

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58568; File No. SR-CHX-2008-12)

September 17, 2008

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Consolidating into a Single Rule Certain Requirements for Securities Traded on the Exchange Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 15, 2008, the Chicago Stock Exchange, Inc. (“Exchange” or “CHX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

The CHX proposes to amend its rules to add and consolidate into a single rule certain requirements for products traded on the Exchange pursuant to unlisted trading privileges (“UTP”) that have been established in various new products proposals previously approved by the Commission. The text of the proposed rule change is available on the Exchange’s Web site ([www.chx.com](http://www.chx.com)) and at 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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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposal. The text of these statements may be examined at the places specified in Item III 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 to add and consolidate into a single rule certain requirements for products traded on the Exchange pursuant to UTP that have been established in various new products proposals previously approved by the Commission. The Exchange proposes to add CHX Article 22, Rule 6 to set forth rules regarding the extension of UTP to a security that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stocks, unless otherwise noted. The Exchange will file with the Commission a Form 19b-4(e) with respect to any such security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Act.<sup>3</sup> In addition, any new derivative securities product traded on the Exchange pursuant to proposed CHX Article 22, Rule 6 will be subject to the following criteria.

Proposed CHX Article 22, Rule 6(a)(i) provides that the Exchange will distribute an information circular prior to the commencement of trading in such new derivative securities product which generally will include the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the new derivative securities product; (2) the Exchange's rules that will apply to the new derivative securities product, including the suitability rule; (3) information about the dissemination of value of the underlying

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<sup>3</sup> 17 CFR 240.19b-4(e).

assets or indexes; and (4) the risk of trading during irregular trading hours due to the lack of calculation or dissemination of the Intraday Indicative Value or a similar value.

Proposed CHX Article 22, Rule 6(a)(ii) reminds Participants that they are subject to the prospectus delivery requirements under the Securities Act of 1933, as amended (“Securities Act”), unless the new derivative securities product is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (“1940 Act”) and the product is not otherwise subject to prospectus delivery requirements under the Securities Act. The Exchange will inform its Participants regarding the application of the provisions of this subparagraph to a particular series of exchange-traded funds governed by the 1940 Act by means of an information circular.

Proposed CHX Article 22, Rule 6(a)(iii) addresses trading halts in the new derivative securities products traded on the Exchange pursuant to UTP. Proposed CHX Article 22, Rule 6(a)(iii) provides that the Exchange, upon notification by the listing market of a halt due to a temporary interruption in the calculation or wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument, will immediately halt trading in that product on the Exchange. If the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product that day. If an interruption in the calculation or wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the Intraday Indicative Value (or a similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market.

Additionally, proposed CHX Article 22, Rule 6(a)(iii) provides that for a new derivative securities product where a net asset value (and, in the case of managed fund shares or actively managed exchange-traded funds, a “disclosed portfolio”) is disseminated, the Exchange will immediately halt trading such security upon notification by the listing market that the net asset value and, if applicable, such disclosed portfolio is not being disseminated to all market participants at the same time. The Exchange will resume trading in the new derivative securities product only when the net asset value and, if applicable, such disclosed portfolio is disseminated to all market participants at the same time or trading in the new derivative securities product resumes on the listing market.

CHX represents that the Exchange's surveillance procedures for new derivative securities products traded on the Exchange pursuant to UTP will be similar to the procedures used for equity securities traded on the Exchange and will incorporate and rely upon existing Exchange surveillance systems. The Exchange will closely monitor activity in new derivative securities products traded on the Exchange pursuant to UTP and deter any potential improper trading activity. Proposed CHX Article 22, Rule 6(b) also provides that the Exchange will enter into a comprehensive surveillance sharing agreement (“CSSA”) with a market trading components of the index or portfolio on which the new derivative securities product is based to the same extent as the listing exchange’s rules require the listing market to enter into a CSSA with such market.

Finally, proposed CHX Article 22, Rule 6(c) provides for restrictions for Participants registered as Market Makers (“Restricted Market Maker”) in an new derivative securities product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index comprised of currencies or commodities (collectively, “Reference Assets”). Specifically, proposed CHX Article 22, Rule

6(c)(i) provides a Restricted Market Maker in an new derivative securities product is prohibited from acting or registering as a market maker in any Reference Asset of that new derivative securities product or any derivative instrument based on a Reference Asset of that new derivative securities product (collectively, with Reference Assets, “Related Instruments”). Proposed CHX Article 22, Rule 6(c)(ii) provides a Restricted Market Maker shall, in a manner prescribed by CHX, file with CHX and keep current a list identifying any accounts (“Related Instrument Trading Accounts”) for which Related Instruments are traded: (a) in which the Restricted Market Maker holds an interest; (b) over which it has investment discretion; or (c) in which it shares in the profits and/or losses. In addition, a Restricted Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account which has not been reported to CHX as required by this Rule. Proposed CHX Article 22, Rule 6(c)(iii) provides that in addition to the existing obligations under CHX rules regarding the production of books and records, a Restricted Market Maker shall, upon request by CHX, make available to CHX any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Restricted Market Maker for which Related Instruments are traded. Finally, proposed CHX Article 22, Rule 6(c)(iv) provides that a Restricted Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

## 2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in

particular, with the requirements of Section 6(b).<sup>4</sup> The proposed rule change is consistent with Section 6(b)(5) of the Act because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest by allowing the CHX to add and consolidate into a single rule certain requirements for products traded on the Exchange pursuant to UTP.

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

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

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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2008-12 on the subject line.

Paper Comments:

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<sup>4</sup> 15 U.S.C. 78f(b)(5).

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-CHX-2008-12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of 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 Number SR-CHX-2008-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.<sup>5</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

This proposal would consolidate into a single rule various provisions related to UTP that have been established in other new products proposals previously approved by the Commission. Proposed CHX Rule 6 is closely modeled after similar rules of other national securities exchanges<sup>6</sup> and does not raise any novel issues. The Commission finds good cause for approving the proposed rule change prior to the 30<sup>th</sup> day after the date of publication of the notice of filing thereof in the Federal Register. Accelerated approval of this proposal will expedite the trading of additional products by the Exchange, subject to consistent and reasonable standards. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

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<sup>5</sup> 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).

<sup>6</sup> See Securities Exchange Act Release Nos. 57806 (May 9, 2008), 73 FR 28541 (May 16, 2008) (SR-Phlx-2008-34) (approving amendment to Phlx Rule 136 and adoption of Phlx Rule 803(o)) and 57448 (March 6, 2008), 73 FR 13597 (March 13, 2008) (SR-NSX-2008-05) (approving NSX Rule 15.9).



V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (SR-CHX-2008-12) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

Florence E. Harmon  
Acting Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).