

A specialist may elect automatic execution of such agency limit orders on an issue-by-issue basis. *The foregoing provisions of this Article XX, Rule 37(a)(3) shall not apply to limit orders designated by a floor broker as "post protection only" in accordance with the provisions of Article XX, Rule 7, Interpretation and Policy .05.*

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 Exchange 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. The Exchange 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 amend Article XX, Rules 7 and 37 of the CHX Rules, which govern, among other things, display of limit orders in a specialist's book and execution prices due certain limit orders. The proposed change would permit a CHX member (including a floor broker) to elect zero-second display by a CHX specialist of limit orders designated by the member as PPO orders.

Under Exchange Act Rule 11Ac1-4⁵ and current Article XX, Rule 7 (Interpretation and Policy .05) of the CHX Rules, a CHX specialist must display customer limit orders "immediately," which means " * * * as soon as practicable, which under normal market conditions means no later than 30 seconds from time of receipt." Although past studies have shown that CHX specialists, through the use of automated tools, display the vast majority of customer limit orders within zero seconds after they are required to do so, CHX specialists may choose to actually see one or more orders before deciding whether or not to execute the order, transfer the order to another marketplace or display the order at the Exchange.⁶

In some cases, however, customers expressly desire the zero-second display of their orders. Specifically, the CHX has been advised that, for certain customers of CHX floor brokers, zero-second display of their limit orders is often their paramount consideration. While CHX specialists may choose not to display each limit order in zero seconds—because they may wish to have the opportunity to decide whether or not to interact with certain limit orders—the CHX floor broker community has suggested a solution which protects the interests of CHX member order-sending firms and their customers, while permitting CHX specialists to appropriately handle limit orders.

Under the proposed rule change, PPO orders (as designated by a CHX floor broker) would be automatically displayed by the specialist in zero seconds without any opportunity for a specialist to interact with the order prior to display. PPO orders would be treated in accordance with applicable CHX rules governing priority and precedence, but would not be entitled to trade through protection by the CHX specialist in the event of a price penetration in the primary market.⁷ This solution will afford CHX floor brokers the flexibility to elect zero-second display of their customers' limit orders in instances that render such immediacy of paramount concern. The proposal in turn does not require a specialist to provide subject limit orders with trade through protection or the other protections set forth in Article XX, Rule 37(a)(3), when the specialist has been

provided in the CHX trading system. These default timers, which can be set, among other things, from zero to 25 seconds (in listed securities) or from zero to 30 seconds (in over-the-counter ("OTC") securities), ensure that eligible orders are automatically displayed when they improve a specialist's quote and when the timer setting has elapsed without the orders having been manually displayed, executed or transferred to another marketplace. In addition, the CHX Market Regulation Department actively surveils to ensure that CHX specialists do not routinely rely on their timers to extend the display period beyond what is necessary for the specialist to interact with the limit orders they receive.

⁷ Under Article XX, Rule 37(a)(3), a limit order for a Dual Trading System (*i.e.*, listed) issue, which is resident in a CHX specialist's book for 15 seconds or more, generally is entitled to "trade through protection," *i.e.*, execution at the limit price in the event of a price penetration in the primary market. Article XX, Rule 37(a)(3) also requires execution at the limit price, subject to certain conditions, (a) if the bid or offer has been exhausted in the primary market, (b) if the issue is trading at the limit price in the primary market, and (c) if a block trade has been printed on the Exchange or an away market at superior price. A floor broker electing PPO would also forego these protections otherwise due under Article XX, Rule 37(a)(3).

denied the opportunity to interact with the order.

The CHX believes that the proposal is consistent with the interests of the investing public, as a floor broker will be able to elect zero-second display of a limit order when that display is either requested by the customer or otherwise is in a customer's interest.⁸ In other instances, an order-sending firm may consider the protections of Article XX, Rule 37(a)(3) to constitute a better means of achieving its customer's goals, in which case the floor broker could elect to forego zero-second display.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,⁹ in general, and Section 6(b)(5) of the Act,¹⁰ in particular, which requires, among other things, that the rules of an exchange be designed, among other things, 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.

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

The Exchange has neither solicited nor received written comments on 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**

⁸ Orders routed to a CHX floor broker constitute orders from sophisticated investors who choose to utilize the services of a floor broker because, among other reasons, the investor can communicate certain conditions regarding execution of the order, which conditions the floor broker will take into account in seeking liquidity to fill the order. Such investors possess sufficient market experience to fully evaluate the consequences of having their floor broker elect the PPO order option on their behalf. By restricting the PPO order option to floor brokers, the CHX believes that it will avoid instances where less sophisticated investors would elect zero-second display of their limit orders, without fully considering the ramifications of foregoing primary market protection of such limit orders.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

⁵ 17 CFR 240.11Ac1-4 ("Display Rule").

⁶ Specialists can help ensure that they meet their Display Rule obligations with respect to these manually handled orders by using additional automated functions, such as the default timers