

Halt Auction would commence five minutes prior to such Halt Auction and with respect to an IPO Auction would commence fifteen minutes plus a short random period prior to such IPO Auction. Any Eligible Auction Orders associated with an IPO or Halt Auction would be queued until the end of the Quote-Only Period at which time they would be eligible to be executed in the associated auction. The Exchange proposes to require that all orders associated with IPO or Halt Auctions be received prior to the end of the Quote-Only Period in order to participate in the auction. The Exchange would permit Eligible Auction Orders associated with an IPO or Halt Auction to be cancelled at any time prior to execution. Coinciding with the beginning of the Quote-Only Period for a security, the Exchange further proposes to disseminate and update the BATS Auction Feed associated with the IPO or Halt Auction every five seconds thereafter via electronic means.

III. Discussion

After careful consideration of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,¹⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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.

BATS notes that the current proposal is integral to its listing rules,¹⁵ and would provide companies with an alternative venue to list and trade securities in an orderly fashion at the open and close of trading, as well as in

Book executions occurring while orders are collected). See Notice *supra* note 3, at 76 FR 56252.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ The Commission notes that the Exchange separately proposed, and the Commission approved, rules for the qualification, listing, and delisting of companies on the Exchange. See Securities Exchange Act Release No. 34-65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

the context of an IPO or halted trading in the security.¹⁶ The Exchange believes that operation of Exchange Auctions for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange.¹⁷

The Commission notes that the Exchange has proposed to operate Exchange Auctions as a single price Dutch auction to match buy and sell orders at the price at which most shares would execute. The Exchange has designed Exchange Auctions to be conducted within specified periods of time and in accordance with specified order entry, cancellation, pricing, and execution priority parameters. The Exchange may adjust the timing of or suspend Exchange Auctions with prior notice to Members whenever, in the judgment of the Exchange, it would be required by the interests of a fair and orderly market.¹⁸ The Exchange also has designed the BATS Auction Feed to disseminate information regarding the current status of price and size information related to auctions being conducted. The Exchange has represented that the BATS Auction Feed will be available to data recipients equally and without charge.¹⁹

The Commission believes that the proposal is designed to assist the price discovery process, should help minimize price volatility, and should promote a fair and orderly market for securities listed on the Exchange. The Commission believes that the BATS Auction Feed should enhance transparency and promote competition among orders by facilitating the public dissemination of current trading interest in a particular security during Exchange Auctions.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-BATS-2011-032) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill,
Deputy Secretary.

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¹⁶ See Notice, *supra* note 3, 76 FR at 56253.

¹⁷ See *id.* at 56253.

¹⁸ See Proposed BATS Rule 11.23(g).

¹⁹ The Commission notes that should the Exchange determine to charge fees associated with the BATS Auction Feed, the Exchange would submit a proposed rule change to the Commission in order to implement those fees.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65615; File No. SR-CHX-2011-17]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Submission of Clearing-Related Information for Trades Executed Otherwise Than on the Exchange

October 24, 2011.

I. Introduction

On July 7, 2011, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change regarding the submission of clearing-related information for trades executed otherwise than on the CHX. The proposed rule change was published for comment in the **Federal Register** on July 26, 2011.³ The Commission received one comment in support of the proposal.⁴ CHX filed Amendment No. 1 to the proposed rule change on October 24, 2011.⁵ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

The text of the proposed rule change, as modified, is reproduced below. Additions are *italicized*, deletions are [bracketed].

Rules of Chicago Stock Exchange, Inc.

* * * * *

Article 1.

Definitions and General Information

Rule 1. Definitions

Whenever and wherever used in these Rules, unless the context requires otherwise, the following terms shall have the respective meanings ascribed to them below:

(a)–(dd) Unchanged

(ee) "*Clearing Participant*" means a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64937 (July 20, 2011), 76 FR 44638 ("Notice").

⁴ See letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Meyer, Chief Compliance Officer, E*Trade Capital Markets, LLC dated August 16, 2011.

⁵ See Amendment No. 1, dated October 24, 2011.

(ff) "Qualified Clearing Agency" means a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services.

* * * * *

Article 21.

Clearance and Settlement

Rule 1. Trade Recording with a Qualified Clearing Agency

(a)–(d) Unchanged

• • • Interpretations and Policies:

.01 Definition of Registered Clearing Agency

The term "Registered Clearing Agency" shall mean a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of the Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services..

.02 Definition of Fully-Interfaced Clearing Agency

The term "Fully-Interfaced Clearing Agency" shall mean a Registered Clearing Agency which, in conjunction with the Registered Clearing Agency selected by the contra-party to the contract, has established systems for the clearance and settlement of securities contracts in a manner which does not require each party to a contract to be a participant in the same Registered Clearing Agency.

.03 Definition of a Qualified Clearing Agency

For purposes of this Rule, the term "Qualified Clearing Agency" shall mean a Fully Interfaced Clearing Agency which has entered into an agreement with the Exchange pursuant to which it will (i) Provide such services to the Exchange and its Participants as the Exchange, and such Qualified Clearing Agency shall from time to time agree, (ii) maintain facilities through which Exchange Contracts may be recorded, cleared and settled, and (iii) supply the Exchange with data reasonably necessary and requested in order to permit the Exchange to enforce compliance by its Participants with the provisions of the Exchange Act, the rules and regulations thereunder and the Rules of the Exchange.】

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Rule 6. Submission of Clearing Information for Transactions Executed Off-Exchange

The Exchange shall make clearing submissions for non-Exchange trades only in the following manner:

(a) Substitution of Participants in Off-Exchange Transactions.

(1) An Institutional Broker registered with the Exchange and acting as an authorized agent of a Clearing Participant may enter a non-tape, clearing-only submission into the Exchange's systems for trades executed otherwise than on the Exchange for the

purpose of transferring securities from one Clearing Participant to another, provided that the transfer does not constitute a transaction in securities that is otherwise subject to trade reporting that has not, in fact, been previously and separately reported as a transaction. The Exchange shall make such submissions to a Qualified Clearing Agency. Each such Institutional Broker must be party to an agreement with the Clearing Participant in which name the submissions are made under which the Institutional Broker has received authorization from the Clearing Participant to act on its behalf. Copies of these agreements shall be filed by the Institutional Broker with the Exchange.

(2) A Participant can only use a non-tape, clearing-only submission for a trade that has been reported in the market in which it was effected.

(3) An Institutional Broker must enter all non-tape, clearing-only submissions into the Exchange's systems pursuant to this subparagraph (a) for a given non-Exchange transaction within three (3) hours of the execution of such transaction.

(b) Non-Tape, Clearing-Only Riskless Principal Submissions

(1) An Institutional Broker registered with the Exchange may make non-tape, clearing-only submissions into the Exchange's systems for submission to clearing to facilitate riskless principal transactions as defined in Article 9, Rule 14 ("riskless principal transactions") taking place on another national securities exchange, or over-the-counter, only as follows. For riskless principal transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker shall make, for the offsetting "riskless principal" portion of the transaction, a clearing-only submission. If the order is executed in multiple transactions, the Institutional Broker may enter a non-tape, clearing-only submission at the volume-weighted average price ("average price") of those transactions. The Institutional Broker shall provide to the Exchange records sufficient to identify such transactions as "riskless principal."

(2) A Participant can only use a non-tape, clearing-only submission for a trade that has been reported in the market in which it was effected.

(3) An Institutional Broker must enter all non-tape, clearing-only submissions into the Exchange's systems pursuant to this subparagraph (b) for a given non-Exchange transaction within twenty (20) minutes of the execution of such transaction. For clearing submissions reported at the average price of multiple trade executions, the Institutional Broker shall enter the non-tape, clearing-only submission into the Exchange's systems within twenty (20) minutes of the last component trade execution.

(c) Each Clearing Participant which is a party to a non-tape, clearing-only submission under this rule will pay a Trade Processing Fee in the amount specified in the Exchange's Fee Schedule.

• • • Interpretation and Policies:

.01 An Institutional Broker making a submission pursuant to this rule must obtain documentary evidence of a non-Exchange trade execution no later than the close of business on the day of the trade and submit such evidence to the Exchange in a format acceptable to it and within such timeframe that the Exchange shall designate, but in no event later than T+1.

.02 An Institutional Broker entering a non-tape, clearing-only submission shall be responsible for ensuring that all clearing information is accurate and complete prior to its submission.

.03 Post-trade cancellations and corrections: price, volume and security changes. No later than T+1, Exchange operations personnel may cancel a clearing submission and enter a new corrective submission if the Institutional Broker which entered the original submission provides documentary evidence that the original trade execution was cancelled and re-entered at the same price, quantity and/or security of the corrective clearing submission. Exchange operations personnel may also correct a clearing submission if it was erroneously entered on terms which differed from the reported trade execution, if provided with documentary evidence of the original trade execution. Exchange operations personnel may also enter a clearing submission which the Institutional Broker failed to enter or which was not processed due to systems error, if provided with documentary evidence of the original trade execution. In all cases, the documentary evidence must be provided to the Exchange Operations personnel prior to entry of the corrective submission. In extraordinary circumstances, corrective submissions can be made after T+1 subject to the approval of an officer of the Exchange.

.04 Post-trade cancellations and corrections: Clearing Participant changes. Either Exchange Operations personnel or Institutional Brokers may cancel a clearing submission and enter a new corrective submission to correct a misidentification of the Clearing Participant, by no later than T+1. Before the corrective submission is made, the Institutional Broker must obtain documentary evidence of the misidentification of the Clearing Participant, and provide it to the Exchange Operations personnel if the latter are making the corrective submission. In extraordinary circumstances, corrective submissions can be made after T+1 subject to the approval of an officer of the Exchange.

* * * * *

The Exchange is proposing to adopt Rule 6 to Article 21 to set forth the terms upon which the Exchange will submit information for clearance and settlement to the National Securities Clearing Corporation, ("NSCC") and to amend Article 1, Rule 1 to add updated definitions and Article 21, Rule 1 to delete definitions. Rule 6 provides for the submission of clearing related information to a Qualified Clearing Agency i.e., NSCC. The CHX submits clearing information to NSCC through

the Regional Interface Operation (“RIO”) system.⁶

Proposed Rule 6(a) addresses clearing submissions made via CHX systems, *i.e.*, Brokerplex,⁷ for transactions executed on another exchange or in the over-the-counter (“OTC”) market. These submissions will be made by the Exchange only on behalf of an Institutional Broker acting as an authorized agent of a Clearing Participant.⁸ The Institutional Broker may submit a clearing-only entry to Brokerplex for the purpose of transferring securities from one Clearing Participant to another, as long as the trade has been properly reported for transaction reporting purposes.

Proposed Section (a)(3) of Rule 6 would require an Institutional Broker to enter all non-tape, clearing-only entries into the Exchange’s systems for a given non-Exchange transaction within three hours of the execution of the transaction. According to the CHX, the complex nature of these transactions, which frequently involve multiple counterparties, and are often of large size such that the Clearing Participant separately confirms the terms of the transaction with the Institutional Broker to ensure the creditworthiness of the counter-party, necessitates an extended period of time for submission of clearing information to NSCC. Once all of the final clearing allocations have been entered in Brokerplex for submission to NSCC, the CHX deems them to be “locked in” for purposes of comparison and settlement.⁹

CHX provided three scenarios wherein Institutional Brokers would make clearing entries under paragraph (a) of Rule 6. First, an Institutional Broker may buy or sell securities on another trading center as a correspondent of a clearing member of that trading center. Any resulting execution report would be “flipped” from the executing clearing member via entries in Brokerplex to the trading account of the Institutional Broker or the CHX Clearing Participant on whose behalf the Institutional Broker is acting.¹⁰

⁶ RIO is a service offered by NSCC to regional exchanges to make clearing submissions.

⁷ The Brokerplex® system is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers. See Article 17, Interpretations and Policies .03.

⁸ Institutional Brokers are an elective sub-category of Exchange Participants who register with the Exchange and are subject to the obligations of Article 17 of the CHX rules, in addition to the other provisions of Exchange rules.

⁹ The Exchange will identify non-CHX trades as distinct from transactions executed in the CHX’s Matching System in submissions to NSCC.

¹⁰ See Notice, *supra* note 3.

Second, an Institutional Broker may execute or instruct a third party broker-dealer to execute a cross-transaction in the OTC market and report the transaction to a Trade Reporting Facility (“TRF”) using the Institutional Broker’s trading symbol or the symbol of the Institutional Broker’s clearing firm when reporting the trade to the Consolidated Tape.¹¹ The Institutional Broker may then enter the transaction information in Brokerplex and transfer the positions from its own trading account (or the account of its clearing firm) to the accounts of the ultimate beneficiaries of the trade. Once all components of the transaction are properly allocated, the information in Brokerplex is forwarded to the NSCC via RIO for clearance and settlement.

Third, transactions may be executed on another trading center by a third party broker-dealer, which then utilizes an Institutional Broker as its agent for handling the allocation of the clearing information. These third party transactions may include both cross-transactions executed OTC and reported to a TRF by the third party broker-dealer, as well as purchases or sales of securities by the third party broker-dealer on another exchange or OTC.¹² The third party broker-dealer instructs the Institutional Broker how to handle any substitution of Clearing Participants and allocate the trade. In either the second or third scenario, the trade may have been executed with broker-dealer A as the selling firm and broker-dealer B as the buyer. After the trade has been executed, broker-dealer B may step out of the transaction in favor of broker-dealer C.¹³ The Institutional Broker making the clearing submission would be responsible for substituting the various parties based upon instructions of those parties or their agents. Clearing information for third-party cross-trades and single-sided purchases or sales is then recorded in Brokerplex and

¹¹ The ability of an Institutional Broker to directly execute a transaction in the OTC market is predicated on the Commission’s approval of a separate proposal which would establish that Institutional Brokers are not operating directly on the Exchange. (SR-CHX-2011-29). See Securities Exchange Act Release No. 65354 (September 19, 2011), 76 FR 59476 (September 26, 2011). Institutional Brokers who execute transactions in the OTC market must be members of FINRA. See Section 15(b)(8) of the Act.

¹² The Institutional Broker may be instructed to allocate the trades at an average price of the transactions executed by the third party broker-dealer.

¹³ There may be multiple broker-dealers (*e.g.*, broker-dealers D, E, and F) who “step in” to one or both sides of the transaction because many of the transactions handled by Institutional Brokers arise out of transactions on a derivatives exchange, either as a hedge or part of a combination stock-options order (such as a buy-write trade).

submitted to NSCC in the same manner as if the trades had been executed by the Institutional Broker.

Rule 6(a) requires Institutional Brokers that make these submissions to have an agreement with the Clearing Participant in whose name the entries are submitted. The agreement must authorize the Institutional Broker to act on behalf of the Clearing Participant.¹⁴ The Institutional Broker must file copies of these agreements with the Exchange. The Exchange has developed functionality within the Brokerplex application to validate that such agreements are in place before an Institutional Broker is able to submit clearing entries to Brokerplex.¹⁵ The Exchange will monitor clearing submissions to ensure that the Institutional Brokers involved in these transactions have the appropriate agreements in place and will take disciplinary action to enforce this requirement.

CHX’s system for making clearing submissions does not provide a fully-automated comparison feature.¹⁶ CHX states that its rules provide procedural safeguards to ensure that the manual comparison is valid. Furthermore, a Participant is prohibited from using a non-tape, clearing-only submission for the purpose of effecting a transaction required to be trade reported which has not been trade reported or for reporting a trade for regulatory purposes.¹⁷ Proposed Interpretation and Policy .01 to Rule 6 will require that an Institutional Broker submitting an entry for a transaction executed otherwise than on the Exchange obtain documentary evidence of the non-Exchange trade execution no later than the close of trading and submit such evidence to the Exchange in a format acceptable to it and within such

¹⁴ In addition, the Exchange requires Clearing Participants to sign a clearing agreement by which the latter accept responsibility for non-Exchange transactions submitted to NSCC through the auspices of an authorized Institutional Broker. See Amendment 1 at note 11.

¹⁵ See Amendment No. 1, *supra* note 5.

¹⁶ The Commission understands that Nasdaq’s ACT system provides a fully automated comparison process. CHX has committed to develop such a system by December 2011. See Amendment No. 1 at notes 5 and 13.

¹⁷ As detailed in a letter to Kathy England, Assistant Director, Division of Trading and Markets, Commission, and Mark Donohue, Assistant Director, Office of Compliance, Inspections and Examinations, Commission dated October 24, 2011, the Exchange plans to monitor the activity of Participants that make clearing-only submissions for compliance with applicable trade reporting rules. In addition, the Exchange has made arrangements to share data regarding its clearing submissions for non-Exchange trades with FINRA in order to assist in its efforts to oversee trading activity in the over-the-counter marketplace.

timeframe that the Exchange shall designate, but in no event later than T+1. CHX believes this requirement will strengthen the safeguards associated with submitting trades for comparison and provide CHX with the necessary data to perform surveillance of the transactions.¹⁸

Proposed Interpretation and Policy .02 states that an Institutional Broker that enters a non-tape, clearing-only record is responsible for ensuring that all clearing information is accurate and complete before the clearing information is submitted to NSCC. Section (b) of Rule 6 governs non-tape riskless principal submissions.¹⁹ It permits an Institutional Broker to enter non-tape submissions in Brokerplex which are submitted to clearing to facilitate riskless principal transactions that occurred otherwise than on the Exchange. For riskless principal transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy, or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker will submit a clearing-only report for the offsetting riskless portion of the transaction. If the order is executed in multiple transactions, the Institutional Broker may submit a non-tape, clearing-only report at the volume-weighted average price ("average price") of those transactions. Entries in Brokerplex must be made within twenty minutes of the execution, or for multiple trade executions reported at an average price, within twenty minutes of the last component trade execution. The Institutional Broker must provide CHX records sufficient to identify the transactions as riskless principal transactions.²⁰

¹⁸ For transactions which originated with the Institutional Broker and were handled in the Brokerplex system, the execution report provided either directly from the away trading center or a drop copy thereof will constitute the written evidence of the non-Exchange trade execution. If the trade was executed by a third-party broker-dealer, the Institutional Broker must provide a record which evidences the away market trade execution (such as a confirmation or other record from the executing trading center) to the Exchange in a specified format to be communicated by the Exchange. See Amendment No. 1 at notes 14 and 18.

¹⁹ Article 9, Rule 14 (Reporting Riskless Principal Transactions) describes the manner in which Exchange Participants are required to report riskless principal transactions for trade reporting purposes.

²⁰ The information necessary to identify riskless principal transactions is normally provided to the Exchange either directly via Brokerplex in the form of the execution report from the other trading center or a "drop copy" of the execution report (which can be systematically linked to the original order and

Proposed Interpretation and Policy .03 governs post-trade cancellations and corrections of clearing-related information entered pursuant to proposed Rule 6.²¹ It would permit Exchange personnel, generally no later than T+1, to cancel a clearing submission and enter a corrected submission if the Institutional Broker that entered the original submission provides documentary evidence that the trade was cancelled in the marketplace in which it was originally executed and re-entered at the price, quantity, and/or security of the corrected clearing submission. Exchange operations personnel may also enter a clearing submission which an Institutional Broker failed to enter²² or which was not processed due to a systems error, if operations personnel have been provided documentary evidence of the original trade execution. Proposed Interpretation and Policy .04 would permit either Exchange Operations personnel or Institutional Brokers to cancel a clearing submission and enter a new corrective submission to correct a misidentification of the Clearing Participant, generally, by no later than T+1. Before the corrective submission is made, the Institutional Broker must obtain documentary evidence of the misidentification of the Clearing Participant, and provide it to the Exchange Operations personnel if the latter are making the corrective submission. Authorizing Exchange personnel to make these cancellations and corrections should prevent unnecessary and unwanted failures to clear and should help ensure transactions settle in an accurate manner.

III. 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:

the clearing submission), which must be provided by the Institutional Broker pursuant to Article 11, Rule 4. The Exchange plans to add a riskless principal identifier to these records.

²¹ CHX states that the need to correct a clearing record is typically identified by an order-sending firm or Institutional Broker where there is a clearing break and the parties are looking for a position which does not show up or they have a position they did not expect to have. See Amendment No. 1 at 17.

²² If an Institutional Broker fails to enter the clearing submission within the timeframes specified in the Rule 6, it will be in violation of the rule.

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-CHX-2011-17 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-2011-17. This file number should be included on the subject line if email 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 inspection and copying 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-2011-17 and should be submitted on or before November 21, 2011.

IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,²³ and, in particular, Section 6(b)(5) of the Act,²⁴ which, among other things, requires that

²³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁴ 15 U.S.C. 78f(b)(5).

the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, 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. The Commission believes that the Exchange's proposal will facilitate the clearance and settlement of complex transactions that occur otherwise than on the CHX.

Rule 6 sets forth the requirements for Institutional Brokers who utilize CHX's systems to provide a clearance service for transactions executed otherwise than on the Exchange.²⁵ The filing permits Institutional Brokers to provide a clearing service by entering information with respect to trades that have occurred in multiple venues in Brokerplex for submission to NSCC. Proposed Rule 6(a) requires Institutional Brokers to have an agreement with the Clearing Participant in whose name the entries are made and to file a copy of the agreement with the Exchange, which should ensure Institutional Brokers have the appropriate authorization to act on behalf of a particular Clearing Participant. The Exchange will provide a functionality within Brokerplex to validate that an agreement is in place before an Institutional Broker may submit clearing entries in Brokerplex. CHX requires Clearing Participants to sign a clearing agreement accepting responsibility for non-Exchange transactions submitted to NSCC through an Institutional Broker.²⁶ CHX will distinguish non-CHX trades from CHX-trades in its submissions to NSCC.²⁷ These requirements should increase transparency regarding the clearing service that Institutional Brokers provide for non-exchange trades and should enable the Exchange and other regulators to surveil the clearing activity to ensure that Institutional Brokers and Clearing Participants are acting consistent with the provisions of the rule.

In addition, CHX has represented that it will develop an automated system for

²⁵ NASDAQ Rule 7038 permits the use of step-outs by member firms for trades effected otherwise than on NASDAQ. Rule 7042 governs clearing entries for riskless principal transactions. FINRA also permits the use of non-tape, clearing only entries for riskless principal transactions. See e.g., Rule 6282.

²⁶ See Article 21, Rule 4. The Commission expects that CHX will maintain copies of these agreements.

²⁷ See Amendment No. 1, *supra* note 5.

the submission of clearing information such that trades for which clearing information has been submitted are locked-in before the clearing information is submitted to NSCC. Locked-in trades eliminate the risk to NSCC that after a clearing entry has been submitted to it, one of the parties to the transaction will disavow the transaction. Further, for submissions pursuant to proposed Rule 6(a), the Institutional Broker must make clearing entries involving substitution of parties within three hours of the execution of the transaction, and provide documentation to the Exchange of a non-Exchange execution no later than the close of business on the day of the trade. These aspects of the rule should assist the Exchange as well as other regulators to more effectively monitor this clearing activity. The Commission urges CHX to continue to review the amount of time Institutional Brokers have to provide clearing information to CHX.

Rule 6(b) will permit Institutional Brokers to submit non-tape, clearing only entries for riskless principal transactions. Institutional Brokers must provide the Exchange records to demonstrate that the transactions were riskless principal transactions. The Institutional Broker must make all clearing entries within twenty minutes of the execution of the transaction, or, in the case of multiple transactions, of the last component trade execution, and provide to the Exchange documentation of a non-Exchange trade execution no later than the close of business on the day of the trade. These aspects of the rule should assist the Exchange as well as other regulators in more effectively monitoring clearing activity.

Furthermore, the Commission notes that, with respect to either category of submissions of clearing information for trades executed other than on the Exchange, CHX's proposed rule forbids Participants from using CHX's clearing submission services to avoid any regulatory trade reporting obligations.²⁸ The Commission understands that CHX will share data regarding its clearing submissions for non-Exchange trades with FINRA in order to assist FINRA in supervising the over-the-counter component of this activity.²⁹ The rule should provide CHX with additional information and documentation regarding the clearing activities of Institutional Brokers and thus enhance CHX's ability to surveil non-tape, clearing-only entries related to

transactions executed otherwise than on the Exchange.

Finally, the rule permits Exchange personnel, under prescribed circumstances, to cancel and/or correct clearing submissions and codifies that Institutional Brokers are responsible for ensuring that all clearing information is complete and accurate for non-tape, clearing-only submissions. The Commission believes that the limitations regarding changes to clearing entries are appropriate, however, the Commission expects CHX to monitor the changes made by Exchange personnel to ensure that they are only making changes that are permitted by the rule and only when they have the appropriate documentation indicating the need for the change to the clearing records. The limitations in the rule should help avoid abuse of the process by Institutional Brokers.

The Commission finds good cause to approve the filing, as modified by Amendment No. 1, before the 30th day after the date of publication in the **Federal Register**, because the changes made in Amendment No. 1 clarify the activity that will be permitted under the rule and add limitations to make the rule more effective. As discussed, NASDAQ provides a similar service for its members.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change (SR-CHX-2011-17), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

In the Matter of Accesspoint Corp., Aero Performance Products, Inc., Apex Resources Group, Inc., Aradyme Corp., Bancroft Uranium, Inc., Fightersoft Multimedia Corp., Fortress Financial Group, Inc., and Global Aircraft Solutions, Inc.; Order of Suspension of Trading

October 27, 2011.

It appears to the Securities and Exchange Commission that there is a

²⁸ See proposed Rule 6(a)(2) and 6(b)(2).

²⁹ See Amendment No. 1, *supra* note 5.

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).