

system, and, in general, to protect investors and the public interest. The proposed rule change would coordinate standards of review of clearly erroneous trades across markets, thereby eliminating conflicting rulings among exchanges and disparate treatment of similarly priced trades.

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

BX 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*

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>12</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>13</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may implement the new rule on October 5, 2009, the same date as the other equities exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same

date as the other equities exchanges.<sup>14</sup> Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.<sup>15</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 5, 2009.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 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-BX-2009-060 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-BX-2009-060. 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

<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

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 a.m. and 3 p.m. 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 publicly available. All submissions should refer to File Number SR-BX-2009-060 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-24244 Filed 10-7-09; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60775; File No. SR-CHX-2009-11]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposal Relating to Exchange Rule Regarding Clearly Erroneous Transactions**

October 2, 2009.

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 October 1, 2009, Chicago Stock Exchange, Inc. ("Exchange" or "CHX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. CHX has designated the proposed rule change as constituting a rule change under Rule 19b-4(f)(6) under the Act,<sup>3</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>16</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> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its rules regarding clearly erroneous transactions. The text of this proposed rule change is available on the Exchange's Web site at (<http://www.chx.com>) and in the Commission's Public Reference Room.

## 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 Change

#### 1. Purpose

The Exchange proposes to modify Article 20, Rules 10 and 11 in order to improve the Exchange's policies and procedures regarding clearly erroneous executions. The proposed changes are part of a market-wide effort designed to provide transparency and finality with respect to clearly erroneous executions. This effort seeks to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. The proposed changes are more fully discussed below.

#### Definition

The Exchange will maintain the meaning of the definition of a clearly erroneous execution, but proposes to add clarifying language with respect to cancelled trades. The proposed change identifies that a transaction made in clearly erroneous error and agreed to be canceled by both parties or determined by the Exchange to be clearly erroneous will be removed "from the Consolidated Tape."<sup>4</sup> A trade will only be removed from the Consolidated Tape when the determination is deemed final and any applicable appeals have been exhausted.

<sup>4</sup> For purposes of this Rule, "removed from the Consolidated Tape" means that a subsequent message will be sent to the Consolidated Tape indicating that a previously executed trade has been cancelled.

#### Participant Initiated Review Requests

The Exchange proposes to amend Article 20, Rule 10(b) to update the procedures for requesting a review of a clearly erroneous transaction. First, the proposed rule would require that requests for review be made only by electronic mail ("email") or other electronic means specified from time to time by the Exchange. Under its current rules, the Exchange also allows requests to be made via facsimile. Requiring requests for review to be made via email creates a standard format that can easily be logged and tracked. The Exchange will republish the email address or other electronic means to be used for all clearly erroneous filings in a circular distributed to Participants.<sup>5</sup>

The amended rule specifies that requests for review must be received by the Exchange within 30 minutes of the execution time for orders initially routed to and executed on the Exchange. The Exchange proposes that Participants submit certain essential identifying information with the request including the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. The current rule already requires requests for review to be received within 30 minutes of the execution, but only requires submission of such information which is "reasonably necessary for use by the Exchange in resolving the matter."

The proposed rule also requires the Exchange to notify the counterparty to a trade upon receipt of a timely filed request for review that satisfies the numerical guidelines set forth within the Rule. This proposed language requires notice only when a request is filed in a timely manner and satisfies the Numerical Guidelines. This change alleviates any potential burden on the Exchange of notifying the counterparty when a request for review does not merit a ruling.

The Exchange proposes to amend Article 20, Rule 10 to allow an Officer of the Exchange or such other employee designee ("Officer") of CHX to request additional information from each party to a transaction under review. Parties to the review will have 30 minutes from the time of the request to provide additional supporting information.

#### Routed Executions

The Exchange proposes to give other market centers an additional 30 minutes from the receipt of their participant's timely filing to request a ruling, but no longer than 60 minutes from the time of

<sup>5</sup> Article 1, Rule 1(s) defines a Participant as any Participant Firm that holds a valid Trading Permit.

the execution under review. This provision accounts for those executions initially directed to an away market center and subsequently routed by that away market center to the Exchange.

For example, assume an order is initially routed by a participant to Market Center A and subsequently routed to the CHX where the order is executed at a price outside of the Numerical Guidelines. This provision generally requires Market Center A to file with the Exchange within 30 minutes from the time it receives its participant's timely filed request for review. This provision caps the filing deadline for an away market center at 60 minutes from the time of the execution under review.

#### Threshold Factors

Currently, the Exchange's Clearly Erroneous Execution rule specifies numeric guidelines for determining what constitutes a clearly erroneous transaction. These guidelines are an offset of at least twenty percent (20%) from the prevailing National Best Bid or Offer ("NBBO") at the time of trade execution for transactions under \$1. For transactions at or exceeding \$1, the relevant NBBO offset is ten percent (10%). The Exchange proposes to modify its existing numerical thresholds to conform to those being adopted by other trading centers.

#### Numerical Guidelines

The proposed numerical guidelines state that a transaction executed during the Early Session,<sup>6</sup> Regular Trading Session,<sup>7</sup> Late Trading Session<sup>8</sup> or Late Crossing Session<sup>9</sup> may be found to be clearly erroneous only if the price of the transaction to buy is greater, or less in the case of a sale, than the reference price by an amount that equals or exceeds the numerical guidelines for a particular transaction category. The Reference Price shall be equal to the Consolidated Last Sale immediately prior to the execution under review, unless unusual circumstances are present. The proposed guidelines for sales greater than \$0.00 up to and including \$25.00 are 10% for the Regular Trading Session and 20% for the Early, Late Trading and Late Crossing Sessions. The proposed guidelines for sales greater than \$25.00

<sup>6</sup> The Early Session "shall begin at 6 a.m. and shall end at 8:30 a.m. [Central Time] and shall end at 8:30 a.m. [Central Time]." Article 20, Rule 1(b).

<sup>7</sup> The Regular Trading Session "shall begin at 8:30 a.m. [Central Time] and shall end at 3 p.m. each day for all securities." Article 20, Rule 1(b).

<sup>8</sup> The Late Trading Session begins "immediately after the close of the second session and shall end at 3:15 p.m. [Central Time]." Article 20, Rule 1(b).

<sup>9</sup> The Late Crossing Session begins "immediately after the close of the third session and shall end at 4 p.m. [Central Time]." Article 20, Rule 1(b).

up to and including \$50.00 are 5% for the Regular Trading Session and 10% for the Early, Late Trading and Late Crossing Sessions. The proposed guidelines for sales greater than \$50.00 are 3% for the Regular Trading Session and 6% for the Early, Late Trading and Late Crossing Sessions. A filing

involving five or more securities by the same ETP Holder will be aggregated into a single filing called a "Multi-Stock Event." In the case of a Multi-Stock Event, the proposed guidelines are 10% for the Regular Trading Session and 10% for the Early, Late Trading and Late Crossing Sessions. In the case of

Leveraged ETF/ETN securities, the above guidelines are to be multiplied by the leverage multiplier of the security. Executions that do not meet or exceed the Numerical Guidelines will not be eligible for review under this section. The following chart summarizes the proposed Numerical Guidelines.

Reference price: Consolidated Last Sale	Regular Trading Session Numerical Guidelines (subject transaction's % difference from the Consolidated Last Sale):	Early, Late Trading and Late Crossing Session Numerical Guidelines (subject transaction's % difference from the Consolidated Last Sale):
Greater than \$0.00 up to and including \$25.00 .....	10% .....	20%.
Greater than \$25.00 up to and including \$50.00 .....	5% .....	10%.
Greater than \$50.00 .....	3% .....	6%.
Multi-Stock Event—Filings involving five or more securities by the same ETP Holder will be aggregated into a single filing.	10% .....	10%.
Leveraged ETF/ETN securities .....	Regular Trading Session Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x).	Regular Trading Session Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x).

Establishing Numerical Guidelines which are consistent with other market centers within the Rule brings regulatory transparency and consistency in the application of the rules of the Exchange. These Numerical Guidelines represent the general consensus approach and were developed based on the collective experiences of a market-wide group. The Exchange believes that the Thresholds established are fair and appropriate and apply evenly to all participants.

*Unusual Circumstances*

The CHX further proposes that in Unusual Circumstances the Exchange may, in its discretion and with a view toward maintaining a fair and orderly market, use a Reference Price other than the consolidated last sale. Unusual Circumstances may include periods of extreme market volatility, sustained illiquidity, or widespread system issues. Other Reference Prices that the Exchange may use would include the consolidated inside price, the consolidated opening price, the consolidated prior close, or the consolidated last sale prior to a series of executions.

The following example explains the use of a Reference Price equal to the consolidated last sale prior to a series of executions.

ABC has a consolidated last sale of \$10.00. During the Regular Trading Session Customer A enters a market order to buy 10,000 shares, although it had intended a market order for 1,000 shares. The size of the order is such that the order sweeps the CHX Book, which reflects 1,000 shares of liquidity offered at each of the following prices. Executions occur, moving through the depth of Book, as follows:

- Trade #1—1000 shares @ \$10.00 (9000 remaining)
- Trade #2—1000 shares @ \$10.20 (8000 remaining)
- Trade #3—1000 shares @ \$10.40 (7000 remaining)
- Trade #4—1000 shares @ \$10.60 (6000 remaining)
- Trade #5—1000 shares @ \$10.80 (5000 remaining)
- Trade #6—1000 shares @ \$11.00 (4000 remaining)
- Trade #7—1000 shares @ \$11.20 (3000 remaining)
- Trade #8—1000 shares @ \$11.40 (2000 remaining)
- Trade #9—1000 shares @ \$11.60 (1000 remaining)
- Trade #10—1000 shares @ \$11.80 (complete)

Thus, to be eligible for review, a transaction must be at a price that is at least 10% higher than the consolidated last sale prior to the series of executions. Customer A could request a ruling for trades #6 through #10, priced at \$11.00 and above, but trades #1 through #5 would not be eligible for review.

Under the proposed rule the Exchange may also use a higher numerical guideline if, after market participants have been alerted to erroneous activity, the price of the security returns toward its prior trading range but continues to trade beyond the price it would have normally been busted.

*Joint Market Rulings*

In the interest of achieving consistency across markets, the Exchange proposes that, in events that involve other markets, the Exchange would have the ability to use a different Reference Price and/or Numerical Guideline. In these instances the Reference Price would be determined based on a consensus among the Exchanges where the transactions occurred. Furthermore, when a ruling is

made across markets, the Exchange may determine that the ruling is not eligible for appeal because immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.

*Additional Factors*

The proposed amendments to Article 20, Rules 10 and 11 also enumerate some additional factors that an Officer may consider when determining whether an execution is clearly erroneous. These factors include, but are not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Late Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market, the protection of investors and the public interest.

*Numerical Guidelines Applicable to Volatile Market Opens*

The Exchange proposes to give itself the ability to expand the Numerical Guidelines applicable to transactions occurring between 9:30 a.m. and 10 a.m. ET based on the disseminated value of the S & P 500 Futures at 9:15 a.m. ET. When the S&P Futures are up or down from 3% up to but not including 5% at

9:15 a.m., the Numerical Guidelines are doubled. When the S&P Futures are up or down 5% or greater at 9:15 a.m., the Numerical Guidelines are tripled. The Exchange believes that the S&P 500 futures contract is an appropriate and reliable barometer of market activity prior to the market opening due to its broad based market coverage and deep liquidity. Using the S&P 500 Futures disseminated value at 9:15 a.m. as the barometer of market activity, the Exchange is providing a transparent means of offering adjusted guidelines in times of volatile market activity.

#### *Outlier Transactions*

The proposed amendments to Article 20, Rule 10 provide that an Officer of the Exchange may consider requests for review received after thirty minutes, but not longer than sixty minutes after the execution in question in the case of an Outlier Transaction. An Outlier Transaction is a transaction where, (1) the execution price of the security is greater than three times the current Numerical Guidelines, or (2) the execution price of the security breaches the 52-week high or low, in which case the Exchange may consider Additional Factors to determine if the transaction qualifies for review or if the Exchange shall decline to act.

#### Review Procedures

##### *Initial Determination*

The Exchange proposes to remove language in Article 20, Rules 10 and 11 that currently allows an Officer to modify one or more of the terms of a transaction under review. Under the proposed rule, the Officer of the Exchange will only have the authority to break the trades or rule to let the trades stand. This change attempts to remove the subjectivity from the rule that is necessitated by an adjustment.

The Exchange also proposes adding language stating that a determination shall be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Regular Trading on the following trading day. Rulings made outside of 30 minutes by an Officer will not fail for lack of timeliness. The guideline simply provides participants an appropriate expectation that a ruling will generally be made within 30 minutes, and in no case later than the start of Regular Trading on the following trading day.

##### *Appeals*

The Exchange proposes to amend the appeals procedure for trades that are deemed to be clearly erroneous. First, the Exchange will no longer accept appeal requests via facsimile or in writing (i.e., hand delivered). Similar to

the proposed language for an initial request for a ruling, all appeal requests must be made via email.

The current rule provides that the Exchange shall review and render a decision upon an appeal without specifying any particular timeframe in which a decision would be provided by the Exchange. The proposed rule offers more definite guidelines to ensure the expedient resolution of appeals. It requires the Exchange to review appeals as soon as practicable, but generally on the same day as the executions under review. Appeals received between 2 p.m. CT and the close of trading in the Late Crossing Session should be made as soon as practicable, but in no case later than the trading day following the date of the execution under review. This revised provision provides participants a reasonable expectation of when a ruling on appeal will generally be made.

Further, the proposed rule declares that any determination made by an Officer or by the Committee on Exchange Procedure shall be rendered without prejudice as to the right of the parties to the transaction to submit their dispute to arbitration. This provision simply clarifies the fact that nothing in the proposed rule limits or impedes the rights of the parties to arbitrate their dispute.

#### System Disruption and Malfunctions

Currently, Systems Disruptions and Malfunctions are addressed in Article 20, Rule 11. The Exchange proposes to consolidate these provisions within Article 20, Rule 10 for the sake of inter-market consistency. Within the current System Disruptions and Malfunctions provisions, after an Officer determines that a trade was clearly erroneous he may declare the transaction null and void or modify the trade to attempt to achieve an equitable rectification of the error. The proposed Rule eliminates the Exchange's ability to modify a clearly erroneous execution. The Exchange must either uphold or nullify the execution based upon the findings of the Officer reviewing the execution.

The proposed Rule provides that, in the event of a disruption or a malfunction, an Officer of the Exchange or other senior level employee designee will rely on the proposed numerical guidelines in determining whether an execution is clearly erroneous. However, the Officer or senior level employee may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors, and protect the public interest. The proposed rule also adds that actions taken under these circumstances must be taken within 30

minutes of detection of the erroneous transaction in the ordinary case, and by no later than the start of the Regular Trading Session on the day following the date of the execution under review when extraordinary circumstances exist.

#### Officers Acting on Their Own Motion

The Exchange proposes to add a section to the Rule that will grant Officers (or such other senior level employee designee) the ability to act on their own motion to review potentially erroneous executions. Under the current rule, Officers have the ability to act upon their own motion only in the event of a system disruption or malfunction, or when extraordinary market conditions or other circumstances exist in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. The proposed rule would allow an Officer of the Exchange or other senior level employee designee to review executions and rely on the Numerical Guidelines, under any circumstance. In extraordinary circumstances an Officer (or such other senior level employee designee) may apply a lower Numerical Guideline if it is determined that such action is necessary to maintain a fair and orderly market or protect investors and the public interest. In some instances the Exchange may detect a single execution that breaches the Numerical Guidelines but is not the subject of a ruling request. This provision gives the Exchange the ability to review such executions. Additionally, in practice clearly erroneous executions commonly involve multiple parties and multiple executions. In such instances, all affected parties may not request a ruling. The Exchange proposes this provision to permit an Officer (or such other senior level employee designee) to rule on a group of transactions related to the same occurrence or event as a whole, without a formal request for a ruling from every affected party.

#### Trade Nullification for UTP Securities That Are Subject of Initial Public Offerings

The proposed rule also provides a specific policy on trade nullification and for UTP securities that are subject to initial public offerings. Under the proposed rule, Officers must either declare an opening transaction null and void or decline to take action, but can no longer be adjusted. Furthermore, the proposed rule requires that, in extraordinary circumstances, the reviewing Officer (or such other senior

level employee designee) may take action by no later than the start of Regular Trading on the day following the date of the execution under review.

#### Effective Date

As noted above, the proposed rule amendments are submitted as part of a marketwide initiative to standardize the various clearly erroneous rules of national securities exchanges. As such, the exchanges have agreed to a coordinated implementation and effective date of October 5, 2009 for these changes.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>10</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>11</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The proposed rule change provides transparency and finality for participants and creates consistent results across U.S. equities exchanges with respect to clearly erroneous executions. This proposed change further promotes the maintenance of a fair and orderly market, the protection of investors and the protection of the public interest.

#### 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 that is 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.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has

become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>14</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)<sup>15</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it may implement the new rule on October 5, 2009, the same date as the other equities exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to begin applying the new rule on the same date as the other equities exchanges.<sup>16</sup> Application of the new rule on this date should help foster transparency and consistency among those exchanges that adopt clearly erroneous execution rules substantially similar to those previously approved by the Commission.<sup>17</sup> For these reasons, the Commission designates that the proposed rule change become operative on October 5, 2009.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>17</sup> See Securities Exchange Act Release No. 60706 (September 22, 2009), 74 FR 49416 (September 28, 2009) (NYSEArca-2009-36).

#### 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-2009-11 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-CHX-2009-11. 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 Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 publicly available. All submissions should refer to File Number SR-CHX-2009-11 and should be submitted on or before October 29, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-24242 Filed 10-7-09; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>11</sup> 15 U.S.C. 78f(b)(5).