

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79538; File No. SR-CHX-2016-21)

December 13, 2016

Self Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Website Data Publication Requirements and Clarify Certain Data Reporting Obligations Related to the Regulation NMS Plan to Implement a Tick Size Pilot Program

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 November 29, 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 II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend Article 20, Rule 13(b) of the Rules of the Exchange (“CHX Rules”) to modify the website data publication requirements and clarify the Exchange’s data reporting obligations relating to the Regulation NMS Plan to Implement a Tick Size Pilot Program.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

On August 25, 2014, the Exchange, and several other self-regulatory organizations (the “Plan Participants”³) filed with the Commission, pursuant to Section 11A of the Act⁴ and Rule 608 of Regulation NMS thereunder,⁵ the Plan to Implement a Tick Size Pilot Program (the “Plan”).⁶ The Plan Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁷ The Plan⁸ was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁹ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.¹⁰ On November 6, 2015, the SEC exempted the Plan Participants from implementing the

³ A “Participant” is a “member” of the Exchange for purposes of the Act. See CHX Article 1, Rule 1(s). For clarity, the Exchange proposes to utilize the term “CHX Participant” when referring to members of the Exchange and the term “Plan Participant” when referring to Participants of the Plan.

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁷ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁸ Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

⁹ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

¹⁰ See Approval Order at 27533 and 27545.

pilot until October 3, 2016.¹¹ As set forth in Appendices B and C to the Plan, data that is reported pursuant to the appendices shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the Pre-Pilot data collection period commenced on April 4, 2016. On September 13, 2016, the Commission exempted the Plan Participants from the requirement to fully implement the Pilot on October 3, 2016, to permit the Plan Participants to implement the pilot on a phased-in basis, as described in the Plan Participants' exemptive request.¹²

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Plan Participant is required to comply, and to enforce compliance by its members, as applicable, with the provisions of the Plan.

On March 28, 2016, the Exchange filed with the Commission a proposed rule change to adopt Article 20, Rule 13(b), which was immediately effective upon filing, to implement the data collection requirements of the Plan, including requirements relating to website data publication.¹³ Specifically, current Article 20, Rule 13(b)(2)(A)(v) provides that the Exchange shall make Appendix B.I and B.II data of certain CHX Participants that operate Trading Centers¹⁴ collected

¹¹ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

¹² See Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., dated September 13, 2016; see also Letter from Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., to Brent J. Fields, Secretary, Commission, dated September 9, 2016.

¹³ See Securities Exchange Act Release No. 77469 (March 29, 2016), 81 FR 19275 (April 4, 2016) (SR-CHX-2016-03).

¹⁴ The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an

pursuant to current Article 20, Rule 13(b)(2)(A) publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

Also, current Article 20, Rule 13(b)(B)(ii) provides that the Exchange shall make Appendix B.I and B.II data of the Exchange operated Trading Center collected pursuant to current Article 20, Rule 13(b)(2)(B)(i) publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data. In addition, current Article 20, Rule 13(b)(3)(C) provides that the Exchange shall make Appendix B.IV data collected pursuant to current Article 20, Rule 13(b)(3)(A) and (B) publicly available on the Exchange website on a monthly basis at no charge and shall not identify the Trading Center that generated the data.

The Exchange is now proposing amendments to Article 20, Rule 13(b)(2)(A)(v) (regarding Appendix B.I and B.II data for Trading Centers operated by CHX Participants), Article 20, Rule 13(b)(2)(B)(ii) (regarding Appendix B.I and B.II data for the Exchange operated Trading Center) and Article 20, Rule 13(b)(3)(C) (regarding Appendix B.IV data) to provide that data required to be made available on the Exchange website be published within 120 calendar days following the month end. The Exchange also proposes to adopt new language under Article 20, Rule 13(b)(5) (regarding Appendix B.III data) that provides that the Exchange shall make its Appendix B.III data publicly available on the CHX website within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

Moreover, the Exchange is proposing to adopt Article 20, Rule 13(b)(4)(C) (regarding Appendix C data) to clarify that the Exchange, as a Designated Examining Authority (“DEA”), shall collect the data required by Item I of Appendix C to the Plan and current paragraph

alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” See 17 CFR 242.600(b).

(b)(4)(A) for those CHX Participants that are Market Makers for which the Exchange is the DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. Also, in light of the recently proposed amendment to the Financial Industry Regulatory Authority (“FINRA”) Rule 6191(b)(4)(B),¹⁵ which provides, among other things, that FINRA shall aggregate and publish (i) Market Maker profitability statistics for Market Makers for which FINRA is the DEA; (ii) Market Maker profitability statistics collected from other Plan Participants that are DEAs; and (iii) Market Maker profitability statistics for Market Maker profitability statistics [sic] for Market Makers whose DEA is not a Plan Participant, the Exchange is proposing to adopt additional language that provides the Exchange, as DEA, shall also make the data collected pursuant to current paragraph (b)(4)(A) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules.

Furthermore, the Exchange is proposing amendments to paragraph .08 of the Interpretations and Policies under Article 20, Rule 13(b) to conform its provisions to the above proposed changes. Specifically, amended paragraph .08 would provide that with respect to data for the Pilot Period, the Exchange shall make the data collected pursuant to current paragraph (b)(4)(A) available to FINRA for aggregation and publication on the FINRA website pursuant to FINRA Rules and the Exchange will publish the data collected pursuant to current paragraphs (2) and (3) on the Exchange website, which shall commence at the beginning of the Pilot Period. Also, notwithstanding the provisions of amended paragraphs (b)(2)(A)(v), (b)(2)(B(ii) and (b)(3)(C), the Exchange shall make data for the Pre-Pilot Period publicly available on the Exchange’s website pursuant to Appendix B to the Plan by February 28, 2017.

¹⁵ See SR-FINRA-2016-042, filed November 15, 2016.

The purpose of delaying the publication of the website data is to address confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.¹⁶ In addition, the purpose of adopting language that the Exchange will transmit Appendix C data to the SEC for the Market Making activity of a CHX Participant for which the Exchange is the DEA is to clarify the Exchange's data reporting obligations pursuant to the Plan. Moreover, the purpose of explicitly stating that the Exchange will publish the relevant Appendix B data on its website and that FINRA will publish the relevant Appendix C data on its website is to conform CHX Rules to the website publication procedures recently proposed by FINRA.¹⁷

The Exchange notes that the proposed rule change is similar to SR-FINRA-2016-042 in all material respects, except that the Exchange does not propose to adopt provisions regarding the calculation and public dissemination of Appendix C data as FINRA will be conducting that function on behalf of all Plan Participants. Also, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the 30-day operative delay. If the Commission waives the 30-day operative delay, the operative date of the proposed rule change will be the date of the filing.

¹⁶ The Exchange understands that some Market Makers may utilize a DEA that is not a Plan Participant and that their Designated Examining Authority ("DEA") would not be subject to the Plan's data collection requirements. Prior to this proposal, the Plan Participants implemented rules that required members that were Market Makers whose DEA is not a Plan Participant to transmit transaction data for Market Maker profitability calculations to FINRA. See e.g., Securities Exchange Act Release No. 77469 (March 29, 2016), 81 FR 19275 (April 4, 2016) (SR-CHX-2016-03).

¹⁷ See supra note 15.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act¹⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act¹⁹ in particular, 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 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that this proposal is consistent with the Act because it is designed to assist the Plan Participants in meeting their regulatory obligations pursuant to the Plan and is in furtherance of the objectives of the Plan, as identified by the SEC. The Exchange believes that the instant proposal is consistent with the Act in that it is designed to (1) address confidentiality concerns by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information, (2) clarify the Exchange's data reporting obligations pursuant to the Plan and (3) conform CHX Rules to the website publication procedures recently proposed by FINRA.²⁰

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. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is

¹⁸ 15 U.S.C. 78f(b).

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ See supra note 15.

designed to assist the Plan Participants in meeting their regulatory obligations pursuant to the Plan.

The proposal is intended to (1) address confidentiality concerns that may adversely impact competition by permitting the Exchange to delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information, (2) clarify the Exchange's data reporting obligations pursuant to the Plan and (3) conform CHX Rules with the website publication procedures recently proposed by FINRA.²¹ The Exchange notes that the proposed change will not affect the data reporting requirements for CHX Participants. The proposal also does not alter the information required to be submitted to the SEC.

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

Because the foregoing 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, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6)²³ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii), the

²¹ See supra note 15.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing so that it may become operative immediately.

The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Participants in meeting their regulatory obligations pursuant to the Plan. The proposal is intended to address confidentiality concerns by permitting the Exchange to (1) delay website publication to provide for passage of additional time between the market information reflected in the data and the public availability of such information; and (2) allow for FINRA to aggregate and publish Market Maker profitability data for all Participant DEAs. The Exchange notes that the proposed change will not affect the data reporting requirements for members for which CHX is the DEA. The proposal also does not alter the information required to be submitted to the Commission.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement these proposed changes that are intended to address confidentiality concerns. The Commission notes that some Pilot data was scheduled to be published on November 30, 2016. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative on November 30, 2016.²⁴

²⁴ For purposes only of waiving the operative delay for this proposal, the Commission has 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.²⁵ If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁶ of the Act to determine whether the proposed rule change 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 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. Please include File No. SR-CHX-2016-21 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-CHX-2016-21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

²⁵ 15 U.S.C. 78s(b)(3)(C).

²⁶ 15 U.S.C. 78s(b)(2)(B).

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 changes 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 the filing also will 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-2016-21 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.²⁷

Eduardo A. Aleman
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).