

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85877)

May 16, 2019

Order Granting Application by Chicago Stock Exchange, Inc. for an Exemption Pursuant to Section 36(a) of the Exchange Act from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) has filed with the Securities and Exchange Commission (“Commission”) an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ from the rule filing requirements of Section 19(b) of the Exchange Act² with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”) that the Exchange seeks to incorporate by reference.³ Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

On December 7, 2018, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder,⁴ a proposed rule change to amend Article 14 (Arbitration) of the rules of the Exchange (“Rules”) to adopt arbitration provisions that are substantively similar to Rule 12 (Arbitration) of the rules of NYSE National, Inc. (“NYSE National”), which incorporates by reference the FINRA Rule 12000 Series (Code of Arbitration Procedure for Customer Disputes) and Rule 13000 Series (Code of Arbitration

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ See Letter from Elizabeth K. King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Commission, dated January 2, 2019 (“Exemptive Request”).

⁴ 17 CFR 240.19b-4.

Procedure for Industry Disputes) (collectively, the “Codes of Arbitration”). NYSE National is a national securities exchange and affiliate of CHX. The proposal was published for comment in the Federal Register on December 27, 2018⁵ and was immediately effective upon filing. The Exchange submitted the Exemptive Request in connection with this rule change.

CHX has requested, pursuant to Rule 0-12 under the Exchange Act,⁶ that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to those Exchange rules that are effected solely by virtue of a change to a cross-referenced FINRA rule, including FINRA rules designated as NASD rules.⁷ Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to each FINRA rule (or series of rules, in the case of the Codes of Arbitration) that are cross-referenced in Article 14, Rule 1 of the Rules, without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.⁸ Article 14, Rule 1 cross-references the FINRA Rule 12000 Series and Rule 13000 Series of the Codes of Arbitration, and FINRA Rule 2268.

The Exchange states that the direct incorporation by reference of FINRA rules is intended to be a comprehensive integration of the relevant FINRA rules into CHX’s rules.⁹ CHX also states that the FINRA rules that the Exchange seeks to incorporate by reference are categories of

⁵ See Exchange Act Release No. 84866 (Dec. 19, 2018), 83 FR 66830 (Dec. 27, 2018) (SR-CHX-2018-08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Article 14 of the Rules of the Exchange Related to Arbitration Proceedings) (“Notice”).

⁶ 17 CFR 240.0-12.

⁷ See Exemptive Request, supra note 3, at 1-2.

⁸ Id.

⁹ See Exemptive Request, supra note 3, at 2.

rules that are regulatory in nature.¹⁰ In addition, the Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange agrees to provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule.¹¹ Such notice will alert Exchange members to the proposed rule change and give them an opportunity to comment on the proposal. The Exchange further represents that it will inform members in writing when the Commission approves any such proposed rule changes.¹²

According to the Exchange, this exemption is necessary and appropriate because it would result in the Exchange's rules being consistent with the relevant cross-referenced FINRA rules at all times, thus helping ensure identical regulation of joint members of the Exchange and FINRA with respect to such rules. Without such an exemption, joint members of the Exchange and FINRA could be subject to two different standards.¹³ Moreover, the Exchange believes that by incorporating the above-referenced FINRA rules in the Exchange's rulebook as rules of the Exchange, the exemption would help ensure consistent regulation of Exchange members that are not FINRA members and Exchange members that are FINRA members.¹⁴ In addition, the Exchange believes that the exemption would help ensure consistency between certain Exchange

¹⁰ The Exchange represents that the FINRA rules proposed to be incorporated by reference are not trading rules. In addition, the Exchange notes that several other self-regulatory organizations ("SROs") incorporate by reference certain regulatory rules of another SRO and have received from the Commission similar exemptions from Section 19(b) of the Exchange Act. See Exemptive Request, supra note 3, at 2, n 5.

¹¹ See Exemptive Request, supra note 3, at 2. The Exchange represents that it will provide such notice via a posting on the same website location where the Exchange will post its own rule filings pursuant to Rule 19b-4(1) under the Exchange Act within the time frame required by such rule. The website posting will include a link to the location on FINRA's website where the applicable proposed rule change is posted. Id. at n. 6.

¹² See Exemptive Request, supra note 3, at 2.

¹³ Id.

¹⁴ Id.

and FINRA rules that are covered by the Exchange’s regulatory services agreement (“RSA”) with FINRA, which would facilitate FINRA’s provision of services to the Exchange under the RSA within the scope of those rules.¹⁵ The Commission has issued exemptions similar to the Exchange’s request.¹⁶ In granting one such exemption in 2010, the Commission repeated its 2004 statement that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the

¹⁵ Id.

¹⁶ See, e.g., Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (order granting NYSE National, Inc.’s exemptive request relating to rules of FINRA incorporated by reference); 83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAX PEARL, LLC’s exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (Jan. 29, 2016), 81 FR 6066, 6083-84 (Feb. 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC (now known as Nasdaq MRX, LLC) and exemptive request relating to rules of the International Securities Exchange, LLC (now known as Nasdaq ISE, LLC) (“ISE”) incorporated by reference, including index options rules); 70050 (Jul. 26, 2013), 78 FR 46622, 46642 (Aug. 1, 2013) (order granting application for registration as a national securities exchange of Topaz Exchange, LLC (now known as Nasdaq GEMX, LLC) and exemptive request relating to rules of ISE incorporated by reference, including index options rules); 61152 (Dec. 10, 2009), 74 FR 66699, 66709-10 (Dec. 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated (“C2”) and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated (“CBOE”) incorporated by reference, including index options rules). See also, e.g., Exchange Act Release No. 61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc.’s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (“BATS Options Market Order”).

Exchange Act;¹⁷

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹⁸

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.¹⁹ The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA changes a rule that the Exchange has incorporated by reference.

Accordingly, IT IS ORDERED, pursuant to Section 36 of the Exchange Act,²⁰ that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act

¹⁷ See 17 CFR 240.0-12 and Exchange Act Release No. 39624 (Feb. 5, 1998), 63 FR 8101 (Feb. 18, 1998) (“Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule”).

¹⁸ See BATS Options Market Order, supra note 16 (citing Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (“2004 Order”).

¹⁹ See BATS Options Market Order, supra note 16, 75 FR at 8761; see also 2004 Order, supra note 18, 69 FR at 8502.

²⁰ 15 U.S.C. 78mm.

solely with respect to changes made to each FINRA rule cross-referenced in Article 14, Rule 1, without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act, provided that the Exchange promptly provides written notice to its members whenever FINRA proposes to change a rule that the Exchange has incorporated by reference.

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

Eduardo A. Aleman
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(76).