

## V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>24</sup> that the proposed rule change (SR-CBOE-2007-140) be, and it hereby is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57007; File No. SR-CHX-2007-17]

### Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Elimination of Provisions Relating to Rule 10a-1

December 20, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 31, 2007, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), and on October 22, 2007 amended, the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CHX. CHX has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act.<sup>3</sup> 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

Through this filing, the Exchange proposes to amend its rules to eliminate all provisions that would impose a “price test” in connection with the short sale of securities or require that CHX’s Matching System operate in a manner consistent with such a price test.

The text of this proposed rule change is available at the Exchange, on the Exchange’s Web site at <http://www.chx.com/rules/>

[proposed\\_rules.htm](#), 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 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 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

On June 28, 2007, the Commission approved final rules eliminating the price test of Rule 10a-1<sup>4</sup> and amending Regulation SHO.<sup>5</sup> The Commission’s action prohibits any self-regulatory organization from having a price test and removes the “short exempt” marking requirement of Rule 200(g). The compliance date for these changes (“Compliance Date”) was July 6, 2007.

The Exchange’s rules currently include several provisions that should be eliminated to ensure that the Exchange’s rules do not improperly impose a price test or otherwise require handling of short sale orders in a manner inconsistent with the Commission’s latest action. Among others, these provisions include a requirement that participants effect short sales in compliance with Rule 10a-1; a description of the Matching System’s repricing of sell short orders, when necessary to comply with Rule 10a-1; and a requirement that participants mark orders as “short exempt.”<sup>6</sup> Through this filing, the Exchange would eliminate these provisions.

The Exchange filed Amendment No. 1 to the proposal to confirm that it is not eliminating a section of its “Short Sales” rule that imposes a requirement

that a market maker notify the Exchange if it has a position in a security that is greater than or equal to 5% of the outstanding public float of that security, as determined by the company’s most recent report on Form 10-K.<sup>7</sup> The Exchange’s original proposal had sought to remove this provision from its rules.<sup>8</sup>

###### 2. Statutory Basis

The proposal 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).<sup>9</sup> The Exchange believes that the proposed change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by modifying CHX’s rules to comply with the Commission’s amendments to Rule 10a-1 and Regulation SHO.

##### 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 not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization’s Statement on Comments Regarding 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

<sup>7</sup> See Article 9, Rule 23(b).

<sup>8</sup> This provision is one that apparently was inadvertently carried over from the Exchange’s old trading model and is not necessary in the Exchange’s new trading model. A separate provision of the Exchange’s new trading model rules specifically requires that market makers keep data about their positions and report that information to the Exchange upon request. See Article 16, Rule 10. The Exchange will file a separate proposal to eliminate this provision, if it continues to believe that it is appropriate to do so.

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

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

<sup>4</sup> 17 CFR 240.10a-1.

<sup>5</sup> See Securities Exchange Act Release No. 34-55970 (June 28, 2007).

<sup>6</sup> See Article 9, Rule 23(a); Article 20, Rule 8(e)(5); and Article 11, Rules 3 and 4, respectively. Other provisions that must be eliminated are ones that relate to the “short exempt” order type and that refer to Rule 10a-1. See Article 1, Rule 2(hh) and Article 20, Rule 4(b)(23) (the “short exempt” order type); and Article 1, Rule 1(w) (referring to Rule 10a-1).

<sup>24</sup> 15 U.S.C. 78s(b)(2).

<sup>25</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).

may designate, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> 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.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay of the proposal. The Commission believes that such waivers are consistent with the protection of investors and the public interest because the proposed rule change conforms CHX's rules to currently effective Commission Rules.<sup>13</sup> For this reason, the Commission designates the proposal to be operative upon filing with the Commission.

#### 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-2007-17 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-2007-17. 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 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-2007-17 and should be submitted on or before January 18, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56972; File No. SR-NASD-2007-035]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a/ Financial Industry Regulatory Authority, Inc.); Order Granting Approval of a Proposed Rule Change Related to Mandated Use of an Automated Liability Notification System

December 14, 2007.

#### I. Introduction

On May 25, 2007, the National Association of Securities Dealers, Inc. ("NASD")<sup>1</sup> filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>2</sup> Notice

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA") in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

of the proposal was published in the **Federal Register** on October 17, 2007.<sup>3</sup> For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

NASD Rule 11810(i) sets forth the procedures that must be followed when a party is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer is seeking delivery of those securities. Under Rule 11810(i), the owed party delivers a liability notice to the owing or failing party. The liability notice sets a cut off date for the delivery of the securities by the owing party and provides notice to the owing party that it will be held liable for any damages caused by its failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

If the owing party delivers the securities in response to the liability notice, it has met its delivery obligation. If the owing party fails to deliver the securities in sufficient time for the owed party to participate in the voluntary corporate action, it will be liable for any damages that may accrue thereby (*i.e.*, the owing party must deliver proceeds equivalent to the proceeds that the owed party would have received if it had been able to participate in the offer). The owed party has the responsibility to communicate its intentions to the owing party and to prove, if necessary, that the owing party received the liability notice.

Prior to this proposed rule change, Rule 11810(i) required broker-dealers to send liability notices using "electronic media having immediate receipt capabilities." Although there was no one acceptable means for sending and tracking liability notices, NASD members advised the NASD that it was industry practice to send liability notices by fax. However, sending liability notices by fax is a manual, paper-intensive process that is subject to error. The financial risk to an owing firm that misses or incorrectly processes a liability notice relating to a voluntary corporate action can be considerable.

In response to industry need for a reliable and uniform method of transmitting liability notices, The Depository Trust Company ("DTC") developed the SMART/Track for Corporate Action Liability Notification Service ("SMART/Track"). SMART/Track is a web-based system for the communication of corporate action

<sup>3</sup> Securities Exchange Act Release No. 56639 (October 11, 2007), 72 FR 58918 (October 17, 2007) [File No. SR-NASD-2007-035].

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

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

<sup>13</sup> For purposes only of waiving the 30 day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).