)

Proposed Article 16, Rule 4 is largely a restatement of current Article 16, Rule 8 (Responsibilities) with additional language clarifying general Market Maker obligations, except that the Exchange proposes to delete current Rule 8(c), which provides for heightened quoting and trading requirements, so as to be consistent with the rules of other national securities exchanges.<sup>47</sup> Specifically, proposed Rule 4(a) provides:

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<sup>45</sup> Incidentally, the Exchange proposes to amend paragraph .01(b) of CHX Article 6, Rule 3 to harmonize with, and refer to, proposed CHX Article 16, Rule 3, which includes replacing the term “Market Maker Exam” with the more accurate “Market Maker Authorized Trader Exam,” replacing the term “qualify” with “register” and clarifying that a Participant would request that an “individual” be registered as an MMAT, as an MMAT refers to a single individual. See CHX Article 1, Rule 1(s) defining “Participant.”

<sup>46</sup> While current Article 13, Rule 2(a)(1) explicitly applies to, among others, associated persons of Market Makers and Institutional Brokers, the Exchange proposes to amend current Article 13, Rule 2(a)(1)(B) to clarify that the Exchange may suspend, limit or revoke the registration of an Institutional Broker Representative and Market Maker Authorized Trader for failure to perform its material duties.

<sup>47</sup> Current Rule 8(c) is a minimum performance standard for Market Makers that other national securities exchanges only apply to special subsets of Market Makers (known as Designated or Lead Market Makers depending on the exchange) that are eligible for special fees and rebates for meeting the minimum performance standard. See e.g., NYSEArca Equities Rule 7.24(c), which limit the minimum performance standard to Designated Market Makers; see also e.g., BATS Rule 11.8(e)(1)(D) and (e)(2). Since the Exchange’s Market Maker program only includes regular Market Makers that do not

General. Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with CHX Rules. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

- (1) Maintain continuous quotations consistent with the requirements of paragraph (d) below;
- (2) Remain in good standing with the Exchange and in compliance with all CHX Rules applicable to it;
- (3) Inform the Exchange of any material change in financial or operational condition or in personnel;
- (4) Maintain a current list of MMATs who are permitted to enter orders on behalf of the Market Maker and provide an updated version of this list to the Exchange upon any change in MMATs;
- (5) Clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another Participant that clears trades through such agency; and
- (6) Comply with the requirements of Rule 5 below, as applicable.

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receive any special financial incentives for meeting the special requirements of current Rule 8(c) and the rules of other national securities exchanges do not require regular Market Makers to meet similar performance standards in addition to the general quotation requirements and obligations consistent among the national securities exchanges, the Exchange proposes to eliminate the provisions of current Rule 8(c).

Notably, proposed Rule 4(a):

- is similar to BYX Rule 11.8(a), in that both rules set forth the same general Market Maker obligations and specific Market Maker responsibilities and duties, except that proposed paragraph (a)(6) includes an additional obligation not found under BYX rules requiring Participants that conduct business other than acting as a Market Maker on the Exchange to comply with the requirements of proposed Rule 5 (i.e., current Rule 9) regarding information barriers; and
- restates the first paragraph of current Article 16, Rule 8 as the first paragraph of proposed Rule 4(a).

Proposed Rule 4(b) and (c) provide as follows:

(b) A Market Maker shall be responsible for the acts and omissions of its MMATs.

(c) If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified under this Rule, such Market Maker may be subject to disciplinary action by the Exchange pursuant to Rule 1(d) and/or Rule 2(e) above. Nothing in this Rule 4 will limit any other power of the Exchange under the Bylaws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or MMAT or in respect of any violation by a Market Maker or MMAT of the provisions of this Rule 4.

Notably, proposed Rule 4(b) and (c):

- is similar to BYX Rules 11.8(b) and (c), in that both rules provide that Market Makers shall be responsible for the acts and omissions of its MMATs and provisions regarding the exchange's authority to prosecute noncompliance of Market Maker obligations, except that proposed Rule 4(c) does not refer to a review process for Exchange decisions

made pursuant to proposed Rules 1(d) and/or 2(e), as those proposed rules already cite to the Article 15 review process.

Proposed Rules 4(d) is virtually identical to current Article 16, Rules 8(a), with proposed amendments to capitalize the term “Market Maker,” as noted above.<sup>48</sup> The Exchange does not propose to substantively modify any obligations provided thereunder.

Proposed Rule 4(e) is a restatement of current Article 16, Rule 8(b), with a clarification that each Market Maker must have and maintain minimum net capital of at least the amount required under Rule 15c3-1 under the Exchange Act<sup>49</sup> and Article 7 (Financial Responsibility and Reporting Requirements).<sup>50</sup>

Proposed CHX Article 16, Rule 5 (Limitation on Dealings of Market Makers)

Proposed Rule 5 is virtually identical to current Article 16, Rule 9, with the following clarifying amendments:

- The term “Market Maker” is capitalized.<sup>51</sup>
- Proposed Rule 5(a) clarifies that affected Market Makers must meet information barrier requirements “that comport to the requirements of this Rule 5.”
- Proposed Rule 5(c), which addresses the approval of information barrier procedures by the Exchange, is substantively identical to current Rule 9(c), with the following clarifications:

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<sup>48</sup> See supra note 27.

<sup>49</sup> 17 CFR 240.15c3-1.

<sup>50</sup> The Exchange notes that current CHX Article 7, Rule 3(a)(1)(A) provides, in pertinent part, that Participant shall at all times maintain net capital not less than that prescribed by SEC 15c3-1 (17 CFR 240.15c3-1).

<sup>51</sup> See supra note 27.



- Participants must promptly notify the Exchange of any material changes to a Participant’s organizational structure or compliance and audit procedures that were previously approved by the Exchange pursuant to Rule 5(c).
- The Exchange must approve any material changes to a Participant’s organizational structure or compliance and audit procedures that were previously approved by the Exchange pursuant to Rule 5(c) and must notify such approval to the Participant in writing.
- Explicitly state that absent approval of the information barrier procedures pursuant to proposed Rule 5(c), a Participant may not conduct any business activities other than making markets in assigned securities pursuant to Article 16, as opposed to merely stating that such a Participant may not conduct any “other” business activities.
- Paragraph .02(c)(2) of proposed Rule 5 is amended to replace “a” with “an” before the acronym “MMAT” for grammatical correctness and stylistic consistency.

Proposed CHX Article 16, Rule 6 (Reporting of Position Information by Market Makers)

Proposed Rule 6 is virtually identical to current Article 16, Rule 10, with amendments to capitalize the term “Market Maker,” as noted above.<sup>52</sup> Incidentally, the Exchange proposes to amend Article 12, Rule 8(h)(1)(U) and the Minor Rule Violation chart under the CHX Fee Schedule to update cross-references to proposed CHX Article 16, Rule 6.

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<sup>52</sup> See id.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>53</sup> in general and furthers the objectives of Sections 6(b)(1)<sup>54</sup> in particular, in that it further enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of Section 6(b)(1). Specifically, the Exchange believes that the proposed rule change, notably amended Article 16, would promote clarity of CHX Rules related to the Market Maker application, registration and securities assignment procedures, which furthers the objectives of Section 6(b)(1).

The Exchange also believes that the proposed rule change furthers the objectives of Section 6(b)(5) in particular,<sup>55</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions 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. Generally, the Exchange believes that harmonizing certain proposed rules with the rules of other national securities exchanges, such as BYX, would remove impediments and perfect the mechanisms of a free and open market, which furthers the objectives of Section 6(b)(5).

Specifically, the Exchange believes that proposed Article 16, Rule 3 would promote just and equitable principles of trade and protect investors and the public investors by expanding the

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<sup>53</sup> 15 U.S.C. 78f(b).

<sup>54</sup> 15 U.S.C. 78f(b)(1).

<sup>55</sup> 15 U.S.C. 78f(b)(5).

requirements of MMATs. The Exchange believes that heightened MMAT requirements would enhance oversight of market making on the Exchange.

Similarly, the Exchange believes that proposed Article 16, Rule 4 would promote just and equitable principles of trade and protect investors and the public investors by providing more detailed Market Maker obligations and explicitly stating that the Market Maker shall be responsible for the acts and omissions of its MMATs, which would further incentivize Market Makers to maintain robust oversight over its MMATs.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposed rule change will enhance competition through clarifying and updating CHX Market Maker-related rules.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>56</sup> and Rule 19b-4(f)(6) thereunder.<sup>57</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

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<sup>56</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>57</sup> 17 CFR 240.19b-4(f)(6).

Section 19(b)(3)(A) of the Act<sup>58</sup> and Rule 19b-4(f)(6) thereunder.<sup>59</sup>

A proposed rule change filed under Rule 19b-4(f)(6) under the Act<sup>60</sup> normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>61</sup> 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 asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that although its Market Maker program is currently dormant, it anticipates restarting the program shortly and is currently in the process of reviewing new Market Maker applications. The Exchange also notes that without a waiver of the operative delay, newly approved Market Makers would be required to begin making markets pursuant to a set of rules that have been amended by the proposed rule change and then later modify their procedures to comport to the proposed rule change when it becomes operative; the Exchange believes such a requirement would be unnecessarily burdensome. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>62</sup> The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

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<sup>58</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>59</sup> In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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>60</sup> 17 CFR 240.19b-4(f)(6).

<sup>61</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>62</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).

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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2016-04 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-CHX-2016-04. 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 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 will also 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-2016-04 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>63</sup>

Robert W. Errett  
Deputy Secretary

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<sup>63</sup> 17 CFR 200.30-3(a)(12).