

regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Amex by Arca Securities from its affiliates, NYSE and NYSE Arca, on a pilot basis.<sup>11</sup> The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:<sup>12</sup>

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;<sup>13</sup>

<sup>11</sup> See Routing Pilot Release. See also *supra* note 6 and accompanying text.

<sup>12</sup> See Notice, 76 FR at 53517.

<sup>13</sup> See Notice, 76 FR at 53517, n.7 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Amex Options Rule 993NY(b)(1)(B) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ATP Holders of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ATP Holder.<sup>14</sup> The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.<sup>15</sup>

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.<sup>16</sup> Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed

the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Amex Options Rule 993NY(b). See Notice, 76 FR at 53517.

<sup>14</sup> See NYSE Amex Options Rule 993NY(b). See also Notice, 76 FR at 53517.

<sup>15</sup> See Notice, 76 FR at 53517.

<sup>16</sup> See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,<sup>17</sup> combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE Amex's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEAmex-2011-64) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65444; File No. SR-CHX-2011-27

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Certain References to the Exchange Acting as the Designated Examining Authority

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on September 22, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

<sup>17</sup> This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</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.

change as described in Items I and II below, which Items have been prepared by the CHX. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder. 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**

CHX proposes to amend its rules to eliminate certain references to the Exchange acting as the Designated Examining Authority. 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 is proposing to delete certain references in its rules to its status as the Designated Examining Authority (“DEA”).<sup>5</sup> In the impacted rules, the DEA references generally act to limit the scope and applicability of those rules to firms for which the Exchange acts as the DEA. While this limitation may be appropriate in some contexts, for example the Rules in Article 7 regarding Financial Responsibility and Reporting Requirements, the Exchange no longer believes that these provisions are appropriate in certain other contexts.<sup>6</sup>

The Exchange is therefore submitting this rule proposal to delete certain of those references and make appropriate changes to the remaining provisions.<sup>7</sup>

In Article 6, Rule 5(a), (Supervision of Registered Persons and Branch and Resident Offices), the Exchange proposes to delete the limiting reference to Participants Firms for which the Exchange acts as the DEA. The Exchange proposes that the provisions of Rule 5(a) will apply equally to all Participant Firms.

In Article 17 (Institutional Brokers), Rule 1 (Registration and Appointment) and in Interpretation and Policy .01 of Article 17, Rule 3 (Responsibilities), the Exchange proposes to delete the requirement that Participant Firms seeking to register as an Institutional Broker [sic] must have the Exchange act as the DEA. The Exchange does not believe that it is necessary that the Exchange examine a Participant Firm for its compliance with applicable financial responsibility rules in order that it qualify for status as an Institutional Broker.<sup>8</sup> The Exchange notes that it conducts comprehensive daily surveillance of Institutional Broker trading activity on the CHX and conducts examinations for supervisory and trading-related issues of all CHX-registered Institutional Brokers, irrespective of whether it acts as the DEA. The Exchange also administers a qualification examination for all individuals acting as an Institutional Broker Representative (“IBR”). Only an approved IBR may handle and accept orders from customers of the Institutional Broker firm. Given this oversight structure, the requirement that the CHX act as the DEA for Institutional Brokers in all cases appears superfluous and unnecessarily restrictive.

<sup>3</sup>A to notify the Exchange prior to opening a Joint Back Office arrangement. Similarly, Article 7, Rule 9 requires firms for which the CHX is the DEA to file reports of short positions carried by the firm.

<sup>7</sup>Certain existing rules regarding the qualification and examination of individuals associated with a Participant firm contain references to the CHX acting as DEA. The Exchange is proposing to delete those references as part of a separate rule filing making additional changes to those provisions. Current Article 8, Rule 13 (Advertising and Promotion) also contains similar references and the Exchange plans on eliminating those in a subsequent proposal to conform our rules with those of the Financial Industry Regulatory Agency (“FINRA”) in order to make them “common” for purposes of our agreement with FINRA for the allocation of regulatory responsibility of common rules for dual members.

<sup>8</sup>The elimination of this requirement does not imply that an Institutional Broker firm will not be examined for compliance with financial responsibility rules. It simply means that another SRO will perform the examination function for those rules.

##### **2. Statutory Basis**

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act in general,<sup>9</sup> and furthers [sic] the objectives of Section 6(b)(5) in particular,<sup>10</sup> in that it is [sic] 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 changes will expand the reach of the Exchange rules in circumstances where it is appropriate and fair to do so, and will eliminate outdated limitations of certain provisions to a subset of Exchange Participants. The broad application of Exchange rules to all Participants should result in the fair and evenhanded application of such rules to Participant firms generally.

#### *B. Self-Regulatory Organization’s Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others*

No written comments were either solicited or received.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6)<sup>12</sup> thereunder, the Exchange has designated this proposal as one that effects a change 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) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6)<sup>13</sup> 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

<sup>9</sup> 15 U.S.C. 78f(b).

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

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

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

<sup>13</sup> *Id.*

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

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

<sup>5</sup> Although not a defined term in our rules, the DEA is the Self-Regulatory Organization (“SRO”) with the responsibility for examining a member for compliance with applicable financial responsibility rules pursuant to Exchange Act Rule 17d-1. 17 CFR 240.17d-1.

<sup>6</sup> For example, Participants for which the Exchange is the DEA are required by Article 7, Rule

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Under Rule 19b-4(f)(6) of the Act,<sup>14</sup> a proposal does 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. The Commission is waiving the 30-day operative period for this filing so that it may become effective and operative upon filing.<sup>15</sup> The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to implement the change right away. The proposed rule change eliminates references to DEA which limit the applicability of some rules to firms for which the CHX serves as DEA. These rules will now apply to all member firms.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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 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](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2011-27 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 No. SR-CHX-2011-27. 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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. 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-2011-27 and should be submitted on or before October 27, 2011.

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

**Elizabeth M. Murphy,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65459; File No. SR-FINRA-2011-053]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend Certain Trade Reporting and Compliance Rules

September 30, 2011.

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 September 22, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6730 regarding reporting a transaction in a TRACE-Eligible Security, other than a transaction in an Asset-Backed Security, on a non-business day, and reporting size (volume), commission and settlement, in order for FINRA to consolidate all TRACE-Eligible Securities transaction processing and data management on a single technology platform, the Multi Product Platform ("MPP").

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, and at 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, 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 these 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 aspects of such statements.

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

###### 1. Purpose

Currently, TRACE-Eligible Securities that are Asset-Backed Securities are processed on FINRA's enhanced technology platform, MPP.<sup>3</sup> FINRA proposes certain amendments to the reporting requirements of Rule 6730 of the Trade Reporting and Compliance Engine (TRACE) rules that will permit FINRA to migrate all other TRACE-Eligible Securities to MPP. The proposed amendments are substantially similar to requirements that currently apply to transactions in Asset-Backed Securities, and will simplify reporting a

<sup>14</sup> *Id.*

<sup>15</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>17</sup> 15 U.S.C. 78s(b)(1).

<sup>27</sup> 17 CFR 240.19b-4.

<sup>3</sup> "TRACE-Eligible Security" and "Asset-Backed Security" are defined in, respectively, Rule 6710(a) and Rule 6710(m).