

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57458; File No. SR-CHX-2007-24)

March 10, 2008

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto, Relating to the Handling of Clearly Erroneous Transactions

I. Introduction

On October 4, 2007, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rules 10 and 11 of Article 20 regarding the handling of “clearly erroneous” and other transactions and to make corresponding changes to Article 2, Rule 5. On January 7, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on January 18, 2008.³ The Commission received no comment letters on the proposal, as amended by Amendment No. 1. On February 29, 2008, the Exchange submitted Amendment No. 2 to the proposed rule change. This order provides notice of Amendment No. 2 and approves the proposed rule change, as modified by Amendments No. 1 and 2, on an accelerated basis.

II. Discussion

Currently, CHX Article 20, Rules 10 and 11 allow the Exchange to cancel a trade, or modify the terms of a trade, when its terms are determined to be “clearly erroneous” or when

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 57137 (January 14, 2008), 73 FR 3497.

other circumstances (including a CHX systems problem) require that that action be taken for the maintenance of a fair and orderly market or the protection of investors and the public interest.⁴

As a result of the experience gained through the operation of these rules, the Exchange now proposes several changes to the rules' provisions.

First, the Exchange seeks to amend Article 20, Rule 10 by extending, from 15 to 30 minutes, the time for filing an initial written request for review of a potentially "clearly erroneous" trade. As part of this change, the Exchange would eliminate the requirement that a participant notify the Exchange by telephone of its intent to seek review but would retain the requirement that the request must be in writing.

Second, the Exchange would establish in Article 20, Rule 10 specific thresholds for determining whether a transaction is eligible for review under this rule. Under this proposal, a trade would be found to be eligible for review if: (i) for a trade where the price per share is less than \$1.00, the execution price is 20% or more away from the midpoint of the national best bid and offer ("NBBO"); or (ii) for a trade where the price per share is equal to or greater than \$1.00, the execution price is 10% or more away from the midpoint of the NBBO.

Third, the Exchange proposes to amend Article 20, Rule 10 to eliminate one of the two levels of appeal that can be taken from an initial Exchange determination that the terms of a trade should be modified or that the trade should be cancelled. Under the current Article 20, Rule 10, the Exchange's initial decision may be appealed to a subcommittee of the Committee on Exchange Procedure and the subcommittee's decision may be appealed, in turn, to the full

⁴ See CHX Rules, Article 20, Rule 10 ("Handling of Clearly Erroneous Transactions") and Rule 11 ("Systems Disruptions and Malfunctions").

Committee on Exchange Procedure.⁵ The Exchange proposes to eliminate the appeal to the full Committee. Thus, the decision of this subcommittee will be the final Exchange action on the matter. The Exchange also proposes to permit an appeal of an eligibility review under Article 20, Rule 10(b).⁶

Finally, the proposed change would amend Article 20, Rule 11 to give the Exchange the discretion, in situations where it is acting on its own initiative to respond to systems disruptions or extraordinary market conditions or other circumstances, to determine that the number of affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. The Exchange noted that this determination is intended to provide certainty to participants whose transactions were affected by decisions in these unusual situations.⁷

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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

⁵ A subcommittee of the Committee on Exchange Procedure is composed of members of the full Committee on Exchange Procedure. The Exchange also proposed to make corresponding changes to Article 2, Rule 5, relating to appellate rights arising from subcommittee decisions, to confirm that the decision of the subcommittee is final and that the Exchange's initial decision is not stayed pending any appeal to the subcommittee. The Exchange also proposed changes to Article 2, Rule 5, to ensure that this rule language is consistent with the changes proposed in Article 20, Rule 10 and made other minor adjustments to the rule text.

⁶ See Amendment No. 2.

⁷ The Exchange noted that other markets have included a similar provision in their rules. See Nasdaq Rule 11890(c)(1); NYSE Arca Rule 7.10(c)(2).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2007-24 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CHX-2007-24. 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 Web site (<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 inspection and copying 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2007-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁸ and, in particular, the requirements of Section 6(b) of the Act⁹ and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ in that the proposal is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates a “clearly erroneous” transaction may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission’s view, the determination of whether a transaction is clearly erroneous and the process for reviewing such a determination should be based on specific and objective criteria and subject to specific and objective procedures.

The Commission believes that the thirty-minute time frame and the thresholds for determining whether a transaction is eligible for review are clear and objective. The Commission further believes that the simplification of the notification process, the streamlining of the appeals process, and the granting of discretion to the Exchange to better deal with

⁸ In approving this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

situations involving systems disruption or extraordinary market conditions are appropriate and consistent with the Act.

Pursuant to Section 19(b)(2) of the Act,¹¹ the Commission finds good cause to approve the proposal, as amended, prior to the thirtieth day after the amended proposal is published for comment in the Federal Register. Amendment No. 2 merely clarifies that an eligibility determination by the Exchange under Article 20, Rule 10 may be appealed to a subcommittee of the Committee on Exchange Procedure. Accelerating approval of the amended proposal would give parties affected by such a determination the right to have the decision reviewed. Accordingly, the Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the Federal Register.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CHX-2007-24), as modified by Amendments No. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹¹ 15 U.S.C. 78s(b)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).