

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50619; File No. SR-CHX-2003-07)

November 2, 2004

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto Relating to Out-of-Range Execution Rules

On March 20, 2003, the Chicago Stock Exchange, Incorporated (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to amend CHX Article XX, Rule 37, which governs, among other things, “out-of-range” executions.³ The Exchange amended the proposal on March 10, 2004,⁴ and September 15, 2004.⁵ The proposed rule change, as amended, was published for comment in the Federal Register on September 29, 2004.⁶ The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ An “out-of-range” execution is an execution that would create a new high or new low for the day when compared to the primary market range.

⁴ See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated March 10, 2004 (“Amendment No. 1”). Amendment No. 1 clarified the purpose and effects of the proposal.

⁵ See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 (“Amendment No. 2”). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

⁶ See Securities Exchange Act Release No. 50417 (September 21, 2004), 69 FR 58208.

securities exchange.⁷ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act⁸ because it is designed 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.

CHX Article XX, Rule 37, governs the Exchange's Midwest Automated Execution ("MAX") system and its SuperMAX 2000 system. Currently, Rule 37 contains provisions stating that neither system shall automatically execute an order if the execution would set a new high or new low for the day compared to the primary market price. If an out-of-range execution would result, the order is deemed to have been submitted with a request for a stop and will be sent to a CHX specialist for manual handling. This proposal would eliminate these provisions, thereby allowing MAX and SuperMAX 2000 to effect automatic executions that may establish new highs or new lows for the day. CHX believes that these provisions are no longer necessary because, with the advent of decimal pricing and the increase in trading volume at regional exchanges such as CHX, an out-of-range execution is more readily seen by customers as reflecting the current market for the security.

The out-of-range provisions in Rule 37 were designed to assist specialists in providing customers primary market price protection and to provide those customers an opportunity for price improvement by offering a stop. Although the Commission found these provisions to be consistent with the Act,⁹ it does not believe that the Act compels CHX to offer this particular form of investor protection. Therefore, the Commission believes that it is consistent with the Act

⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 36401 (October 20, 1995), 60 FR 54893 (October 26, 1995).

for CHX to delete these provisions, thereby allowing its automatic execution systems to establish new highs and new lows for a security.

Although deleting the provisions that treat orders that would result in out-of-range executions as if they had a request for a stop, certain of CHX's other rules contain references to the practice of stopping stock.¹⁰ CHX has represented that it is appropriate to clarify whether the practice of stopping stock should be permitted on the Exchange. If the Exchange's management, member committees, and Board of Governors determine that the practice of stopping stock on the Exchange should be prohibited, the Exchange would propose a separate rule change to the Commission. On the other hand, if the Exchange determines that it remains appropriate for CHX specialists to stop stock in certain limited circumstances, CHX has represented that it would propose a rule change to the Commission defining the circumstances under which stock may be stopped on the Exchange and specifying appropriate conduct by CHX specialists.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-CHX-2003-07), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹⁰ See CHX Article XX, Rules 28 and 37(b)(2).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).