

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81683; File No. SR-CHX-2017-12)

September 22, 2017

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change Regarding Qualified Contingent Trades and Related Information Recording Obligations by Certain Participants

I. Introduction

On July 26, 2017, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ a proposed rule change regarding Qualified Contingent Trades (“QCT(s)”) and related recordkeeping obligations for certain Exchange participants. The proposed rule change was published for comment in the Federal Register on August 10, 2017.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange permits its participants to submit to the Exchange cross orders marked with a QCT modifier (sometimes referred to as “QCT crosses”) to effect transactions that comprise the NMS stock component of a QCT.⁵ QCT crosses are submitted to the Exchange

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 81315 (August 4, 2017), 82 FR 37479 (“Notice”).

⁵ See id. at 37480. A QCT is “a transaction consisting of two or more component orders, executed as agent or principal where: (1) at least one component order is in an NMS stock; (2) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution

consistent with an exemption from Rule 611(a) of Regulation NMS⁶ that the Commission granted in 2006 and modified in 2008 (the “QCT Exemption”).⁷ As described below, the Exchange proposes to amend its rules relating to QCTs to permit only Institutional Brokers (“IB(s)”) ⁸ to effect such transactions on the Exchange, to impose additional recordkeeping requirements relating to such transactions, and to make additional, clarifying changes to its rules.

A. QCT Crosses May Only Be Submitted By IBs

The Exchange proposes to amend Article 1, Rule 2(b)(2)(E) to provide that QCT crosses may be submitted to the Exchange only by registered IBs.⁹ Article 1, Rule 2(b)(2) sets forth the order execution modifiers that may be attributed to cross orders, and Article 1, Rule 2(b)(2)(E) defines the QCT cross order modifier.¹⁰ Under the proposal, this definition would be amended to

of all other components at or near the same time; (4) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. See id. at 37480; see also Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008) (“2008 QCT Exemptive Order”).

⁶ 17 CFR 242.611(a).

⁷ See Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006); see also 2008 QCT Exemptive Order, supra note 5.

⁸ Article 1, Rule 1(n) defines an IB as a member of the Exchange that is registered as an IB pursuant to Article 17 of the Exchange’s rules and has satisfied all Exchange requirements to operate as an IB. For the sake of clarity, the Commission notes that, unless otherwise specified, references herein to “Article” and “Rule” are references to the Exchange’s rules.

⁹ See proposed Article 1, Rule 2(b)(2)(E).

¹⁰ See Article 1, Rule 2(b)(2).

state that only IBs may utilize the QCT cross order modifier.¹¹ The Exchange notes that, currently, CHX rules permit any Exchange participant to submit QCT crosses, but in practice non-IB participants do not submit them.¹² The Exchange also notes that its rules currently require only IBs to input all orders and related information into Brokerplex – an automated Exchange order and trade management system – and that this requirement facilitates the Exchange’s ability to gather information it considers to be crucial to its review of QCT crosses executed on the Exchange.¹³

B. Recordkeeping Requirements for Away Component Trades of QCT Crosses

The CHX Broker Back Office System (“BBOS”) is an Exchange-maintained trade management system that, among other things, enables the Exchange to review information to identify the specific component transactions on away exchanges that are being used to hedge QCT crosses executed on the Exchange.¹⁴ Currently, the Exchange encourages, but does not require, IBs to input into BBOS certain information for away QCT component orders and trades related to QCT crosses executed on the Exchange.¹⁵ Moreover, Article 11, Rule 3(a)(1)-(3), which sets forth recordkeeping obligations for certain Exchange participants, including IBs, does

¹¹ See proposed Article 1, Rule 2(b)(2)(E). The Exchange also proposes to add the acronym “QCT” to Article 1, Rule 2(b)(2)(E) to make clear that the acronym refers to “Qualified Contingent Trade.” See id.; see also Notice, supra note 4, at 37481 n.25.

¹² See Notice, supra note 4, at 37480 n.12 and 37481.

¹³ See id. at 37480-81; see also Article 17, Rules 3 and 5 (describing, among other things, Brokerplex and certain IB obligations).

¹⁴ See Notice, supra note 4, at 37480. The Exchange notes that, currently, the vast majority of such component transactions involve exchange-traded options. See Notice, supra note 4, at 37480 n.17.

¹⁵ See id. at 37482.

not currently impose recordkeeping obligations on Exchange participants regarding such away component orders and trades of QCT crosses.¹⁶

The Exchange has proposed several interrelated amendments to Article 11, Rule 3 to require IBs to maintain their own records of, and record with the Exchange, certain information regarding away QCT component orders and trades. Specifically, the Exchange proposes to adopt new Rule 3(a)(4), which would make subject to the Rule 3(a) recordkeeping requirements every component order and trade, whether handled by the Exchange participant or not, related to a cross order marked QCT that is submitted by the Exchange participant and executed within the Exchange matching system.¹⁷

Relatedly, the Exchange proposes to modify Rule 3(b) to include a cross reference to proposed Rule 3(a)(4), and would thereby require that, subject to exceptions set out in interpretations to Rule 3, IBs accurately record in an electronic system designated by the Exchange certain details regarding the away component orders and executions identified in proposed Rule 3(a)(4).¹⁸ The Exchange proposes to set forth these details in new Rule 3(b)(27), which would provide that, with respect to any cross order marked QCT that is submitted by the Exchange participant and executed within the Exchange matching system, the date and time of receipt by the Exchange participant of the corresponding order from its customer and all information specified by the Exchange regarding any related component orders and trades

¹⁶ See id.

¹⁷ See proposed Article 11, Rule 3(a)(4). Article 11, Rule 3(a) requires covered Exchange participants to preserve a record, meeting the criteria of paragraph (b), of the information enumerated in Rule 3(a) for at least three years (or any longer period of time required by SEC Rule 17a-4).

¹⁸ See proposed Article 11, Rule 3(b). The Exchange also proposes to add the word “accurately” to the Rule 3(b) text so that the rule requires covered participants to accurately record the specified information in the designated Exchange system(s). See id.

executed within the matching system or away shall be entered into BBOS (as applicable), in a manner prescribed by the Exchange.¹⁹

In addition, the Exchange has proposed amendments to Article 17 that dovetail with its proposed changes to Article 11, Rule 3. The Exchange proposes to amend Article 17, Rule 3(a) to state that an IB must enter all orders it receives for execution and any other information required under Article 11 into an automated system approved by the Exchange.²⁰ The Exchange states that this proposed change is necessary to broaden the scope of Article 17, Rule 3(a) beyond just orders received by the IB for execution to reflect that proposed Article 11, Rule 3(b)(27) may require the recording of information related to orders that the IB did not actually receive or otherwise handle.²¹

The Exchange also proposes to adopt new Article 17, Rule 7, which would codify the BBOS into the Exchange's rules.²² Specifically, proposed Rule 7(a) would state that the BBOS is a trade management system developed and maintained by the Exchange that permits IBs to input certain information and to generate reports therefrom, and that it also is an automated system approved by the Exchange for the purposes of amended Article 17, Rule 3(a).²³ Proposed

¹⁹ See proposed Article 11, Rule 3(b)(27); see also proposed Article 17, Rule 7(c) (specifying the information regarding related component orders and trades to be entered into the BBOS). The Exchange also proposes to relocate the current rule text in Article 11, Rule 3(b)(27) to proposed Article 11, Rule 3(b)(28). Correspondingly, the Exchange proposes to amend the cross references in Interpretations and Policies paragraph .06 of Article 11, Rule 3 to reflect this relocation.

²⁰ The Exchange also proposes to amend the title of Rule 3(a) to reflect that it requires the entry of orders and related information into an automated system. See proposed Article 17, Rule 3(a); see also Notice, supra note 4, at 37482.

²¹ See Notice, supra note 4, at 37482.

²² See proposed Article 17, Rule 7.

²³ See proposed Article 17, Rule 7(a).

Rule 7(b) would state that users of the BBOS are responsible for entering all transactional, order and other information into the system as required by CHX Rules, in an accurate, timely and complete manner; the Exchange, as the operator of BBOS, retains information entered into BBOS on behalf of the user in conformity with applicable rules and regulations; and the Exchange will provide such information to IBs in a format designated by the Exchange to assist IBs in conducting research regarding their own trading activities, responding to requests for information from customers, regulatory authorities or by process of law, and for other legitimate business purposes.²⁴ Further, proposed Rule 7(b) would state that the Exchange charges IBs the fees specified in its published Schedule of Fees and Assessments for the collection and retrieval of such information.²⁵ Proposed Rule 7(c) would list the specific information regarding component orders and trades related to QCT crosses that IBs are required to enter into the BBOS, as applicable. Specifically, proposed Rule 7(c) would provide that for all orders and trades described under amended Article 11, Rule 3(b)(27), IBs must record the following information into the BBOS, as applicable: (1) QCT Type; (2) Related Exchange; (3) Print Time; (4) Expiration Year; (5) Expiration Month; (6) Price; (7) Contracts; (8) Strike Price; (9) Call/Put; (10) Volume; and (11) Short Sale Indicator.²⁶

²⁴ See proposed Article 17, Rule 7(b).

²⁵ See *id.* The Exchange states that it is not proposing to assess a fee for use of the BBOS in addition to the current fees related to costs incurred by the Exchange in creating any requested reports, which shall be rebilled to Exchange participants at cost. See Notice, *supra* note 4, at 37482 n.38.

²⁶ See proposed Article 17, Rule 7(c). The Exchange notes that this required information would be identical to the current data fields available in the BBOS. See Notice, *supra* note 4, at 37482 n.37.

C. Proposed Clarification Regarding IB Trading Accounts

Currently, Article 17, Rule 3(c) provides that each IB must maintain separate accounts for handling agency transactions, principal transactions, and transactions involving errors, and must enter transactions into the appropriate accounts.²⁷ The Exchange states it is proposing to amend this rule to clarify that the required accounts relate to special recordkeeping accounts that must be maintained at the Exchange, which, the Exchange represents, is necessary for the Exchange to adequately surveil and examine the relevant IB trading activity, as well as to provide additional detail as to the types of transactions that must be recorded in the respective accounts.²⁸ Accordingly, the Exchange has proposed to amend Article 17, Rule 3(c) to state that each IB must establish and maintain separate CHX recordkeeping accounts at the Exchange for the sole purpose of recording the following activity: (1) an agency recordkeeping account for agency transactions; (2) a principal recordkeeping account for principal and riskless principal transactions; and (3) an error recordkeeping account for transactions involving only bona fide errors.²⁹ The proposed rule also would state that an IB must record each above-mentioned transaction into the appropriate CHX recordkeeping account.³⁰

D. Additional Proposed Rule Clarifications – Article 11, Rule 3

The Exchange proposes various clarifying amendments to Article 11, Rule 3 regarding certain recordkeeping requirements concerning orders and executions by certain types of

²⁷ See Article 17, Rule 3(c); see also Notice, supra note 4, at 37482.

²⁸ See Notice, supra note 4, at 37482.

²⁹ See proposed Article 17, Rule 3(c).

³⁰ See id.

Exchange participants, including, but not limited to, IBs.³¹ Specifically, the Exchange proposes to amend Article 11, Rule 3(a) to state that the provisions of Rule 3 only apply to the Exchange participants described in paragraph (e) of the rule – namely, registered IBs and registered market makers, as well as any Exchange participant for which the Exchange is the Designated Examining Authority.³² The Exchange also proposes to amend paragraph (e) to state that any other Exchange participant also is required to maintain the information specified in Rule 3 to the extent such information is required to be maintained pursuant to the Exchange Act and the rules thereunder or, as previously set forth in the pre-existing version of paragraph (e), pursuant to the rules of the other self-regulatory organizations of which they are members.³³

In addition, the Exchange proposes to clarify that proprietary orders fall under the purview of Article 11, Rule 3.³⁴ To accomplish this, the Exchange proposes to delete from paragraph .01 under the Interpretations and Policies of Article 11, Rule 3 the sentence stating that a decision by a participant to buy or sell securities for his or her own account on the Exchange shall not constitute an order for which a record must be made under the rule.³⁵ The Exchange notes that that sentence excluded from the scope of Article 11, Rule 3(a) the decision

³¹ The Exchange also proposes to add the phrase “by Certain Participants” to the title of the rule so that it reads “Records of Orders and Executions by Certain Participants.” See proposed Article 11, Rule 3. The Exchange states that this change is meant to better distinguish Article 11, Rule 3 from Article 11, Rule 2, which requires all Exchange participants to comply with the requirements of SEC Rules 17a-3 and 17a-4. See Notice, supra note 4, at 37481.

³² See proposed Article 11, Rule 3(a).

³³ See proposed Article 11, Rule 3(e).

³⁴ See Notice, supra note 4, at 37481.

³⁵ See proposed Interpretation and Policy .01 to Article 11, Rule 3.

to purchase or sell a security on a proprietary basis, and not the proprietary order itself.³⁶ The Exchange states, however, that it believes the sentence could be misconstrued to exclude all proprietary orders from the scope of Article 11, Rule 3.³⁷ The Exchange also believes that current Article 11, Rule 3(a)(1)-(3) adequately describes the types of orders subject to current Article 11, Rule 3.³⁸

Further, the Exchange proposes to amend paragraph .03 under the Interpretations and Policies of Article 11, Rule 3. Currently, paragraph .03 states that the rule shall not apply to orders sent or received through the matching system or through any other electronic system that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange. The Exchange states that it believes the current provision could be misconstrued to exclude such orders from the scope of Article 11, Rule 3, which is not the Exchange's intent.³⁹ Accordingly, the Exchange proposes to amend paragraph .03 to state that a participant that sends or receives orders, cancellations and executions through the matching system or through any other electronic system that the Exchange expressly recognizes as providing the required information in a format acceptable to the Exchange is not required to maintain separate records of such orders, cancellations and executions.⁴⁰

³⁶ See Notice, supra note 4, at 37481.

³⁷ See id.

³⁸ See id.

³⁹ See id. The Exchange also notes that the amendments would have no impact on a Participant's recordkeeping obligations under Article 11, Rule 2, which requires, among other things, that Participants comply with the recordkeeping requirements of SEC Rule 17a-3. See id. at 37481-82, n.33.

⁴⁰ See id.

E. Additional Proposed Rule Clarifications – Cross Orders

The Exchange has also proposed to adopt amendments to clarify its rules regarding the operation of cross orders and Cross With Size handling and to eliminate redundant language in those rules.⁴¹ Specifically, the Exchange proposes to amend the definition of “cross order” to state that a cross order may only execute within the Exchange’s matching system if it is priced better than the working price, as defined under Article 1, Rule 1(pp), of all resting orders on the CHX Book.⁴² The Exchange notes that the amended definition is intended to clarify that while the pricing requirement is a prerequisite for executing a cross order within the matching system, a cross order that does not meet the pricing requirement is still by definition a cross order for purposes of the Exchange’s rules.⁴³ The Exchange also proposes to amend Article 1, Rule 2(g)(1), which defines and sets forth special order handling requirements for Cross With Size orders, to state that a cross order that meets the Cross With Size definition will execute if there are no resting orders on the CHX Book with a working price better than the cross order.⁴⁴ In addition, the Exchange has proposed to amend Article 20, Rule 8(e)(1), which specifies how certain order types will be executed in the matching system, to remove references to Cross With Size and to state that cross orders are to be handled pursuant to Article 1, Rule 2(a)(2) and Rule

⁴¹ See Notice, supra note 4, at 37480-81.

⁴² See proposed Article 1, Rule 2(a)(2).

⁴³ See Notice, supra note 4, at 37480-81.

⁴⁴ See proposed Article 1, Rule 2(g)(1). The Exchange also proposes to remove from this rule, as well Article 1, Rule 2(a)(2), language that states that cross and Cross With Size orders will execute so long as it would not constitute a trade-through under Regulation NMS (including all applicable exceptions and exemptions). See id.; see also proposed Article 1, Rule 2(a)(2). The Exchange notes that it is proposing to remove this language because it is redundant. See Notice, supra note 4, at 37481.

2(g)(1).⁴⁵ The Exchange states it is proposing to remove references to Cross With Size from Article 20, Rule 8(e)(1) because Cross With Size is a special handling for cross orders, and not itself an order type or order modifier.⁴⁶

F. Operative Date

The Exchange has proposed to provide notice to its participants of the operative date of the proposed change in the event that the proposed rule change is approved by the Commission.⁴⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act⁴⁸ and the rules and regulations thereunder applicable to the Exchange.⁴⁹ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁵⁰ which requires that an exchange be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange; and Section 6(b)(5) of the Act,⁵¹ which requires, among other things, that the rules of an exchange be 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

⁴⁵ See proposed Article 20, Rule 8(e)(1).

⁴⁶ See Notice, supra note 4, at 37481.

⁴⁷ See Notice, supra note 4, at 37482.

⁴⁸ 15 U.S.C. 78f(b).

⁴⁹ In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵⁰ 15 U.S.C. 78f(b)(1).

⁵¹ 15 U.S.C. 78f(b)(5).

national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the Exchange's proposal to permit only registered IBs to submit QCT crosses to the Exchange is consistent with the Act. The Exchange has noted that, currently, while other types of Exchange participants are permitted to submit QCT crosses, only IBs do so in practice.⁵² As such, the Commission believes that this aspect of the proposal is designed to codify existing practice with respect to QCT crosses and not designed to alter the status quo with respect to the type of Exchange participant that submits them to the Exchange. In addition, the Exchange has represented that any Exchange participant that has satisfied the applicable requirements may register as an IB.⁵³ Further, the Exchange has noted that IBs have experience in ensuring that QCT crosses are submitted to the Exchange matching system in a manner consistent with Exchange rules and the QCT Exemption, the Exchange's surveillance and examination program is optimized with respect to the submission of QCT crosses by IBs in particular, and the Exchange believes that the most effective way for it to surveil QCT cross activity for compliance with Exchange rules and the QCT Exemption is to limit the submission of QCTs to IBs.⁵⁴ Accordingly, the Commission believes that the Exchange's proposal to amend Article 1, Rule 2(b)(2)(E) to reflect current practice on the Exchange and permit only IBs to submit QCT crosses is consistent with Section 6(b)(5) of the Act in that it is reasonably designed to help prevent fraudulent and manipulative acts and practices, and to protect investors and the

⁵² See Notice, supra note 4, at 37481, 37483.

⁵³ See id. at 37483.

⁵⁴ See id.

public interest, and is not designed to permit unfair discrimination. The Commission also notes in this regard that it received no comments on the proposal.

In addition, the Commission believes that the Exchange's proposed rule amendments to require IBs to maintain records of, and record with the Exchange, appropriate information regarding QCT cross transactions, and in particular the away component orders and trades of such transactions, are consistent with the Act. As the Exchange noted, currently, its recordkeeping rules do not require the recording of information regarding the away component orders and trades related to QCT crosses submitted to the Exchange, and IBs instead are encouraged, but not required, to enter such information into the BBOS.⁵⁵ In addition, the BBOS currently is not described in the Exchange's rules. The Commission believes that the Exchange's proposal to require reporting of relevant information regarding away component orders and trades related to QCT crosses and subject that information to the Exchange's recordkeeping requirements in Article 11, Rule 3 and Article 17, Rule 3, as well as the Exchange's proposal to codify the BBOS in Article 17, Rule 7, will strengthen the Exchange's recordkeeping requirements with respect to QCT crosses and should enhance the Exchange's ability to monitor for compliance with relevant Exchange rules and the QCT Exemption.⁵⁶ Moreover, the Commission does not believe that these additional recordkeeping obligations would be unduly burdensome to IBs, and in this regard again notes that it received no comments on the proposal. Accordingly, the Commission believes that the Exchange's proposed amendments to Article 11, Rule 3 and Article 17, Rules 3 and 7 to require additional recordkeeping regarding QCT crosses is designed to support CHX's regulatory oversight of QCT

⁵⁵ See id. at 37482.

⁵⁶ See Notice, supra note 4, at 37483.

crosses and thereby should help protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

Lastly, the Commission believes that the Exchange's additional proposed amendments to clarify its rules regarding IB recordkeeping accounts (Article 17, Rule 3(c)), the recordkeeping requirements for certain Exchange participants (Article 11, Rule 3), and the operation of the cross order type and Cross With Size handling (Article 1, Rule 2(a)(2), Article 1, Rule 2(g)(1) and Article 20, Rule 8(e)) add transparency and remove any potential ambiguity in those rules and reduce the potential for confusion as to their meaning and intended application, which should help protect investors consistent with Section 6(b)(5) of the Act. In addition, the Commission believes that these proposed changes are reasonably designed to clarify the scope and meaning of those rules, which should help the Exchange assure compliance by Exchange participants with the Exchange's rules, consistent with Section 6(b)(1) of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act⁵⁷ that the proposed rule change (SR-CHX-2017-12), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁸

Eduardo A. Aleman
Assistant Secretary

⁵⁷ 15 U.S.C. 78s(b)(2).

⁵⁸ 17 CFR 200.30-3(a)(12).