

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50952; File No. SR-CHX-2004-42)

December 30, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Short Sales of Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 21, 2004, the Chicago Stock Exchange, Incorporated (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission” or the “SEC”) the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. 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

The CHX proposes to amend its rules to eliminate and modify provisions relating to short sales of securities, where those provisions are inconsistent with, or different from, the requirements of Regulation SHO.³ The text of the proposed rule change is available for viewing at the places specified in Item IV below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Release No. 34-50103, File No. S7-23-03, 69 FR 48008 (August 6, 2004) (the “Adopting Release”), and accompanying orders: Release No. 34-50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) and Release No. 34-50747 (November 29, 2004), 69 FR 70480 (December 6, 2004).

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 regarding the proposal. 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 Commission has adopted new Regulation SHO, which provides new comprehensive regulation of short sales.⁴ Among other things, this new series of rules provides new definitions, sets out uniform locate and delivery requirements for broker-dealers and establishes a procedure to allow the Commission to suspend temporarily the operation of the current "tick" test or short sale price test for specified securities.⁵

Because of the new comprehensive regulation provided by Regulation SHO, the Exchange believes that it is important to delete, from its rules, provisions that regulate the short selling of securities.⁶ Specifically, the Exchange seeks to delete, from its rules: (1) Sections (b) and (c) of Article IX, Rule 17 (relating to locate and delivery requirements

⁴ See the Adopting Release.

⁵ See Rule 200 (definitions); Rule 203 (uniform locate and delivery requirements) and Rule 202T (allowing the suspension of short sale rules in specified securities) set forth in the Adopting Release.

⁶ The Exchange has not sought to amend the substantive requirements of a provision relating to short sales of odd-lots, except to add an interpretation confirming that the rule does not apply when the SEC has suspended the application of the rule as permitted by Regulation SHO. In the coming months, the Exchange plans to study the scope of this rule and to determine what changes, if any, should be made to its requirements.

and the “bona fide” market making exemption from the short sale rule); and (2) Rules 11 and 12 of Article XXI (relating to long sales and mandatory stock borrowing). By deleting these rules, the Exchange seeks to ensure that its regulation of short sales is not inconsistent with, or different from, the provisions of Regulation SHO. Indeed, these rule changes would leave one primary provision relating to short sales in the Exchange’s own rules – a provision that requires members to effect short sales in accordance with the SEC’s short sale rules.⁷

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁸ In particular, the proposed changes are consistent with Section 6(b)(5) of the Act, because they would 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 by providing for a uniform set of rules to regulate the short selling of securities.

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

The Exchange does not believe that the proposed rule changes will impose any inappropriate burden on competition with respect to the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments Regarding the Proposed Rule Changes Received from Members, Participants or Others

⁷ The Exchange seeks to amend the current rule text of this provision to specifically refer to Regulation SHO. See Article IX, Rule 17(a).

⁸ 15 U.S.C. 78(f)(b).

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing proposed rule change has been filed with the CHX pursuant to Section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ The CHX requests that the Commission waive both the 5-day notice and the 30-day pre-operative requirements contained in Rule 19b-4(f)(6)(iii).¹¹ The CHX has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date it was filed, or such shorter time as the Commission may designate. The CHX believes good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors. The CHX will implement the foregoing proposed rule change immediately.

The Commission believes that waiving the 5-day notice and the 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ Under subparagraph (f)(6)(iii) of Rule 19b-4, the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. See 17 CFR 240.19b-4(f)(6)(iii).

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

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-2004-42 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File No. SR-CHX-2004-42. 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 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 inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also 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-2004-42 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Jill M. Peterson
Assistant Secretary

Action as set forth or recommended herein
APPROVED pursuant to authority delegated
by the Commission under Public Law 87-592

For: Division of Market Regulation

By: _____
Larry E. Bergmann
Senior Associate Director

(date)

¹² 17 CFR 200.30-3(a)(12).