

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

The Exchange is proposing to amend Article XX, rule 37 of the CHX rules, which governs, among other things, execution of resting limit orders following a block trade-through in the primary market. The text of the proposed rule change is available at the Commission or the CHX.

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 regarding 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 is proposing to amend Article XX, rule 37 of the CHX rules, which governs, among other things, execution of resting limit orders following a block trade-through in the primary market. Under existing Exchange rules relating to listed securities, whenever a block trade³ in the primary market trades through a CHX specialist's quote, the specialist must execute all limit orders in the book (that are priced at the block price or better) at the block price.⁴

The CHX believes that this requirement was likely instituted as a marketing tool to attract new customers when trading occurred in much larger variations and trading on regional exchanges was somewhat less common.

³ A block trade is a trade that involves (a) a trade of "block size" (10,000 shares or more, or with a market value of \$200,000 or more); and (b) either (i) a cross of block size (where a single firm represents all of one side of the transaction and all or a portion of the other side) or (ii) any other transaction where a single firm represents an order of block size on only one side of the transaction, so long as the transaction does not occur at the Exchange's current bid or offer. At the time a transaction occurs on another market, the CHX can determine whether it is a *block size trade*; the CHX does not yet know, however, which firms were on which sides of the transaction and therefore cannot then determine whether it meets the other requirements of a *block trade*.

⁴ See CHX Article XX, rule 37(a)(3).

Today, trading on regional exchanges is not a new phenomenon. Moreover, the CHX represents that because the vast majority of block trades are not identified as such when they occur, it is impossible for a specialist to know, at the time of a particular block-size trade-through, whether or not limit orders must be filled at the block price. As a result, the specialist often fills the orders at the limit price and adjusts them to the better block price when it is confirmed that a block trade occurred. The Exchange represents that the practice of manually correcting execution prices is a large inconvenience to some key CHX order-sending firms, which must send out two trade confirmations to each customer "one that is generated as soon as the trade occurs and a second to reflect the corrected execution price."

The delays associated with confirming the appropriate execution price for orders subject to this requirement are not appropriate in the fast-paced, automated markets that exist today. Therefore, the CHX is proposing to eliminate the requirement that a CHX specialist fill resting limit orders at the block price following a block trade-through in the primary market.⁵ Recognizing that many specialists may wish to continue filling such limit orders at the block price as a customer service accommodation, however, the proposed rule change would permit a CHX specialist to continue to have the option to engage an existing functionality of the Exchange's MAX automatic execution system that automatically executes designated limit orders at the block price when a block size trade-through occurs in the primary market.⁶

2. Statutory Basis

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.⁷ In particular, the proposed rule is consistent with section 6(b)(5) of the Act⁸ in that it is designed to promote just and equitable

⁵ If, however, a specialist is representing an order in his or her quote that is traded through by a block trade from another market, and the specialist receives satisfaction from the other market, the specialist must give the higher price to the customer order.

⁶ This functionality was approved by the Commission and implemented in early January of 2003. See Securities Exchange Act Release No. 47068 (December 20, 2002), 67 FR 79671 (December 30, 2002).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments 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.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

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 self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No.