

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52094; File No. SR-CHX-2004-11)

July 21, 2005

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 to the Proposed Rule Change to Implement a Fully-Automated Electronic Book for the Display and Execution of Orders in Securities That Are Not Assigned to a Specialist

I. Introduction

On February 20, 2004, 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 implement a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a specialist. On June 18, 2004, the Exchange amended the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on July 19, 2004.⁴ The Commission received no comments on the proposed rule change, as amended. On May 20, 2005, the Exchange filed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (“Division”), Commission, dated June 17, 2004, and the attached Form 19b-4, which replaced the original filing in its entirety (“Amendment No. 1”).

⁴ See Securities Exchange Act Release No. 50002 (July 12, 2004), 69 FR 43036 (“Notice”).

Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended and approves Amendment No. 2 on an accelerated basis. In addition, the Commission solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange proposes to implement a fully-automated electronic book for the display and execution of orders in securities that are not assigned to a CHX specialist. Under the Exchange's current rules, securities that are not assigned to a CHX specialist are traded in two ways: (a) securities can be placed in the cabinet⁶ or (b) securities can be removed from the cabinet and assigned to a lead market maker for trading.⁷ According to the Exchange, the procedures associated with the trading of these securities are quite manual. For example, the Exchange maintains a physical location, known as the cabinet, at which written information is manually maintained regarding existing bids, offers, and orders for each cabinet security. Orders for these cabinet securities are filled manually, and each transaction is recorded on a written trade ticket before being entered into the Exchange's systems for public dissemination. Securities that are assigned to lead market makers also are subject to manual procedures similar to those used for cabinet securities, except that these orders are also entered into the Exchange's systems so that they can be automatically quoted.

⁵ See Form 19b-4 dated May 20, 2005, which replaced the original filing in its entirety ("Amendment No. 2"). Amendment No. 2 clarifies the operation of the electronic book in particular circumstances; clarifies the obligations of a market maker in the electronic book; incorporates new provisions relating to orders for non-regular way settlement and to a floor member's responsibility to clear the electronic book before sending orders to other markets; and updates the filing to reflect the Exchange's recent demutualization. The amended rule text proposed in Amendment No. 2 is available on the Exchange's Web site (<http://www.chx.com>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

⁶ See CHX Article XX, Rule 11.

The proposed rule change, as amended, would replace these manual procedures with a new fully-automated electronic book that would display and match eligible limit orders in these securities, without the participation of a specialist or lead market maker. Specifically, as described below, this new electronic book would allow the Exchange’s participants, whether or not they are on the Exchange’s floor, to enter orders into an automated matching system operated by the Exchange for possible execution.

Eligible securities and eligible orders. Under the proposed rules, all securities eligible for trading on the Exchange that are not assigned to a specialist would be traded in the electronic book.

Orders sent to the electronic book would be required to be specifically designated for handling in the electronic book.⁸ The electronic book would accept only round-lot limit orders that are good for the day on which they are submitted.⁹ No odd-lot orders or good-till-cancelled orders would be accepted.

Orders could be designated as “immediate or cancel” or “fill or kill” orders to ensure that they are immediately filled or cancelled.¹⁰ Orders could also be designated as “cross” or “cross with size” to permit the handling of orders to buy and sell the same security.¹¹ Orders

⁷ See CHX Article XXXIV, Rule 3, Interpretation and Policy .02.

⁸ See Proposed CHX Article XXA, Rule 2.

⁹ Id.

¹⁰ An immediate or cancel order would be executed, in whole or in part, as soon as it is received by the electronic book. If execution is not possible, or if only a partial execution is possible, any unexecuted balance of the order would be immediately cancelled. A fill or kill order would be executed in full as soon as it is received. If execution is not possible, the entire order would be immediately cancelled. See Proposed CHX Article XXA, Rule 2(c)(1) and (2).

¹¹ A “cross” order would be an order to buy and sell the same security at a specific price that is better than the best bid and offer (“BBO”) displayed in the electronic book and,

could not be designated with any other conditions and, except for certain cross orders, would be required to be for regular way settlement.¹²

In addition, otherwise eligible orders would be cancelled in certain circumstances, to ensure compliance with applicable intermarket trading rules. For example, if an order in a listed security improperly crosses or locks another Intermarket Trading System (“ITS”) market, the order would not be displayed, but would be immediately cancelled to ensure compliance with the ITS Plan’s rules relating to locked markets.¹³ Similarly, inbound orders in Nasdaq/NM securities that lock or cross the NBBO would be automatically cancelled.¹⁴

Operating hours. Under the proposed rules, the electronic book would operate during the Exchange’s Primary Trading Session and its Post-Primary Trading Session.¹⁵ Specifically,

for listed securities, equal to or better than the National Best Bid or Offer (“NBBO”). A “cross with size” order would be an order to buy and sell at least 25,000 shares of the same security: (a) at a price equal to or better than the BBO displayed in the electronic book and, for listed securities, equal to or better than the NBBO; (b) where the size of the order is larger than the aggregate size of all interest displayed in the electronic book at that price; and (c) where neither side of the order is for the account of the CHX participant sending the order to the electronic book. The Exchange represented that these definitions are substantially similar to the descriptions of the types of cross transactions that can occur today on the Exchange’s floor without interference from the trading crowd. See CHX Article XX, Rule 23.

¹² See Proposed CHX Article XXA, Rules 2(b) and 2(c)(5). Under the proposed rules, orders could be designated as “non-regular way cross” and “non-regular way cross with size.” These cross and cross with size orders would be for non-regular way settlement and would be executed without regard to either the NBBO or orders for regular way settlement that could be in the electronic book. The Exchange represented that the procedures for cross transactions with non-regular way settlement are the same as the Exchange’s current procedures on the floor.

¹³ See Proposed CHX Article XXA, Rule 2(e).

¹⁴ The Exchange represented that this handling of Nasdaq/NM securities is not required by any intermarket plan, but is consistent with the rules governing the Exchange’s participation in The Nasdaq Stock Market, Inc.’s (“Nasdaq’s”) SuperMontage system.

¹⁵ The Exchange’s Primary Trading Session is open, for a particular security, during the same times that such security is traded on its primary market (e.g., 8:30 to 3:00 p.m.

the electronic book would accept orders on each day for a particular security once the primary market in that security opens.¹⁶ The electronic book would close at 3:30 p.m. (Central Time) and all unexecuted orders would be automatically cancelled.

Routing of orders. Orders could be sent to the electronic book through the Exchange's MAX system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange participants.¹⁷ The Exchange anticipates that all CHX participants – whether they are located on the Exchange's trading floor or off the floor – would be able to receive access to the electronic book. The electronic book would also accept and automatically execute commitments sent by market centers that participate in the ITS. National Association of Securities Dealers, Inc. ("NASD") market participants would have direct telephone access to the supervisory center for the electronic book to enter orders in the Nasdaq/NM securities in which they are registered, as required by the OTC/UTP Plan.¹⁸

Ranking and display of orders. Except for cross and cross-with-size orders, all orders received by the electronic book would be ranked according to their price and time of receipt and would be displayed to the public when they constitute the BBO in the electronic book for a

Central Time, for most securities). The Exchange's Post-Primary Trading Session operates until 3:30 p.m. Central Time. See CHX Article IX, Rule 10(b).

¹⁶ The proposed rules define the primary market as the listing market for a security, unless otherwise designated by the Exchange's Committee on Exchange Procedure; provided, however, that if a security is traded by the New York Stock Exchange, Inc. ("NYSE"), then the primary market for such security would be the NYSE, and if a security is traded by the American Stock Exchange LLC ("Amex"), then the primary market for such security would be the Amex. If a security is traded on both the NYSE and the Amex, whichever of the two is the listing market would be considered the primary market. If a security is listed on both the NYSE and Nasdaq, the NYSE would be considered the primary market. See Proposed CHX Article XXA, Rule 3(b).

¹⁷ See Proposed Article XXA, Rule 4(a)(1).

¹⁸ See CHX Article XX, Rule 43.

security.¹⁹ In the Notice, the Exchange stated that it initially plans to disseminate these best bids and offers through the systems used for that purpose today – through the CTA/CQ Plan for listed securities, and through the OTC/UTP Plan for Nasdaq/NM securities.²⁰

Automated matching of orders. In the electronic book, orders would automatically match against each other, in price/time priority.²¹ Specifically, an incoming order would be matched against one or more orders in the electronic book, in the order of their ranking, at the price of each order, for the full amount of shares available at that price, or for the size of the incoming order, if smaller. If an incoming order could not be matched when it is received and it is not designated as an order that should be immediately cancelled, the order would be placed in the electronic book.

Inbound ITS commitments, if priced at or better than the current BBO in the electronic book, would be automatically matched against the order(s) reflected in the electronic book's BBO, for the full amount of shares at that price, and any remaining portion of the ITS commitment would be automatically cancelled.²² To ensure that the electronic book does not

¹⁹ See Proposed CHX Article XXA, Rule 4(b).

²⁰ See Notice, *supra* note 4.

²¹ The only exceptions to this price/time priority matching would occur when certain “cross” and “cross with size” orders are executed. First, eligible “cross with size” transactions could execute at the price of orders in the electronic book, without executing those earlier-received orders. See Proposed CHX Article XXA, Rules 2(c)(4) and 4(d). Because this type of crossing transaction is permitted on the floor of the Exchange today, the Exchange believes it is appropriate to include this transaction type in the fully-automated electronic book. Similarly, when non-regular way cross and cross with size orders are placed in the electronic book, they would execute without regard to either the NBBO or orders for regular way settlement that could be in the electronic book. See Proposed CHX Article XXA, Rules 2(c)(5) and 4(d).

²² See Proposed CHX Article XXA, Rule 4(c)(3).

trade through another market in violation of the ITS Plan's trade-through provisions, orders in listed securities would only be matched at prices that are equal to, or better than, the NBBO.²³

Cross or cross with size orders would be automatically executed if they meet the requirements for those types of orders. If they do not meet applicable requirements, they would be immediately cancelled.²⁴

Finally, unless a customer specifically requests otherwise, all orders in securities that are traded in the electronic book that are received on the floor of the Exchange would have to clear the electronic book before the orders could be routed to another market. Any customer directives for special handling of orders would have to be documented and reported to the Exchange.²⁵

No distinction between agency and professional orders. Under the proposed rules, agency orders (entered on behalf of a customer) and professional or proprietary orders (entered for the account of a CHX participant or other broker-dealer) would be handled in an identical way in the electronic book's matching algorithms.

Cancellations of transactions and handling of clearly erroneous transactions. Under the proposed rules, participants that make a transaction in demonstrable error could agree to cancel and unwind the transaction, subject to the approval of the Exchange.²⁶ For purposes

²³ See Proposed CHX Article XXA, Rule 4(c)(4).

²⁴ See Proposed CHX Article XXA, Rule 4(d).

²⁵ See Proposed CHX Article XXA, Rule 8. The Exchange stated that it believes that this requirement for clearing the electronic book is consistent with the Exchange's current requirement that floor brokers or market makers clear the specialist's post in securities before sending orders to other markets. See CHX Article XX, Rule 10, Interpretation and Policy .02.

²⁶ See Proposed CHX Article XXA, Rule 5.

of the electronic book, the Exchange also proposes to adopt a policy for the handling of clearly erroneous transactions.²⁷ This policy would allow the Exchange to: (a) review, and potentially modify or cancel, executions where one party believes that the terms of the transaction were clearly erroneous when submitted, and (b) modify or cancel executions that result from a disruption or malfunction in the use or operation of the electronic book, or any communications system associated with the electronic book. The proposed rules set out procedures for each of these reviews, including specific means for participants to appeal the Exchange's decisions.

Registration of market makers. Under the proposal, Exchange participants could seek registration as market makers in one or more of the securities traded in the electronic book. A market maker would be required to maintain a continuous two-sided market in each security in which he or she is registered, and to engage, to a reasonable degree under existing circumstances, in a course of dealing in the securities in which he or she is registered that is reasonably calculated to contribute to the maintenance of a fair and orderly market.²⁸ In exchange, these market makers would be entitled to utilize exempt credit for financing their market maker transactions. The proposed rules set out a process for market makers to apply for this registration and for the suspension or termination of their registrations, where appropriate.²⁹

Additional changes to rules. Because this proposal is designed to replace the Exchange's existing cabinet security and lead market maker systems, the proposed rule change, as amended, also contains changes to various rules associated with those trading systems.³⁰

²⁷ See Proposed CHX Article XXA, Rule 7.

²⁸ See Proposed CHX Article XXA, Rule 6(b).

²⁹ See Proposed CHX Article XXA, Rule 6(a) and (d).

³⁰ See proposed changes to CHX Article XII, Rule 9 (deleting the cabinet securities rule from the Minor Rule Violation Plan ("MRVP")); CHX Article XX, Rule 11 (deleting the cabinet securities rule); CHX Article XXVIII, Rule 6 (deleting the rule permitting

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.³¹ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act³² in that 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.

The proposal would replace the Exchange's current manual procedures used to trade securities that are not assigned to a specialist with a fully-automated electronic book that would display and match eligible limit orders in these securities, without the participation of a specialist or lead market maker. The Commission believes that this new automatic execution system should provide investors with a more efficient mechanism by which to immediately access and trade such securities. Moreover, the Commission finds that the automated display of orders and transactions will help to perfect the mechanism of a free and open market by automatically handling orders in a fair and reasonable manner and by increasing the transparency of orders and transactions in these securities on the Exchange.³³

the Board of Governors to place securities in the cabinet); CHX Article XXXIV, Rule 3 (deleting the interpretation that creates the lead market maker program); and Participant Fees and Credits (deleting the lead market maker credits and the recommended MRVP fines for violations of the cabinet system rule).

³¹ 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).

³² 15 U.S.C. 78f(b)(5).

³³ The Commission notes that, while it believes that the proposed rule change, as amended, is consistent with the requirements of the Act, the Commission is not making a determination that the Exchange's automatic execution capabilities would satisfy the

As noted by the Exchange, all eligible orders in the electronic book would be round-lot limit orders, good for the day on which they are submitted and would be automatically cancelled at the end of each day's trading session. Except for certain cross orders, the Exchange proposes that all of the orders would be for regular way settlement and automatically matched against each other in price and time priority in the electronic book. Cross and cross with size orders for non-regular way settlement would also be permitted. These orders would execute automatically without regard to either the NBBO or orders for regular way settlement. The Exchange represented that this is consistent with how these types of crossing transactions are handled on the Exchange's floor today. Accordingly, the Commission believes that it is appropriate to include this transaction type in the electronic book as well.

In addition, the proposed rule change would permit CHX participants to seek registration as market makers in one or more of the securities traded in the electronic book. Under the proposal, a market maker would be required to maintain a continuous two-sided market in each security in which he or she is registered, and to engage, to a reasonable degree under existing circumstances, in a course of dealing in the securities in which he or she is registered that is reasonably calculated to contribute to the maintenance of a fair and orderly market. Proposed CHX Article XXA, Rule 6(c) also states that market makers would be considered dealers on the Exchange for purposes of the Act and the rules and regulations thereunder. Because market makers receive certain benefits for carrying out their duties, the Commission believes that they should have an affirmative obligation to hold themselves out as willing to buy and sell securities for their own account on a regular or continuous basis to

“automated trading center” definition in Rule 600(b)(4) of Regulation NMS. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29,

justify this favorable treatment. In this regard, proposed CHX Article XXA, Rule 6(b) would impose such affirmative obligations on market makers for securities traded in the electronic book.

Furthermore, the Commission believes that the proposed rules provide a reasonable method by which all CHX participants could have access to the electronic book and route orders. Orders would be sent to the electronic book through the Exchange's MAX system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange participants; ITS commitments would be sent to the electronic book through the ITS system; and NASD market participants would have direct telephone access to the supervisory center for the electronic book to enter orders in Nasdaq/NM securities. Furthermore, except for cross and cross-with-size orders, all orders received by the electronic book would be ranked according to their price and time of receipt, and would be displayed to the public when they constitute the BBO in the electronic book for a security through the CTA/CQ Plan for listed securities, and through the OTC/UTP Plan for Nasdaq/NM securities. The Commission believes that these proposed rules provide a reasonable process by which market participants would access and participate in the electronic book and will increase the efficiency of the Exchange's routing and display of eligible orders in the electronic book.

Furthermore, the Commission believes that the Exchange's proposal to automatically cancel and not accept any order in listed securities whose execution would cause the improper trade-through of another ITS market or that improperly locks or crosses another ITS market, any inbound order in Nasdaq/NM securities that improperly locks or crosses the NBBO, or any

2005). The Commission also notes that the Exchange may need to amend its trading rules prior to the applicable effective dates of Regulation NMS.

orders during a trading halt of the particular security, will protect investors and promote the fair and orderly operation of the markets.

In addition, the Commission believes it is appropriate for the Exchange to codify in its rules the method in which erroneous transactions in the electronic book could be handled. The Exchange's proposal would allow participants making a demonstrable error to agree to cancel and unwind the transaction, subject to the Exchange's approval. The Exchange also sets forth formal procedures in proposed CHX Article XXA, Rule 7 regarding the Exchange's review of clearly erroneous transactions, and the specific means for market participants to appeal decisions made by Exchange officials. The Commission believes that the proposed rules are consistent with the Act and provide for a fair, transparent, and reasonable process in which CHX participants can correct erroneous transactions in the electronic book.

Application of "Effect v. Execute" Exemption from Section 11(a) of the Act

Section 11(a) of the Act³⁴ prohibits a member³⁵ of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, "covered accounts") unless an exception applies. In addition, Rule 11a2-2(T)³⁶ under the Act, known as the "effect versus execute" rule, provides exchange members with an exemption from the Section 11(a) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member

³⁴ 15 U.S.C. 78k(a).

³⁵ In connection with the Exchange's demutualization, the Exchange modified its rules to call its members "participants" of the Exchange. See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005). The Exchange's participants are considered members of the Exchange for purposes of the Act. See CHX Article I, Rule 1(l).

to execute the transactions on the exchange. To comply with Rule 11a2-2(T)'s conditions, a member (a) must transmit the order from off the exchange floor; (b) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (c) may not be affiliated with the executing member; and (d) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in the connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission,³⁷ the Exchange represented that transactions effected in the electronic book meet the requirements of Rule 11a2-2(T). Based on these representations, the Commission finds that the electronic book satisfies the four conditions of Rule 11a2-2(T).

Specifically, orders would be sent to the electronic book through the Exchange's MAX® system or through any other communications lines approved by the Exchange for the delivery of orders by Exchange members. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.³⁸ The Exchange, however, in its letter stated that it proposes that its floor members be

³⁶ 17 CFR 240.11a2-2(T).

³⁷ See Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division, Commission, dated May 10, 2005.

³⁸ See, e.g., Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (regarding New York Stock Exchange's ("NYSE") Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the Pacific Exchange's ("PCX") Communications and Execution System, and the Philadelphia Stock Exchange's ("Phlx") Automated Communications and Execution

able to use automated means while on the physical floor to transmit orders for their own account into the electronic book. The Commission has stated that the off-floor transmission requirement may be met when an order is sent from one trading floor of an exchange to another, separate trading floor of the same exchange.³⁹ On the basis of the Exchange's representations, the Commission believes that orders sent, by electronic means, from the Exchange's trading floor may be considered to be sent from "off-floor" for purposes of the CHX electronic book. Specifically, the Commission believes that because the securities traded on the electronic book are not traded on the CHX's physical floor, the electronic book is essentially a different, separate "trading floor." The Commission notes that CHX floor members will not have a time / place advantage with regard to the securities traded in the electronic book. Specifically, orders transmitted from the Exchange's trading floor will not be processed any more quickly by the electronic book than those orders received from off the physical floor. In addition, floor members will see information about orders that are at the top of the electronic book at the same

System ("1979 Release")); and 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978) (regarding the NYSE's Designated Order Turnaround System). See also Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Angelo Evangelou, Senior Attorney, Chicago Board Options Exchange ("CBOE"), dated March 31, 2003 (regarding CBOE's CBOEdirect system ("CBOEdirect Letter")); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Jeffrey P. Burns, Assistant General Counsel, Amex, dated July 9, 2002 (regarding Amex's Auto-Ex system for options); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Richard S. Rudolph, Counsel, Phlx, dated April 15, 2002 (regarding Phlx's AUTOM System and its automatic execution feature AUTO-X); Letter from Paula R. Jenson, Deputy Chief Counsel, Division, Commission, to Kathryn L. Beck, Senior Vice President, Special Counsel and Antitrust Compliance Officer, PCX, dated October 25, 2001 (regarding Archipelago Exchange ("ArcaEx") ("ArcaEx Letter")); Letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Foley & Lardner, dated November 30, 1994 (regarding Chicago Match ("Chicago Match Letter")).

³⁹ See Letter from Richard A. Steinwurtzel, Attorney, Office of Chief Counsel, Division, Commission, to Philip J. Lo Bue, Senior Vice President, PCX, dated December 22, 1978.

time as the public. Specifically, floor brokers will receive this information from the securities information processor that disseminates it to the public. Thus, based on these facts, the Commission believes the off-floor transmission requirement is satisfied in this case.

Second, the rule requires that the member not participate in the execution of its order. Exchange represented that its members relinquish control of orders after they are submitted to the electronic book and noted that the members do not receive special or unique trading advantages.⁴⁰ Third, although Rule 11a2-2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission recognizes that the requirement is satisfied when automated exchange facilities are used.⁴¹ Finally, the Exchange represents that members that rely on Rule 11a2-2(T) for a managed account transaction must comply with the limitations on compensation set forth in the rule.

Accelerated Approval of Amendment No. 2

The Commission finds good cause to approve Amendment No. 2 to the proposed rule change, as amended, prior to the thirtieth day after the amendment is published for comment in

⁴⁰ See Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (Order approving ArcaEx as the equities trading facility of PCX Equities Inc.); 1979 Release, supra note 38, at 6086 note 25. See also CBOEdirect Letter, supra note 38; Letter from Larry E. Bergmann, Senior Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Phlx, dated March 24, 1999 (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division, Commission, to David E. Rosedahl, PCX, dated November 30, 1998 (regarding Optimark); and Chicago Match Letter, supra note 38.

⁴¹ In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2-2(T). See 1979 Release, supra note 38, at 6086 note 25.

the Federal Register pursuant to Section 19(b)(2) of the Act.⁴² Amendment No. 2 clarifies how orders in the electronic book would be handled during a trading halt, that orders that improperly lock or cross other markets or that would trade through another ITS market would be cancelled, and the obligations of a market maker in the electronic book.⁴³ Amendment No. 2 also clarifies the definitions of cross and cross with size orders,⁴⁴ incorporates new provisions relating to orders for non-regular way settlement and to a floor member's responsibility to clear the electronic book before sending orders to other markets,⁴⁵ and updates the proposed rule change to reflect the Exchange's recent demutualization.

The Commission believes that the proposed changes in Amendment No. 2 provide a clearer understanding of the operation of the electronic book and raise no new issues of regulatory concern. In addition, the Commission notes that the requirement for clearing the electronic book is consistent with the Exchange's current requirement that floor brokers or market makers clear the specialist's post in securities before sending orders to other markets.⁴⁶ For these reasons, the Commission believes that good cause exists to accelerate approval of Amendment No. 2.

⁴² 15 U.S.C. 78s(b)(2).

⁴³ See changes to rule text proposed in CHX Article XXA, Rules 2(e), 2(f), 3(d), 4(c)(3), and 6(b).

⁴⁴ See changes to rule text proposed in CHX Article XXA, Rules 2(c)(3) and (4).

⁴⁵ See Proposed CHX Article XXA, Rules 2(c)(5) and 8.

⁴⁶ See CHX Article XX, Rule 10, Interpretation and Policy .02.

IV. 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2004-11 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-CHX-2004-11. 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 Section, 100 F Street, NE, Washington, DC 20549. Copies of such 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 Number SR-CHX-2004-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.⁴⁷

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁸ that the proposed rule change (SR-CHX-2004-11) and Amendment No. 1 thereto are approved, and that Amendment No. 2 thereto is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁹

Margaret H. McFarland
Deputy Secretary

⁴⁷ 15 U.S.C. 78f(b)(5).

⁴⁸ 15 U.S.C. 78s(b)(2).

⁴⁹ 17 CFR 200.30-3(a)(12).