SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69075; File No. SR-CHX-2013-07)

March 8, 2013

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Article 1, Rule 2 (Order Types and Conditions); Article 20, Rule 4 (Eligible Orders); and Article 20, Rule 6 (Locked and Crossed Markets) to Modify the Operation of the CHX Only Order Type and Post Only Order Modifier

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 1, 2013, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. CHX has filed this proposal pursuant to Rule 19b-4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. 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

CHX proposes to amend its rules to modify the operation of the CHX Only order type and Post Only order modifier. The text of this proposed rule change is available on the Exchange's Web site at www.chx.com 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 changes and discussed any comments it received on the

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 17 CFR 240.19b-4(f)(6).

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

The Exchange proposes to amend its rules that collectively govern the CHX Only order type and the Repricing Processes and the Post Only order modifier, as detailed below.[4] Through this proposed rule change, the Exchange seeks to promote greater market liquidity and competition, while maintaining compliance with relevant provisions of the Act,[5] Regulation NMS[6] and Rule 201 of Regulation SHO.[7]

Background

In 2011, the Exchange introduced the CHX Only order type, which was designed to encourage displayed liquidity on the Exchange and reduce automatic cancellations by the Matching System.[8] The CHX Only order is a limit order that is to be ranked and executed on the Exchange, without routing away to another trading center.[9] Order senders have the option to

4 CHX Article 1, Rule 2 (Order Types and Conditions); CHX Article 20, Rule 4 (Eligible Orders); CHX Article 20, Rule 8 (Operation of the Matching System).

5 15 U.S.C. 78a et seq.

6 17 CFR 242.610(d).

7 17 CFR 242.201.

8 Securities Exchange Act Release No. 64319 (Apr. 21, 2011), 76 FR 23634 (Apr. 27, 2011) (SR-CHX-2011-04); CHX Article 1, Rule 2 (Order Types and Conditions); CHX Article 20, Rule 4 (Eligible Orders).

9 The Exchange currently offers one order subtype (i.e. CHX Only) and two order modifiers ("Do Not Route," under CHX Article 1, Rule 2(k) and "Post Only," under CHX Article 20, Rule 4(b)(18)) that require order execution on the Exchange only. Of the three, only orders marked CHX Only are eligible for the current Repricing processes.

default all limit orders to “CHX Only” and therefore be subject to repricing. Notably, the CHX Only order type features an order handling functionality comprised of Regulation NMS repricing (“NMS repricing”) and Short Sale repricing (Short Sale repricing together with NMS repricing, the “Repricing Processes”), to ensure compliance with Regulation NMS[10] and Rule 201 of Regulation SHO.[11] The Repricing Processes are applied to all CHX Only orders that, at the time of order entry, would be in violation of Regulation NMS[12] and/or Rule 201 of Regulation SHO,[13] if displayed or executed at the limit price. However, a CHX Only order that, at the time of order entry, can be displayed or executed in compliance with Regulation NMS[14] and Rule 201 of Regulation SHO[15] will not be subject to the Repricing Processes and shall be displayed and will be executable without repricing.

The Repricing Processes currently result in the repricing of an order to, or ranking and/or display of an order at, a price other than an order’s limit price in order to comply with Regulation NMS[16] and Rule 201 of Regulation SHO.[17] Specifically, NMS repricing currently reprices and displays an order upon entry and in certain cases again reprices and re-displays an order at a more aggressive price one time if and when permissible, but does not continually reprice an order based on changes in the National Best Bid (“NBB”) or National Best Offer (“NBO”, and

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An order that is not marked CHX Only shall not be eligible for the current Repricing processes.

10 17 CFR 242.610(d).

11 17 CFR 242.201.

12 17 CFR 242.610(d).

13 17 CFR 242.201.

14 17 CFR 242.610(d).

15 17 CFR 242.201.

16 17 CFR 242.610(d).

17 17 CFR 242.201.

together with the NBB, the "NBBO"). Also, Short Sale repricing currently reprices an order once upon order entry and does not again reprice such an order after it has been displayed, notwithstanding movements to the NBB.

The Exchange now proposes to modify these processes so as to create an order handling functionality that will reprice, re-rank and/or re-display certain CHX Only orders multiple times depending on changes to the NBBO (the repricing of CHX Only sell short orders subject to Rule 201 of Regulation SHO[18] is dependent solely on declines to the NBB), so long as the order can be ranked and displayed in an increment consistent with the provisions of Regulation NMS[19] and Rule 201 of Regulation SHO,[20] until the order is executed, cancelled or the original limit price is reached. As such, the Exchange proposes to call this functionality the "CHX Only Price Sliding Processes," which will be comprised of "NMS Price Sliding" and "Short Sale Price Sliding." The Exchange also proposes to adopt language to make clear that the proposed CHX Only Price Sliding Processes are based on Protected Quotations[21] at equities exchanges other than the Exchange (Short Sale Price Sliding is based on the NBB) and that all CHX Only limit orders subject to the CHX Only Price Sliding Processes shall maintain their original limit price and

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[18] Id.

[19] 17 CFR 242.610(d).

[20] 17 CFR 242.201.

[21] Pursuant to Article 20, Rule 6(a)(1), the Exchange defines "Protected Quotation" as that term is defined under Rule 600(b) of Regulation NMS (17 CFR 242.600(b)), which states "protected quotation means a protected bid or a protected offer." In turn, Rule 600(b)(57) of Regulation NMS (17 CFR 242.600(b)(57)) states, "protected bid or offer means a quotation in an NMS stock that: (i) is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc."

shall retain their time priority with respect to other orders based upon the time those orders were initially received by the Matching System.

With respect to the Post Only order modifier, the Exchange proposes to amend the definition of "Post Only" (A) to clarify that a Post Only order that would remove liquidity from the CHX book shall be immediately cancelled and (B) to allow a CHX Only Post Only order to be eligible for the CHX Only Price Sliding Processes.[22]

The Proposed CHX Only Price Sliding Processes

Initially, the Exchange proposes to replace all reference to "repricing" under the rule language of CHX Only orders, with the more accurate term "Price Sliding." Also, the Exchange proposes to add a description of the CHX Only Price Sliding Processes by inserting a new paragraph that states that the CHX Only Price Sliding Processes utilized by the Matching System include both NMS Price Sliding and Short Sale Price Sliding and that all CHX Only orders may be subject to either NMS Price Sliding or Short Sale Price Sliding. It is important to note that the proposed CHX Only Price Sliding Processes are only applicable to CHX Only orders. Non-CHX Only orders that, at the time of entry, would be in violation of Regulation NMS[23] or Rule 201 of Regulation SHO,[24] including "Do Not Route" orders, will be cancelled by the Matching System and rejected back to the order sender. To this end, the Exchange also proposes to amend Article 20, Rule 6(d) (Locked and Crossed Markets) to clarify that an order that would lock or cross a Protected Quotation of an external market may, among other possibilities, be subject to the CHX Only Price Sliding Processes, if it is a "CHX Only" order.

22 CHX Article 20, Rule 4(b)(18).

23 17 CFR 242.610(d).

24 17 CFR 242.201.

Moreover, the Exchange proposes to adopt language to clarify that CHX Only orders that are undisplayed in whole or in part (i.e. CHX Only orders marked "Do Not Display" and "Reserve Size," respectively) are not eligible for the CHX Only Price Sliding Processes and that such orders that, at the time of entry, are in violation of Regulation NMS[25] and Rule 201 of Regulation SHO[26] shall be cancelled and rejected back to the order sender. Also, the Exchange proposes to clarify that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, an undisplayed sell short order that is priced above the NBB at the time of initial order entry, but due to a change in the NBB, is now priced at or below the NBB, shall be cancelled.

Proposed NMS Price Sliding

With respect to the current NMS repricing, if a CHX Only order that, at the time of entry, would cross a Protected Quotation displayed by another trading center, the Exchange will reprice the order and rank the order in the CHX book at the locking price and display the order at one minimum price variation below the NBO for bids or above the NBB for offers. Similarly, in the event a CHX Only order that, at the time of entry, would lock or cross a Protected Quotation displayed by another trading center, the Exchange will display the order at one minimum price variation below the NBO for bids or above the NBB for offers. If a CHX Only order subject to NMS repricing is matched after the initial repricing, the order will execute, without further repricing, so long as Regulation NMS[27] and Rule 201 of Regulation SHO[28] are not violated. If the CHX Only order subject to NMS repricing is not subsequently executed or cancelled and the

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[25] 17 CFR 242.610(d).

[26] 17 CFR 242.201.

[27] 17 CFR 242.610(d).

[28] 17 CFR 242.201.

NBBO changes such that the display of the original locking price of the CHX Only order subject to NMS repricing would not lock or cross a Protected Quotation, the order will receive a new timestamp and will be re-displayed at the original locking price. After this repricing, the CHX Only order subject to NMS Repricing will not be repriced, notwithstanding further changes to the NBBO.

As an example of how the current NMS repricing functions, assume that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is $30.22. A CHX Only order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since the display of the sell order at $30.24 would result in an impermissibly crossed market, the CHX Only sell order would be ranked at the locking price of $30.25 within the CHX book and displayed at $30.26, which is one minimum price increment above the NBB, in order to avoid locking the markets. If a buy limit order priced at $30.25 or higher were to be subsequently submitted to the Matching System, it could be executed against the resting CHX Only sell order at its ranked price of $30.25. If the NBB were to decrease to $30.24 without the CHX Only sell order being executed or cancelled, the CHX Only sell order would be re-displayed at the original locking price of $30.25. If the NBB were to decrease again to $30.23, the CHX Only sell order would remain ranked and displayed at $30.25.

With respect to the proposed NMS Price Sliding, the Exchange proposes to adopt language to make clear the distinction between "Initial NMS Price Sliding" (i.e. price sliding upon order entry) and "Multiple NMS Price Sliding" (i.e. price sliding orders that have already been adjusted). Under the proposed "Initial NMS Price Sliding" paragraph, the Exchange proposes to adopt language to clarify that NMS Price Sliding would apply if a CHX Only order, at the time of entry, would lock or cross a Protected Quotation of an external market in violation of Rule 610(d) of Regulation NMS.[29] Aside from this clarification, the Exchange proposes to adopt the functionality of the current NMS repricing in the proposed NMS Price Sliding, whereby CHX Only orders that lock or cross a Protected Quotation of an external market will be initially ranked at the locking price and will be displayed by the Matching System at one minimum price variation below the current NBO for bids and one minimum price variation above the current NBB for offers. In doing so, the Exchange further proposes to refer to these displayable prices as the "Permitted Display Price." Finally, the Exchange proposes to adopt language to state that CHX Only orders subject to NMS Price Sliding will retain their original limit prices irrespective of the prices at which such orders are ranked and displayed. Accordingly, the Exchange proposes to refer to the rank and display of a CHX Only order rather than using the term "reprice." Although the proposed "Initial NMS Price Sliding" will function similarly to the current NMS repricing of CHX Only orders upon order entry, the functionality of the current and proposed processes diverge after initial order entry.

Under the proposed "Multiple NMS Price Sliding" paragraph, the Exchange proposes to adopt language to state that following the initial ranking and display of a CHX Only order subject to NMS Price Sliding, the order will be continuously re-ranked and re-displayed until the order is executed, cancelled or its original limit price is reached. In addition, the Exchange also proposes to adopt language that states that such an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price, based upon changes to the prevailing NBBO; provided, however, that an order may be re-ranked to a less aggressive price where a Protected Quotation of an external market locks or crosses the displayed price of a resting price slid order.

[29] 17 CFR 242.610(d).

To this end, the Exchange proposes to adopt language that details how the Matching System will “Re-rank” and “Re-display” a CHX Only order subject to NMS Price Sliding. Under the proposed “Re-rank” paragraph, the Exchange proposes to adopt language that states that in the event the NBBO changes such that a CHX Only order subject to NMS Price Sliding could be re-ranked at a higher trading increment for buy orders or lower trading increment for sell orders, without crossing a Protected Quotation of an external market, the order will receive a new timestamp and will be re-ranked at the current locking price. Under the proposed “Re-display” paragraph, the Exchange proposes to adopt language that states that in the event the NBBO changes such that a CHX Only order subject to NMS Price Sliding could be re-displayed at a higher trading increment for buy orders or lower trading increment for sell orders, the order will receive a new timestamp and will be re-displayed at the current Permitted Display Price.

As an example of how the proposed NMS Price Sliding would function, assume again that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is priced at $30.22. A CHX only order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since the order is not immediately executable within our system and a display offer of $30.24 would be impermissible, pursuant to both the current NMS repricing and proposed NMS Price Sliding processes, the CHX Only sell order would be ranked at the locking price of $30.25 within the CHX book. Moreover, the Matching System would publicly display the sell order at $30.26, which is one minimum price increment above the NBB, i.e. the Permitted Display Price, in order to avoid locking the market. If a buy limit order priced at $30.25 or higher were to be subsequently submitted to the Matching System, it could be executed against the resting CHX Only sell order at its ranked price of $30.25. Up to this point, the current NMS repricing and proposed NMS Price Sliding is in lockstep. However, the processes diverge once the NBB decreases.

If the NBB were to decrease to $30.24 without the CHX Only order being executed or cancelled, under the current NMS repricing, the CHX Only sell order would be re-displayed at the original locking price of $30.25 and would not be subject to further repricing. In contrast, under the proposed NMS Price Sliding, the CHX Only sell order would be re-ranked in the CHX book at the new locking price of $30.24 and re-displayed at the Permitted Display Price of $30.25. Under this scenario, a buy limit order priced at $30.24 or higher could execute against the resting CHX Only sell order at its re-ranked and original limit price.

If the NBB then reverted back to $30.25, without the order being executed or cancelled, under either the current NMS repricing or proposed NMS Price Sliding processes, the Exchange would continue to display the CHX Only sell order at $30.25 expecting the trading center that posted the new bid at $30.25 to contemporaneously send CHX a satisfying buy order pursuant to Rule 611 of Regulation NMS.[30] With respect to the ranked price, as discussed in detail below, the sell order may be re-ranked to the display price if the Matching System receives a marketable buy order. If the NBB were to instead further decrease to $30.23 without the CHX Only order being executed or cancelled, under the proposed NMS Price Sliding, the CHX Only sell order would maintain its ranked price at $30.24 because NMS Price Sliding would never result in an order being ranked or displayed beyond its original limit price. As such, the CHX Only sell order would be re-displayed at its original limit price of $30.24.

As illustrated above, following the initial ranking and display of an order subject to NMS Price Sliding, an order is typically only re-ranked to the extent it achieves a more aggressive

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30 17 CFR 242.611(a).

price. However, the Exchange proposes to re-rank a resting price slid order at the same price as the displayed price (i.e. a less aggressive price) in the event (1) such order's displayed price is locked by a Protected Quotation of an external market and (2) the Matching System receives a marketable contra-side order.[31] This will avoid the potential of a trade-through of a Protected Quotation displayed by an external market at such ranked price.

As an example of the behavior described above, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a fully-displayable CHX Only bid to buy 100 shares at $10.12 per share, the Exchange will rank the bid at $10.12 and display the bid at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If an external market then updated its Protected Offer to $10.11, thus locking the Exchange's displayed bid (i.e. the order subject to price sliding that is ranked at $10.12 and displayed at $10.11), the Exchange proposes to maintain the ranked price of the resting price slid bid at $10.12 and continue to display the order at $10.11, until a marketable contra-side order is received.

If the Exchange then received an inbound marketable offer priced at the $10.11 (i.e. the displayed price of the resting bid), the Exchange proposes to modify the ranked price of the

31 The Exchange notes that as a general matter Regulation NMS should prevent external markets from displaying Protected Quotations that lock or cross Protected Quotations displayed by the Exchange. However, in a dynamic market, such an event can and does happen for a variety of reasons. For example, if the Exchange updates its contra-side Protected Quotation, it is possible that such quotations lock or cross each other. Neither the Exchange nor the other market would know in this circumstance that such quotations would lock or cross each other when publishing their quotation updates. As another example, in the event another market receives an Intermarket Sweep Order, such market may permissibly display such order without regard to other Protected Quotations, including quotations displayed by the Exchange that lock or cross such order.

resting price slid bid to the same price as the displayed price. Thus, the resting price slid bid could only execute against the incoming marketable offer at the displayed price of $10.11. Similarly, if the inbound marketable offer was priced at $10.12, the resting bid would be ranked at the displayed price of $10.11 and the inbound offer would be ranked and displayed at $10.12. By re-ranking the bid in this example to the displayed price at $10.11, the Exchange will not allow an order to trade-through the NBO when the Exchange receives a marketable contra-side offer during the locked market condition. If, however, the NBO moved back to $10.12, without the resting bid being executed or cancelled, the resting bid would be re-ranked at $10.12 and be continued to be displayed at $10.11.

The Exchange also proposes to make clear that this re-ranking will not result in a change in priority for the order at its displayed price. For instance, in the example above, assume the bid described had been posted and displayed at $10.11 and ranked at $10.12 ("Order A"), and then a later arriving bid is received by the Exchange at $10.11 ("Order B") and posted as well, with priority behind Order A. If the Exchange then re-ranks Orders A because it has been locked by another market center's Protected Quotation, the Exchange does not believe it would be fair to cause such order to lose priority when it was originally first in priority amongst displayed orders on the Exchange. A more detailed example of order execution priority may be found below.

Moreover, the Exchange proposes to adopt language that states that when an external market crosses the Exchange's Protected Quotation and the Exchange's Protected Quotation is a resting displayed order subject to the proposed NMS Price Sliding, the Exchange proposes to rank and display the resting order based on the first uncrossed NBBO ("pro forma NBBO") calculated pursuant to paragraph .01(d) of Article 20, Rule 5.[32] This pro forma NBBO is

[32] Paragraph .01(d) of Article 20, Rule 5 states:

calculated by a CHX-specific protocol that ignores Protected Quotations that cross any Protected Quotation(s) until an uncrossed NBBO is identified. If the first uncrossed NBBO is locked and the Exchange receives a marketable contra-side order, then the resting price slid order with a ranked price that crosses the contra-side Protected Quotation would be ranked at the displayed price. If, however, the first uncrossed NBBO is not locked, then the resting price slid order would be subject to the normal rules of NMS Price Sliding and maintain its current ranked and displayed price or be price slid to a more aggressive price. Thus, the order displayed by the Exchange will still be ranked and permitted to execute at a price that crosses the ignored market's Protected Quotation, which is consistent with Rule 611(b)(4) of Regulation NMS.[33]

As an example of the behavior described above, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a CHX Only bid to buy 100 shares at $10.12 per share, the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If an external market then updated its Protected Offer to $10.10, thus crossing the Exchange's displayed bid, the Exchange would ignore Protected Quotations that crossed the Exchange's displayed bid until the

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> ".01 Trade-through policies and procedures. In determining whether a trade on the Exchange would create an improper trade-through, the Exchange will adhere to the applicable provisions of Reg NMS, as well as to the following policies and procedures:
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> d. <u>Crossed market exception</u>. Trades shall continue to be executed in the Matching System when the NBBO is crossed; provided however, that the Matching System shall only execute orders in that security up to (but not beyond) the first uncrossed NBBO. If a trade is executed in the Matching System while the NBBO is crossed, the Matching System will automatically attach an appropriate modifier to the trade before it is publicly reported."

33 17 CFR 242.611(b)(4).

first uncrossed NBBO was identified. If the first uncrossed NBO was at $10.12, then the resting bid would remain ranked at $10.12 and displayed at $10.11. If, however, the first uncrossed NBO locked the resting bid and the Matching System received a marketable offer at either the ranked or displayed price, then the resting bid would be ranked at the displayed price of $10.11. A more detailed example of order execution priority may be found below.

Proposed Short Sale Price Sliding

With respect to the current Short Sale repricing, if a CHX Only sell short order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO,[34] the Exchange will reprice and display the CHX Only sell short order at one minimum price variation above the current NBB.[35] Thereafter, a CHX Only sell short order subject to Short Sale repricing will not be readjusted downward even if it could be displayed at a lower price without violating Rule 201 of Regulation SHO.[36]

As an example of how the current Short Sale repricing functions, assume again that the NBBO for security XYZ is $30.25 by $30.26. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. A CHX Only sell short order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since this CHX Only sell short order is priced below the current NBB, this order would be repriced and displayed at $30.26, one minimum price increment above the current NBB, pursuant to the

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[34] 17 CFR 242.201.

[35] When the short sale price test restriction under Rule 201 of Regulation SHO (17 CFR 242.201(b)(1)(i)) is in effect, non-CHX Only sell short orders submitted with a limit price at or below the current NBB at the time received by the Matching System and which are not marked a sell short exempt shall be cancelled and rejected back to the order sender. See CHX Article 20, Rule 8(d)(4).

[36] 17 CFR 242.201.

provisions of Rule 612 of Regulation NMS.[37] If the NBB subsequently declined to $30.24, the CHX Only sell short order would not be repriced downward.[38] If the NBB instead increased to $30.26, the Exchange would continue to display the sell short order at $30.26 in reliance on the provision of Rule 201 of Regulation SHO[39] that permits the execution of a displayed short sale order if, at the time of the initial display, the order was priced above the then-current NBB.

With respect to the proposed Short Sale Price Sliding, similar to the organizational structure of the proposed NMS Price Sliding, the Exchange proposes to adopt language to make a clear distinction between "Initial Short Sale Price Sliding" (i.e. price sliding upon order entry) and "Multiple Short Sale Price Sliding" (i.e. price sliding orders that have already been adjusted). Under the proposed "Initial Short Sale Price Sliding" paragraph, the Exchange proposes to maintain the substance of the current Short Sale repricing by including language that states that a CHX Only sell short order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO[40] will be repriced and displayed by the Matching System at one minimum price variation above the current NBB. The Exchange proposes to refer to this minimum price variation above the current NBB as the "Permitted Price." Moreover, the Exchange proposes to adopt language to state that CHX Only orders subject to Short Sale Price Sliding will retain their original limit prices irrespective of the prices at which such orders are repriced and displayed. Although the proposed "Initial Short Sale Price Sliding" will function similarly to the current Short Sale repricing of CHX Only sell short orders

[37] 17 CFR 242.612.

[38] In contrast, if the short sale price test restriction under Rule 201 of Regulation SHO were not in effect for security XYZ, this CHX Only sell short order would have been ranked and displayed pursuant to NMS Repricing (i.e. ranked at $30.25 and displayed at $30.26).

[39] 17 CFR 242.201(b)(1)(iii)(A).

[40] 17 CFR 242.201.

upon order entry, the functionality of the current and proposed processes diverge after initial order entry.

Under the proposed "Multiple Short Sale Price Sliding" paragraph, the Exchange proposes to adopt language to state that to reflect declines in the NBB, the Matching System will continue to reprice a CHX Only sell short order subject to short sale price test restriction under Rule 201 of Regulation SHO at the Permitted Price, until the order is executed or the original limit price is reached. The Exchange further proposes to include language that clarifies that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, Short Sale Price Sliding will take priority over NMS Price Sliding, with respect to CHX Only sell short orders subject to Short Sale Price Sliding. In addition, the Exchange proposes to include language consistent under Rule 201(b)(1)(iii)(A) of Regulation SHO[41] that explicitly states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB. In addition, the Exchange proposes to include language that CHX Only orders marked "short exempt" shall not be subject to Short Sale Price Sliding.

As an example of how the proposed Short Sale Price Sliding functions, assume again that the NBBO for security XYZ is $30.25 by $30.26 and the best priced bid in the CHX Matching System is priced at $30.22. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. A CHX only sell short order to sell 100 shares of XYZ at $30.24 is submitted to the Matching System. Since this CHX Only sell short

[41] 17 CFR 242.201(b)(1)(iii)(A).

order is priced below the current NBB and involves a security subject to the short sale price test restriction under Rule 201 of Regulation SHO, Short Sale Price Sliding will take priority over NMS Price Sliding. As such, under both the current Short Sale repricing and the proposed Short Sale Price Sliding, this order would be repriced and displayed at the Permitted Price of $30.26.

If the NBB subsequently declined to $30.24, under the current Short Sale repricing, the CHX Only sell short order would not be repriced. In contrast, under the proposed Short Sale Price Sliding, the CHX Only sell short order would be repriced and displayed at the new Permitted Price of $30.25. As such, an inbound buy limit order of $30.25 or higher (as opposed to merely $30.26 or higher under the current Short Sale repricing) could execute against the repriced CHX Only sell short order at $30.25. If the NBB then reverted back to $30.25, the Exchange would continue to display the CHX Only sell short order at $30.25 in reliance on the proposed rule that states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB.[42]

Proposed Lock-Only Price Sliding

Furthermore, the Exchange proposes to create a new paragraph that reincorporates the current lock-only repricing instruction. The proposed "Lock-Only Price Sliding" would permit order senders to enter an instruction for the Matching System to only apply the CHX Only Price Sliding Processes if the CHX Only order locks the NBBO at the time of the order entry and not if it crosses the NBBO. For order senders who utilize this instruction, a CHX Only order that crosses the NBBO will be immediately cancelled. In the context of Short Sale Price Sliding, an

[42] 17 CFR 242.201(b)(1)(iii)(A).

order that is priced below the NBB would be cancelled and an order priced at the NBB would be price slid.

Proposed Order Execution Priority of Price Slid Orders

The Exchange proposes to adopt language that establishes that CHX Only orders subject to the CHX Only Price Sliding Processes will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System. That is, all CHX Only orders subject to either NMS Price Sliding or Short Sale Price Sliding will retain their order execution priority based upon the time those orders were initially received, but will also be subject to proposed CHX Article 20, Rule 8(b)(7), which states, in sum, that an order subject to the CHX Only Price Sliding Processes shall receive order execution priority based first on its ranked price, then original time of receipt by the Matching System.

This is an important point of clarification because although the current Repricing Processes and the proposed CHX Only Price Sliding Processes require and will require an order to be re-timestamped each time the order price is adjusted, so as to follow changes to the prevailing NBBO, the purpose of this re-timestamp is to simply record the time of the price adjustment, as opposed to establishing or retaining time priority. Instead, time priority is established by a unique sequence number (e.g. 1, 2, 3, etc …) that the Matching System assigns to each incoming order at the original time of order entry. These sequence numbers ensure that orders retain their relative time priority to each other, even as they are priced adjusted, and these sequence numbers will not be changed nor will an order receive a new sequence number, so long as it is resting in the CHX book. The reason why a sequence number is utilized for establishing order time priority is because it allows CHX to assure proper time priority upon initial receipt by the Matching System and at subsequent price adjustments, irrespective of the granularity of the timestamp used. Consequently, sequence numbers allow and will allow each order to maintain its relative priority over other orders based on the time of original order entry, notwithstanding any price adjustments.

Example 1. As an example of how time priority of CHX Only orders subject to the CHX Only Price Sliding Processes would function and how that is reconciled with general order execution priority, assume that the NBBO for security XYZ is $30.25 by $30.26, the best bid in the CHX book is $30.21 and there are no resting offers in the CHX book. Further, assume that the short sale price test restriction under Rule 201 of Regulation SHO is in effect for security XYZ. Also assume that four CHX Only sell orders for 100 shares of XYZ are then entered in immediate succession and that all orders are fully displayable. The orders are received by the Matching System in the following sequence:

1:	**A**-Original Limit Price: $30.24
2:	**B**-Original Limit Price: $30.26
3 (short):	**C**-Original Limit Price: $30.23
4:	**D**-Original Limit Price: $30.23

Each Arabic numeral represents an order's sequence number. Under this scenario, Orders A, C and D are all subject to the CHX Only Price Sliding Processes because all three orders would violate Regulation NMS[43] and/or Rule 201 of Regulation SHO,[44] if displayed. Specifically, Orders A and D are subject to NMS Price Sliding and Order C is subject to Short Sale Price Sliding. Order B is not subject to the CHX Only Price Sliding Processes because its limit price of $30.26 would not impermissibly lock or cross the NBB.

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43 17 CFR 242.610(d).

44 17 CFR 242.201.

Example 2. After the initial CHX Only Price Sliding Processes have been applied, the orders are prioritized for execution in the CHX book as follows:

(i):	1	**A**–Original Limit Price: $30.24	Rank: $30.25	Display: $30.26
(ii):	4	**D**–Original Limit Price: $30.23	Rank: $30.25	Display: $30.26
(iii):	2	**B**–Original Limit Price: $30.26	Rank: $30.26	Display: $30.26
(iv):	3 (short)	**C**–Original Limit Price: $30.23	Rank: $30.26	Display: $30.26

The Roman numerals represent the order execution priority. Based on CHX Article 20, Rule 8(b), Orders A and D both receive order execution priority over Orders B and C because they both have the same superior ranked price at $30.25. In addition, Order A receives execution priority over Order D, where Order A retains its time priority over Order D from the original time of entry (i.e. Order A has a superior sequence number to Order D). Similarly, since Orders B and C have the same ranked price at $30.26, Order B receives execution priority over Order C, where Order B has a superior sequence number to Order C.

Example 3. Assume now that the NBB for XYZ decreases to $30.23 and none of the orders have been executed or cancelled. The proposed CHX Only Price Sliding Processes will re-prioritize the orders as follows:

(i):	4	**D**-Original Limit Price: $30.23	Rank: $30.23	Display: $30.24
(ii):	1	**A**-Original Limit Price: $30.24	Rank: $30.24	Display: $30.24
(iii):	3 (short)	**C**-Original Limit Price: $30.23	Rank: $30.24	Display: $30.24
(iv):	2	**B**-Original Limit Price: $30.26	Rank: $30.26	Display: $30.26

Order D has jumped Order A because Order D has the most aggressively ranked price at $30.23 and, as such, Order D now receives order execution priority over Order A. Order A, however, has maintained its order execution priority over Order C because although Order C has been price slid so that they are now both ranked at the same price of $30.24, Order A has a superior sequence number to Order C. Order B has fallen to last on the order execution priority list because of its inferior ranked price at $30.26.

Example 4. Assume now that the NBB for XYZ decreases to $30.22 and none of the orders have been executed or cancelled. Further assume that a new CHX Only sell order of 100 shares of XYZ at $30.22 is entered ("Order E"). The proposed CHX Only Price Sliding Processes will re-prioritize the orders as follows:

(i):	5	**E**-Original Limit Price: $30.22	Rank: $30.22	Display: $30.23
(ii):	3 (short)	**C**-Original Limit Price: $30.23	Rank: $30.23	Display: $30.23
(iii):	4	**D**-Original Limit Price: $30.23	Rank: $30.23	Display: $30.23
(iv):	1	**A**-Original Limit Price: $30.24	Rank: $30.24	Display: $30.24
(v):	2	**B**-Original Limit Price: $30.26	Rank: $30.26	Display: $30.26

Order E receives a sequence number inferior to the other four orders because it is the most recent sell order in security XYX to have been received by the Matching System. Also, Order E is subject to NMS Price Sliding as it would lock the NBB. However, Order E jumps to the top of the order execution priority list based on its superior ranked price at $30.22. Order C has now jumped Order D because Order C has been price slid so that they are now both ranked at the same price of $30.23 and Order C has a superior sequence number to Order D. Order A has dropped to fourth on the order execution priority list because its original limit price has been reached and a CHX Only order subject to the CHX Only Price Sliding Processes will never be price slid beyond its original limit price. Order B was never subject to the CHX Only Price Sliding Processes and remains last in the order execution priority list due to its inferior ranked price at $30.26.

Example 5. Assume now that the NBB for XYZ goes back to $30.23, thereby locking the displayed prices of Orders E, C and D. Pursuant to the proposed NMS Price Sliding, Order E would not yet be re-ranked to the displayed price. If the Matching System, however, received an incoming marketable bid priced at either $30.22 or $30.23, the proposed CHX Only Price Sliding Processes would re-prioritize the orders as follows:

(i):	3 (short)	**C**-Original Limit Price: $30.23	Rank: $30.23	Display: $30.23
(ii):	4	**D**-Original Limit Price: $30.23	Rank: $30.23	Display: $30.23
(iii):	5	**E**-Original Limit Price: $30.22	Rank: $30.23	Display: $30.23
(iv):	1	**A**-Original Limit Price: $30.24	Rank: $30.24	Display: $30.24
(v):	2	**B**-Original Limit Price: $30.26	Rank: $30.26	Display: $30.26

At this point, Order E would be re-ranked at its displayed price of $30.23. If the incoming bid were priced at $30.22, the bid would be ranked and displayed at $30.22. If the incoming bid were instead priced at $30.23, the bid would execute against Orders C and D before Order E because Order E has an inferior sequence number to Orders C and D. Furthermore, Order C would be allowed to execute at the NBB locking price in reliance on the proposed rule that states that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then-current NBB.[45]

Example 6. Assume now that another market center posts a Protected Bid of $30.24, without any of the orders being executed. Pursuant to paragraph .01(d) of Article 20, Rule 5 and Rule 611(b)(4) of Regulation NMS, the Exchange would ignore the crossing Protected Quotation

[45] 17 CFR 242.201(b)(1)(iii)(A).

and proceed to ascertain the first uncrossed NBBO. If the first uncrossed NBBO resulted in a locked market, the orders would be prioritized and/or price slid as described in Example 5. If the first uncrossed NBBO did not result in a locked market, the orders would be subject to the normal rules of proposed CHX Only Price Sliding Processes, as shown in Examples 1-4.

Consequently, a CHX Only order subject to the CHX Only Price Sliding Processes will execute similarly to its simple limit order counterpart, except that a CHX Only order subject to the CHX Only Price Sliding Processes will execute at its ranked price or better, as opposed to its limit price or better for limit orders that are not CHX Only. Notwithstanding this difference, CHX Only orders and limit orders are subject to the same CHX rules and processes for order execution as any other non-CHX Only order, in that they may execute against a compatible contra-side order, subject to the conditions and modifiers of the respective orders and the operation of the Matching System, pursuant to CHX Article 20, Rule 8.

<u>CHX Only Orders and Order Modifiers</u>

Correspondingly, many of the modifiers applicable to other non-CHX Only limit orders may be applied to CHX Only orders (<u>e.g.</u> "Time in Force"[46] and "Cancel on Halt"[47]), to the extent that the modifiers do not conflict with the CHX Only order subtype (<u>i.e.</u> CHX Only orders must be displayed, must be ranked and executed on the Exchange and must be subject to the CHX Only Price Sliding Processes). For example, the "Post Only" modifier, with some proposed amendments detailed below, is compatible with CHX Only orders. Whereas, certain

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[46] CHX Article 1, Rule 2(ii) defines "Time in Force" as "an order that is to be executed, in whole or in part, within a specified time period, with any unexecuted balance of the order to be immediately cancelled at the end of the specified time period. No time in force order shall be in force longer than the trading day on which it is received."

[47] CHX Article 1, Rule 2(c) defines "Cancel on Halt" as "an order that should be automatically cancelled by the Matching System if a trading halt or suspension is declared in that security."

modifiers, such as "Immediate or Cancel" ("IOC")[48] and "Intermarket Sweep Order" ("ISO") [49] are inherently incompatible with CHX Only orders.

The current definition of Post Only does not permit a CHX Only Post Only order to be eligible for the CHX Only Price Sliding Processes. Post Only is currently defined as an order that is to be posted on the Exchange and not routed away to another trading center. Moreover, a Post Only order will be immediately cancelled if (1) it is marketable against a contra-side order in the Matching System when entered or (2) it is at a price that would lock or cross a Manual or Protected Quotation.[50] Specifically, the current definition conflicts with the proposed CHX Only Price Sliding Processes, which requires a CHX Only Post Only order that would lock or cross a Protected Quotation of an external market to be price slid and not immediately cancelled.

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48 CHX Article 1, Rule 2(m) defines "IOC" as "an order that is to be executed, either in whole or in part, at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. IOC orders shall be executed in the Matching System at or better than the Exchange's BBO (including any reserve size or other undisplayed orders at or better than that price)."

49 CHX Article 20, Rule 4(b)(15) defines "ISO," in pertinent part, as "an order marked as required by SEC Rule 600(b)(30) that is to be executed against any orders at the Exchange's BBO (including any reserve size or other undisplayed orders at that price) as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. The Matching System, in executing the ISO, shall not take any of the actions described in Rule 5 to prevent an improper trade-through." In turn, Rule 600(b)(30) of Regulation NMS (17 CFR 242.600(b)(30)) defines "Intermarket Sweep Order" as "a limit order for an NMS stock that meets the following requirements: (i) when routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.

50 <u>See</u> Article 20, Rule 4(b)(18).

Therefore, the Exchange proposes to amend the definition of Post Only to allow Post Only orders marked CHX Only to be eligible for the CHX Only Price Sliding Processes. Specifically, the Exchange proposes to amend the definition of Post Only to provide that a Post Only order will be immediately cancelled (A) if the Post Only order would remove liquidity from the CHX book[51] or (B) if, at the time of order entry, the Post Only order would lock or cross a protected quotation of an external market; provided, however, that if the Post Only order is marked "CHX Only" and is eligible for the CHX Only Price Sliding Processes, pursuant to proposed Article 1, Rule 2(y), the Post Only order that would lock or cross a protected quotation[52] of an external market shall be subject to the CHX Only Price Sliding Processes and shall not be immediately cancelled. The following examples illustrate how a CHX Only Post Only order would behave under different market conditions.

Example 1. Assume that the NBBO for security XYZ is \$10.10 x \$10.12 and the short sale price test restriction of Rule 201 of Regulation SHO is not in effect. Assume further that the CHX BBO for security XYZ is also \$10.10 x \$10.12. Now assume that a fully-displayable CHX Only Post Only offer for security XYZ priced at \$10.10 ("Offer A") is received by the Matching System. Since Offer A would remove liquidity from the CHX book (i.e. resting bid at \$10.10), Offer A would be immediately cancelled. This would be the result under either the current or proposed Post Only definition.

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51 In adopting the new language for proposed subparagraph (A), the Exchange does not propose to substantively modify the specific functionality for the immediate cancellation of Post Only orders that are marketable against contra-side orders when entered. Rather, the new language is intended to clarify the meaning of the current language. That is, currently, a Post Only order will be immediately cancelled if it would take liquidity from the CHX book.

52 The Exchange proposes to omit reference to "Manual" quotations, so that the proposed definition accurately reflects Rule 610(d) of Regulation NMS and is consistent with proposed Article 1, Rule 2(y).

Example 2. Assume the same as Example 1 and that the NBBO for security XYZ remains at $10.10 x $10.12, but the CHX BBO moves away to $10.09 x $10.14. Also assume that there are no hidden (i.e. "Do Not Display" orders or ranked price of price slid orders) bids priced at $10.10 on the CHX book. Further assume that a fully-displayable CHX Only Post Only offer for security XYZ priced at $10.10 ("Offer B") is received by the Matching System. The current definition of Post Only suggests that Offer B should be immediately cancelled because although it is not marketable against any resting bids in the CHX book, the display of Offer B would lock a protected quotation of an external market, whereas the CHX Only designation would require application of the current NMS repricing and rank Offer B at the locking price of $10.10 and display the offer at $10.11. The proposed definition of Post Only resolves this conflict by requiring Offer B to be price slid and not be immediately cancelled because it is marked CHX Only.

Example 3. Assume the same as Example 2 and that Offer B is resting in the CHX book, ranked at $10.10 and displayed at $10.11. Thus, the NBBO for security XYZ moves to $10.10 x $10.11 and the CHX BBO moves to $10.09 x $10.11. Further assume that a fully-displayable CHX Only Post Only bid for security XYZ priced at $10.11 ("Bid A") is received by the Matching System. Under both the current and proposed definition of Post Only, Bid A would be immediately cancelled because it would take liquidity from the CHX book, namely Offer B at its ranked price of $10.10.

As a general rule, an order that is resting at a certain price point, whether it be displayed or undisplayed, is always "providing" liquidity to the CHX book. Conversely, if an incoming contra-side order is submitted that could execute against a resting order or if a contra-side resting order is price slid into the resting order, regardless of when the price slid order was originally submitted, the incoming or price slid contra-side order is always “removing” liquidity from the CHX book. Since Post Only orders may never remove liquidity from the CHX book, pursuant to the current and proposed definition of Post Only, an incoming Post Only order that is marketable against a resting contra-side order or a resting price slid Post Only order that is price slid into the resting order, shall always be cancelled.

Example 4. Assume that the NBBO for security XYZ is \$10.10 x \$10.12 and the CHX BBO is \$10.10 x \$10.14. Now assume that the Matching System receives a CHX Only Post Only bid priced at \$10.13 (“Bid B”). Pursuant to NMS Price Sliding, Bid B will be ranked at \$10.12 and displayed at \$10.11. The NBBO is now \$10.11 x \$10.12 and the CHX BBO is \$10.11 x \$10.14. Assume further that while Bid B is resting on the CHX book, an undisplayed simple limit offer at \$10.13 (“Offer C”) is received by the Matching System. Thus, the undisplayed CHX BBO is \$10.12 (i.e. the ranked price of Bid B) x \$10.13 (i.e. the limit price of Offer C). Then assume that the NBBO moves away to match the CHX BBO at \$10.11 x \$10.14.

Although the proposed NMS Price Sliding Processes would price slide Bid B to its original limit price (i.e. re-ranked and re-displayed at \$10.13), since Offer C is already resting at \$10.13, Bid B would be cancelled because the current and proposed definition of Post Only would require that Bid B be immediately cancelled if it would remove liquidity from the CHX book. Thus, this result would not change if Offer C were a fully-displayable Post Only order, as opposed to an undisplayed order.

Example 5. Assume the same as Example 4, except that Offer C is a fully-displayable Post Only offer, as opposed to an undisplayed offer. Thus, the NBBO is at \$10.11 x \$10.12 and the CHX BBO is now at \$10.11 x \$10.13. Then assume that the NBBO moves away to \$10.11 x \$10.13 and Bid B will be price slid to a ranked price of \$10.13 and a displayed price of \$10.12.

Just like Example 4, Bid B will be cancelled because a Post Only order that is price slid into a price point that would remove liquidity shall always be cancelled.

These examples illustrate two important aspects of the operation of the Matching System. First, the Matching System will never price slide an order to avoid an execution. That is, all Post Only orders (e.g. CHX Only Post Only) that would remove liquidity from the CHX book will be immediately cancelled. Also, the Matching System will never lock the CHX book. That is, a Post Only offer (bid) shall not be allowed to post opposite the ranked price of a price slid bid (offer) or a resting undisplayed limit bid (offer). In either situation, the incoming Post Only offer (bid) will be immediately cancelled.

The Exchange acknowledges that the immediate cancellation of Post Only orders that would otherwise remove liquidity from the CHX book may result in the Post Only order sender discovering hidden liquidity on the CHX book. However, the Exchange submits that although an order sender may discover that hidden orders exist, there is no way that the Post Only order sender could learn how many shares are available at that price point, without submitting orders that would execute against the hidden interest. Moreover, if there is no resting liquidity to remove from the CHX book, the Post Only order will be posted and may be executed immediately thereafter. Also, with respect to hidden interest that is the result of price sliding (i.e. the undisplayed ranked price of a price slid order), it is important to note that the order sender that submitted the price slid order had intended to display the order at a price at least as aggressive as the ranked price and, thus, the fact that a Post Only order sender may discover the hidden interest does not disadvantage the order sender that submitted the price slid order.

With respect to IOC, a CHX Only order marked IOC would only be executed if it were immediately executable in the Matching System. If, however, such an order, upon entry, were in violation of Regulation NMS[53] and/or Rule 201 of Regulation SHO,[54] the CHX Only designation would mandate application of the CHX Only Price Sliding Processes, whereas the IOC designation would mandate immediate cancellation of the order. Given this incompatibility, the Matching System will simply ignore the CHX Only designation and treat the order as a simple limit IOC.[55]

In addition, CHX Only is also incompatible with ISO. Generally, ISOs require an order sender to take affirmative steps to ensure that the market is satisfied prior to executing or posting its order, whereas CHX Only orders that violate Regulation NMS employ NMS Price Sliding to comport the order price with respect to the prevailing market, as detailed above. Specifically, an ISO, by its own terms, obviates the need for NMS Price Sliding, where in submitting an order marked ISO, the order sender is required to satisfy the protected quotations of external markets priced superior to the limit order submitted to the Exchange.[56] This in turn allows the order to execute at the Exchange's BBO. The Matching System would, however, apply NMS Price Sliding and rank the order at the NBB and display the order at the Permitted Price one increment above the NBB. If Short Sale Price Sliding were applicable, the same sell order would be repriced and displayed to the Permitted Price above the NBB. As such, the fundamental difference between an ISO and CHX Only order is that an ISO can execute at the Exchange's BBO, whereas the same order marked CHX Only could not.

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[53] 17 CFR 242.610(d).

[54] 17 CFR 242.201.

[55] The CHX Matching System treats an order with incompatible elements differently depending on the order subtype and modifier combination. An incompatibility may result in an order being rejected as a whole or a conflicting element being ignored.

[56] See supra note 49.

Since a CHX Only with an ISO modifier is incompatible, the CHX Matching System will treat the CHX Only ISO as a "Price-Penetrating ISO."[57] That is, the ISO modifier trumps the CHX Only designation. The reasoning behind this treatment is that an order sender who marks an order ISO is representing that it is sending simultaneous orders to other market centers to satisfy the quotations of other markets as required by Rule 600(b)(3) of Regulation NMS. Since the order sender is taking additional steps to satisfy the statutory requirements of an ISO, the Matching System will ignore the CHX Only designation.

These examples clearly show that the proposed CHX Only Price Sliding Processes can promote market liquidity by allowing the CHX Only order type to be ranked and displayed at the most aggressive prices, while maintaining compliance with Regulation NMS[58] and Rule 201 of Regulation SHO.[59] As a result, these proposed rule changes will make the CHX Only order type more attractive to our Participants by increasing fill or execution rates despite fast-paced changes to the NBBO and by increasing the probability of price improvement above displayed bids and offers for inbound orders.

2. Statutory Basis

The Exchange submits that the proposed rule changes to adopt continuous CHX Only Price Sliding Processes for CHX Only orders and to allow orders marked Post Only to be subject

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57 CHX Article 1, Rule 2(aa) (b)(15) defines "Price-Penetrating ISO" as "an order marked as required by SEC Rule 600(b)(30) that is to be executed at or better than its limit price as soon as the order is received by the Matching System, with any unexecuted balance of the order to be immediately cancelled. Orders marked as price-penetrating ISO shall be executed against any eligible orders in the Matching System (including any reserve size or other undisplayed orders, through multiple price points). The Matching System, in executing these orders, shall not take any of the actions described in Rule 5 to prevent an improper trade-through." See also CHX Article 20, Rule 4(b)(15).

58 Id.

59 17 CFR 242.201.

to price sliding is consistent with Section 6(b) of the Act in general[60] and furthers the objectives of Section 6(b)(5) in particular,[61] by promoting just and equitable principles of trade, fostering cooperation and coordination with persons engaged in facilitating transaction in securities, removing impediments, perfecting the mechanisms of a free and open market and, in general, by protecting investors and the public interest. Specifically, by ensuring that all orders marked CHX Only, including Post Only orders, can be price adjusted continuously to reflect the best permissible price without locking or crossing the NBBO, displayed liquidity on the Exchange will be encouraged by improving the chances of order execution and reducing automatic cancellations by the Exchange's Matching System. Consequently, the proposed changes to the CHX Only order type and the Post Only order modifier will benefit Exchange customers by reducing message traffic, improving fill rates and promoting competition among market centers offering similar products and services, which is consistent with the aforementioned objectives of Section 6(b)(5).

In addition, notwithstanding the amendments, the proposed CHX Only Price Sliding Processes and the Post Only order modifier will continue to comport with Rule 610 of Regulation NMS[62] and Rule 201 of Regulation SHO.[63] Specifically, since the proposed CHX Only Price Sliding Processes will ensure that orders are only displayed at permissible prices and that CHX Only Post Only orders are now eligible for price sliding, the proposed rules will be consistent with the mandate of Rule 610(d) of Regulation NMS that requires exchanges to establish, maintain, and enforce rules that require members to reasonably avoid "[d]isplaying

60 15 U.S.C. 78f(b).

61 15 U.S.C. 78f(b)(5).

62 17 CFR 242.610(d).

63 17 CFR 242.201.

quotations that lock or cross any protected quotation in an NMS stock." [64] Moreover, the automated nature of the CHX Only Price Sliding Processes of the CHX Only order type is "reasonably designed to assure the reconciliation of locked or crossed quotations in any NMS stock."[65] Also, since the proposed CHX Only Price Sliding Processes will assist Participants by ensuring that orders, including Post Only orders, are displayed at permissible prices, the proposed rule is reasonably designed to "prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in a NMS stock, or of displaying manual quotations that lock or cross an quotation in any NMS stock disseminated pursuant to an effective national market system plan, other than displaying quotations that lock or cross any protected or other quotation as permitted by an exception contained in its rules established pursuant to paragraph (d)(1) of this section."[66] Similarly, the proposed rules will continue to comport with the requirements under Rule 201 of Regulation SHO[67] by ensuring that CHX Only sell short orders, as well as CHX Only Post Only sell short orders, are displayed above the NBB at the time the sell short order is entered, when the short sale price test restriction under Rule 201 of Regulation SHO is in effect for a covered security. That is, the repricing of short sale orders to follow decreases in the NBB will not adversely impact the ability of the proposed rules to reasonably "prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as

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64 17 CFR 242.610(d).

65 Id.

66 Id.

67 17 CFR 242.201(b)(1)(i).

determined by the listing market for the covered security as of the end of regular trading hours on the prior day. "[68]

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

The Exchange does believe that the proposed rule change will have an impact on competition. However, the Exchange does not believe that the proposed rule change will impose a burden on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act. To the contrary, the amended CHX Only order type and the proposed CHX Only Price Sliding Processes should act as a positive force for competition by providing an alternative to other similar order types and functionality, such as the BATS "Display-Price Sliding."[69]

C. Self-Regulatory Organization's Statement on Comments on 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

Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[70] and Rule 19b-4(f)(6) thereunder.[71]

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68 Id.

69 See BYX Rule 11.9(g).

70 15 U.S.C. 78s(b)(3)(A).

71 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act[72] normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)[73] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay and allow the proposed rule change to be operative as of March 22, 2013, noting that doing so would allow the Exchange to quickly offer Exchange participants the proposed CHX Only order type and price sliding functionality while ensuring that the Exchange's matching system has been properly tested to ensure a smooth transition to the modified CHX Only order type and Post Only order modifier. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[74] This waiver will allow the Exchange to modify this order type without delay such that is similar to an order type offered by other another exchange.[75] Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative as of March 22, 2013.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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.

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[72] 17 CFR 240.19b-4(f)(6).

[73] 17 CFR 240.19b-4(f)(6).

[74] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[75] The CHX-Only order, as modified, is based upon BATS Y-Exchange Rule 11.9(g)(1)(C). See also Exchange Act Release No. 67657 (August 14, 2012), 77 FR 50199 (August 20, 2012) (SR-BATS-2010-035). The differences between the proposed rule and the BATS rule are discussed in the Exchange's proposed rule change.

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. 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. Please include File Number SR-CHX-2013-07 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 Number SR-CHX-2013-07. 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 website (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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-CHX-2013-07 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill
Deputy Secretary

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[76] 17 CFR 200.30-3(a)(12).