

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77995; File No. SR-CHX-2016-07)

June 6, 2016

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Business Continuity Plan Requirements for Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4² thereunder, notice is hereby given that on May 24, 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, II 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”) to adopt Article 7, Rule 14, which corresponds to a similar rule of the Financial Industry Regulatory Authority, Inc. (“FINRA”) regarding Business Continuity Plans (“BCPs”).

CHX has designated this proposed rule change as non-controversial pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder and has provided the Commission with the notice required by Rule 19b-4(f)(6)(iii).⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ 17 CFR 240.19b-4(f)(6)(iii).

The text of this proposed rule change is available on the Exchange's Web site at 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 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 adopt Article 7, Rule 14 to require Participants to maintain BCPs. The Exchange recognizes that BCPs serve a critical function in facilitating the operation of orderly markets in the event of a disruptive emergency. Given that the Exchange does not currently require Participants to maintain BCPs or emergency contact information, the Exchange now proposes to adopt such standards and believes that adopting BCP requirements that are similar to FINRA Rule 4370 and the BCP rules of other national securities exchanges⁶ would better ensure that Participant BCPs meet minimum standards that are, when triggered, executed in a consistent and predictable manner, which furthers the purposes of Section 6(b)(5) of the Act by removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.⁷ Moreover, the Exchange believes that greater harmonization between CHX Rules and FINRA Rules will result

⁶ See e.g., NYSE MKT Equities Rule 4370.

⁷ 15 U.S.C. 78f(b)(5).

in less burdensome and more efficient regulatory compliance for Participants that are also members of FINRA (“Dual Members”). To this end, the Exchange proposes to adopt Article 7, Rule 14, which is similar to FINRA Rule 4370, except that proposed Article 7, Rule 14 differs from FINRA Rule 4370 in the following ways:

- Addresses the unique membership, organizational and rules structures of the Exchange;
- Clarifies throughout proposed Article 7, Rule 14 that Participant BCPs must address a Participant’s existing obligations to other interested parties, in addition to its existing obligations to its Customers,⁸ and defines “interested parties,” as discussed below;
- Expands alternate communication requirements to include Associated Persons⁹ of the Participant, in addition to employees, and other interested parties, in addition to Customers; and
- Expands alternate physical location requirements to include Associated Persons of the Participant, in addition to employees.

Specifically, proposed paragraph (a) provides as follows:

Each Participant must create and maintain a written business continuity plan (“BCP”) identifying procedures relating to an emergency or significant business disruption. Such procedures must be reasonably designed to enable the Participant to meet its existing obligations to Customers and other interested parties. The BCP must be made available promptly upon request to the Exchange staff.

Unlike FINRA Rule 4370(a), which includes additional language that BCPs must address “existing relationships with other broker-dealers and counter-parties,” the Exchange proposes to clarify that requirement by omitting such language from proposed Article 7 Rule 14(a) and, rather, provide that BCPs must be reasonably designed to enable the Participant to meet its existing obligations to Customers and other interested parties. Moreover, the Exchange proposes

⁸ Incidentally, the Exchange proposes to amend CHX Article 1, Rule 1(hh) defining “Customer” to correspond to FINRA Rule 160(b)(4), so as to provide, “‘Customer’ shall not include a broker or dealer registered with the Commission.” Currently, CHX Article 1, Rule 1(hh) provides that “‘Customer’ means any person or entity other than a broker or dealer registered with the Commission.” The Exchange proposes to harmonize its definition of Customer with that of FINRA to clarify the scope of the term.

⁹ See CHX Article 1, Rule 1(d) defining “Associated Person.”

to define “other interested parties” to be inclusive of other broker-dealers and counter-parties, under proposed paragraph (g)(3), which provides as follows:

“Interested parties” means any person or entity to which Participant owes a fiduciary and/or legal responsibility, including, but not limited to, Customers, other brokers or dealers, vendors and banks.

To further clarify the requirement, the Exchange proposes to add the term “other interested parties” after all subsequent references to “Customers” under proposed paragraphs (c)(4), (c)(10) and (e).

Proposed paragraph (b) provides as follows:

Each Participant must update its BCP in the event of any material change to the Participant's operations, structure, business or location. Each Participant must also conduct an annual review of its BCP to determine whether any modifications are necessary in light of changes to the Participant's operations, structure, business or location.

Proposed paragraph (c) provides as follows:

The elements that comprise a BCP are flexible and may be tailored to the size and needs of a Participant. Each plan, however, must at a minimum, address:

- (1) Data back-up and recovery (hard copy and electronic);
- (2) All mission critical systems;
- (3) Financial and operational assessments;
- (4) Alternate communications between Customers and the Participant and between other interested parties and the Participant;
- (5) Alternate communications between the Participant and its employees and between the Participant and its Associated Persons;
- (6) Alternate physical location of employees and the Participant's Associated Persons;
- (7) Critical business constituent, bank, and counter-party impact;
- (8) Regulatory reporting;

- (9) Communications with all regulators; and
- (10) How the Participant will assure Customers and other interested parties have prompt access to their funds and securities in the event that the Participant determines that it is unable to continue its business.

Each Participant must address the above-listed categories to the extent applicable and necessary. If any of the above-listed categories is not applicable, the Participant's BCP need not address the category. The Participant's BCP, however, must document the rationale for not including such category in its plan. If a Participant relies on another entity for any one of the above-listed categories or any mission critical system, the Participant's BCP must address this relationship.

Notably, the Exchange proposes to expand the alternate communications and physical location requirements to include Associated Persons under proposed paragraphs (c)(5) and (c)(6).

Proposed paragraph (d) provides as follows:

Each Participant must designate a member of senior management to approve the plan and he or she shall be responsible for conducting the required annual review. The member of senior management must also be a registered principal.

Proposed paragraph (e) provides as follows:

Each Participant must disclose to its Customers and other interested parties how its BCP addresses the possibility of a future significant business disruption and how the Participant plans to respond to events of varying scope. At a minimum, such disclosure must be made in writing to Customers and other interested parties at account opening, posted on the Participant's Web site (if the Participant maintains a Web site), and mailed to Customers or other interested parties upon request.

Proposed paragraph (f)(1) provides as follows:

Each Participant shall report to the Exchange, via such electronic or other means as the Exchange may specify, prescribed emergency contact information for the Participant. The emergency contact information for the Participant includes designation of two Associated Persons as emergency contact persons. At least one emergency contact person shall be a member of senior management and a registered principal of the Participant. If a Participant designates a second emergency contact person who is not a registered principal, such person shall be a member of senior management who has knowledge of the Participant's business operations. A Participant with only one Associated Person shall designate as a second emergency contact person an individual, either registered with another firm or nonregistered, who has knowledge of the Participant's business operations (e.g., the Participant's attorney, accountant, or clearing firm contact).

Proposed paragraph (f)(2) provides as follows:

Each Participant must promptly update its emergency contact information, via such electronic or other means as the Exchange may specify, in the event of any material change, but in any event not later than 30 days following any change in such information. In addition, each Participant shall review and, if necessary, update its required contact information within 17 business days after the end of each calendar year.

Proposed paragraph (f)(2) is similar to FINRA Rule 4370(f)(2), except that proposed paragraph (f)(2) includes the explicit timing requirements of FINRA Rule 4517(c)(1). Since CHX Rules do not include a rule or provision similar to FINRA Rule 4517, the Exchange believes it is appropriate to incorporate such timing requirements into proposed paragraph (f)(2).

Proposed paragraph (g) provides as follows:

For purposes of this Rule, the following terms shall have the meanings specified below:

- (1) "Mission critical system" means any system that is necessary, depending on the nature of a Participant's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of Customer or other interested party accounts, access to Customer or other interested party accounts and the delivery of funds and securities.
- (2) "Financial and operational assessment" means a set of written procedures that allow a Participant to identify changes in its operational, financial, and credit risk exposures.
- (3) "Interested parties" means any person or entity to which Participant owes a fiduciary and/or legal responsibility, including, but not limited to, Customers, other brokers or dealers, counter-parties, vendors and banks.

Operative Date

The Exchange proposes to make the proposed rule change operative pursuant to two weeks' notice by the Exchange to its Participants via Information Memorandum, but not on a

date prior to the expiration of the thirty (30) days pre-operative waiting period contained in Rule 19b-4(f)(6)(iii) under the Act.¹⁰

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹¹ in general, and furthers the objectives of Sections 6(b)(5) of the Act¹² in particular, in that they are designed to prevent fraudulent and manipulative acts and practices, 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.

Specifically, the Exchange believes that adopting standardized BCP requirements that are similar to FINRA Rule 4370 and the BCP rules of other national securities exchanges¹³ would better ensure that Participant BCPs meet minimum standards that are, when triggered, executed in a consistent and predictable manner, which furthers the purposes of Section 6(b)(5) of the Act by removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.¹⁴

The Exchange also believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between CHX Rules and FINRA Rules, which would result in less burdensome and more efficient regulatory compliance for Dual Members. To the extent that proposed Article 7, Rule 14 differs from FINRA Rules 4370 and 4517(c)(1), such

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(5).

¹³ See supra note 6.

¹⁴ See supra note 12.

differences are non-substantive in nature, merely clarify the scope of the rule, expands certain alternative communication and location requirements to apply to Associated Persons of a Participant or, in the case of the proposed term “interested parties,” better defines the type of contra-parties that must be contemplated in the BCP.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed rule change will harmonize CHX Rules with FINRA Rules regarding BCPs and, thus, has no impact on competition.

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 believes that the proposal qualifies for immediate effectiveness upon filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁶

The Exchange asserts that the proposed rule change: (1) will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, and (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided 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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4.

of filing, or such shorter time as designated by the Commission.¹⁷ While the Exchange does not currently have a rule that requires Participants maintain BCPs, the Exchange believes that the proposed rule change raises no novel issues, as it is substantively consistent with FINRA Rules 4370 and 4517(c)(1). Moreover, although proposed Article 7, Rule 14 differs from FINRA Rule 4370 in that the proposed rule expands alternative communication and location requirements to Associated Persons of Participants and explicitly requires BCPs contemplate a broader range of contra-parties (i.e., interested parties), the Exchange believes that such differences are non-controversial as they merely expand FINRA Rule 4370 requirements to additional parties that rely on the orderly operation of the Participant in the event of an emergency. The Exchange also notes that the proposed rule change would apply to all Participants and not only Dual Members. As such, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act¹⁸ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁹

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 under Section 19(b)(2)(B) of the Act to determine whether the proposed rule should be approved or disapproved.

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2016-07 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-2016-07. 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-2016-07 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.²⁰

Robert W. Errett
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).