

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve the proposed rule change or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2007-24 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2007-24. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2007-24 and should be submitted on or before February 8, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-57140; File No. SR-CHX-2007-23]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change To Allow the Exchange To Open at 8:30 a.m. (Chicago Time) Without Regard to the Opening on the Primary Market**

January 14, 2008.

#### **I. Introduction**

On October 2, 2007, 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"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow the Exchange to open at 8:30 a.m. (Chicago time) without regard to the opening on the primary market. To accommodate its implementation schedule for this proposal, the Exchange extended the time for Commission

action to January 14, 2008. The **Federal Register** published the proposed rule change for comment on November 1, 2007.<sup>3</sup> The Commission received no comments on the proposal.

#### **II. Description**

Under existing rules, the Exchange generally opens for trading in a security once the primary market has done so.<sup>4</sup> If the primary market announces that it will not open, or if the primary market has delayed its opening for reasons other than a regulatory halt, the rules permit two senior CHX officials to open the market.<sup>5</sup> The Exchange has proposed to amend its rules to permit trading to begin at 8:30 a.m. (Chicago time), except for trading in specified exchange-traded funds, which would begin at 7:20 a.m. (Chicago time).<sup>6</sup>

In conjunction with this change to the opening time of the Exchange's market, the Exchange also proposes two other changes to its rules. First, the Exchange would eliminate the opening cross order type. According to the Exchange, these cross orders, which are designed to execute at the primary market opening price, likely could no longer be effectively executed on the Exchange, once the proposed change is made to the time of the Exchange's opening.<sup>7</sup> In addition, the Exchange would add a new rule that prevents immediate or cancel ("IOC") market orders from being accepted until either (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders.<sup>8</sup> The

<sup>3</sup> Securities Exchange Act Release No. 56698 (October 24, 2007), 72 FR 61919.

<sup>4</sup> See CHX Rules, Article 20, Rule 1(b).

<sup>5</sup> See CHX Rules, Article 20, Interpretation and Policy .01.

<sup>6</sup> See Proposed CHX Rules, Article 20, Rule 1(b). The Exchange represents that Exchange-traded funds that begin trading at 7:20 a.m. would be announced, from time to time, by the Exchange in a customer service notification or other type of update. The only exchange-traded fund currently trading at 7:20 a.m. is the streetTRACKS® Gold Trust. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

<sup>7</sup> If the Exchange's systems allow its participants to begin trading before the primary market opens trading in a particular security, an opening cross order (which must execute at the primary market opening price) might violate the protected quotations of other markets. To avoid this potential result, the Exchange believes that it is appropriate to eliminate this order type.

<sup>8</sup> See Proposed CHX Rules, Article 1, Rule 2(n) and Article 20, Rule 4(b)(13). For purposes of this rule, another exchange would be considered to have opened for trading in a security when the first trade

Continued

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Exchange states that this change is designed to prevent market orders from being executed at prices that are far away from the primary market opening price, when that market ultimately opens.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Previously, the Exchange opened for trading in a security once the primary market had opened in that security. The Exchange now proposes to permit trading to begin at 8:30 a.m. Chicago time (9:30 a.m. Eastern time), without regard to whether the primary market opened in that security. The Commission believes that this proposed change is consistent with the Act and does not raise any new regulatory issues. Further, the proposal is consistent with the definition of "regular trading hours" under Rule 600(b)(64) of the Act.<sup>11</sup> In addition, the Exchange has proposed a related change to eliminate the opening cross order type, which executes at the primary market opening price. As the Exchange will no longer link its opening to the primary market, the Commission believes that eliminating the cross order type is consistent with the Act as it eliminates the potential for those order types to violate the protected quotations of other markets. Finally, the Exchange's proposal to prevent IOC market orders from being accepted until the primary market opens in that security or two

in that security occurs in that market on or after 8:30 a.m. The Exchange has stated that two senior officers of the Exchange might decide that it is appropriate to allow IOC market orders to be accepted if, for example, the primary market has announced that it will open later than expected, but other markets are open to provide additional liquidity. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

<sup>9</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 242.600(b)(64).

senior officers of the Exchange otherwise determine that it is appropriate to accept such orders is likewise consistent with the Act and the protection of investors and the public interest and should allow IOC market orders entered on CHX to be executed at prices that are closely related to the primary market opening price.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR-CHX-2007-23) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57133; File No. SR-FINRA-2007-038]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay Implementation of Certain Rule Changes Approved in SR-NASD-2005-146

January 11, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by FINRA. FINRA filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission.<sup>5</sup> The Commission is publishing this notice to

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> FINRA has requested that the Commission waive the 5 day pre-filing notice and 30-day operative delay required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii). *See* discussion *infra* Section III.

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

FINRA is proposing to delay the final implementation date of the rule changes approved in SR-NASD-2005-146,<sup>6</sup> which is currently scheduled for January 14, 2008, until 60 days after Commission approval of SR-NASD-2007-041.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other things, amended IM-2110-2<sup>7</sup> to expand the scope to apply to OTC equity securities and modify the minimum price-improvement standards for securities trading in decimals. The amendments relating to OTC equity securities and the minimum price-improvement provisions are scheduled to become effective on January 14, 2008.<sup>8</sup>

On June 27, 2007, FINRA filed a proposed rule change (SR-NASD-2007-041) to amend the minimum price-improvement standards in IM-2110-2 that were approved as part of SR-

<sup>6</sup> *See* Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146). *See also* NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

<sup>7</sup> Currently, IM-2110-2 generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.

<sup>8</sup> *See* Securities Exchange Act Release No. 56822 (November 20, 2007), 72 FR 67326 (November 28, 2007) (notice of filing and immediate effectiveness of SR-FINRA-2007-023).