

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**

The proposed rule change will change the definition of the term "Eligible Contracts" as used in the cross-margining agreement ("XM Agreement") between OCC and the Chicago Mercantile Exchange Inc. ("CME") and delete Exhibit A to the Agreement.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC 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*

Pursuant to an OCC rule change approved by the Commission in 2008, OCC no longer must notify the Commission when OCC wishes to add new options classes to a cross-margining program.<sup>4</sup> With this requirement no longer in effect, OCC and CME have executed Amendment No. 2 to the XM Agreement to accomplish two purposes. First, the term "Eligible Contracts" as used in the XM Agreement will be redefined. Second, Exhibit A of the XM Agreement, which contains the list of Eligible Contracts included in the XM Agreement, will be deleted in its entirety.<sup>5</sup>

OCC states that it believes that the proposed change is consistent with Section 17A of the Act<sup>6</sup> because it conforms the terms of the XM Agreement to the prior determination of the Commission that notice of the addition of new contracts to cross-margining programs was no longer needed or required. OCC further states that the proposed rule change is not inconsistent with the existing rules of

OCC including any other rules proposed to be amended.

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

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

OCC has not solicited or received written comments with respect to the proposed rule change. OCC will notify the Commission of any written comments it receives.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>7</sup> and Rule 19b-4(f)(1)<sup>8</sup> thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **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-comment@sec.gov](mailto:rule-comment@sec.gov). Please include File No. SR-OCC-2009-10 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-OCC-2009-10. This file number

should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at OCC's principal office and on OCC's Web site at [http://www.theocc.com/publications/rules/proposed\\_changes/proposed\\_changes.jsp](http://www.theocc.com/publications/rules/proposed_changes/proposed_changes.jsp). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-OCC-2009-10 and should be submitted on or before July 8, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-60083; File No. SR-CHX-2009-02]

### **Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to the Rejection of Undisplayed Odd-Lot Orders From the Exchange's Matching System**

June 10, 2009.

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>

<sup>9</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>4</sup> Securities Exchange Act Release No. 57118 (Jan. 9, 2008), 73 FR 2970 (Jan. 16, 2008) [File No. SR-OCC-2007-19].

<sup>5</sup> Amendment No. 2 to the XM Agreement is attached as Exhibit 5A to OCC's filing with the Commission.

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78a(b)(3)(A)(i).

<sup>8</sup> 17 CFR 240.19b-4(f)(1).

notice is hereby given that on June 2, 2009, 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, II, and III below, which Items have been prepared by the CHX. 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**

The CHX proposes to amend its rules to allow Exchange customers to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System. Additionally, the Exchange proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled.<sup>3</sup> The text of this proposed rule change is available on the Exchange's Web site at ([www.chx.com](http://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 change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

The Exchange proposes to amend CHX Article 20, Rule 8 to allow Exchange Participants to specify whether odd-lot orders and unexecuted odd-lot remainders, that are not able to be immediately displayed, should remain in, or be rejected from, the Exchange's Matching System. Additionally, the Exchange proposes to

add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled.

Currently, odd-lot orders and unexecuted odd-lot remainders that are not able to be immediately displayed, because they are at a better price than the current CHX quote and have no other orders with which to aggregate, remain in the Exchange's Matching System until they are executed, are aggregated with another order and displayed<sup>4</sup> or are cancelled. The proposed rule change would allow Exchange Participants to specify whether such orders should remain in, or be rejected from, the Exchange's Matching System. This preference could be set by the Participant on both a default and order by order basis.<sup>5</sup> Orders remaining in the Matching System will continue to be ranked at the price and time at which they were originally received. Orders that are rejected from the Matching System shall either be sent back to the order sender or be routed to another destination according to each Participant's instructions<sup>6</sup> or, if designated "do not route," automatically cancelled. The Exchange also proposes that Participants that elect to have orders routed to another destination pursuant to this rule, or pursuant to Article 20, Rule 5 ("Prevention of Trade-throughs"), agree to be bound by such transactions.

Exchange Participants have requested this functionality to improve the certainty of order execution. For example, if a Participant enters a limit order to buy four hundred (400) shares into the Matching System and that order matches with an order to sell three hundred fifty (350) shares at the same price, the system would execute three hundred fifty shares leaving fifty (50) shares as an unexecuted odd-lot remainder. Currently, if there were no other round-lot orders at the same price, these shares would remain undisplayed in the Matching System; reducing the likelihood that the Participant would

receive a timely execution on the remaining shares.<sup>7</sup> Under the proposed rule change, the Participant would be able to specify that such orders be rejected from the Matching System and either cancelled or routed to another destination with which they have an agreement.

This proposed rule change is consistent with Regulation NMS because it applies only to odd-lot orders and unexecuted odd-lot remainders. Only round-lot orders are subject to the requirements of Regulation NMS in that only round-lot orders must be included in the Exchange's automated quote.<sup>8</sup> In contrast, odd-lot orders are not displayed, and the prohibitions against both locked and crossed markets and trade-throughs do not apply to odd-lots. Exchanges are permitted to establish their own rules for handling odd-lot orders and the odd-lot portions of mixed-lot orders.<sup>9</sup>

The Exchange also proposes to add a generic routing rule to clarify how any orders that are rejected from the Exchange's Matching System, and routed away according to Participant instructions, will be handled. The use of routing services is optional and is available only to exchange Participants.

In such cases, the Participant will be responsible for ensuring that it has a relationship with its chosen destinations to permit the requested access. The Exchange shall not have responsibility for the handling of the order by the other destination, but will report any execution or cancellation of the order by the other destination to the Participant that submitted the order, will notify the other venue of any cancellations or changes to the order submitted by the order-sending Participant and, if requested by the Participant and its chosen destination, will flip any executions into the Participants account, as necessary, and report that second leg of the away-market transaction to clearing.<sup>10</sup>

<sup>7</sup> This also assumes that there are no other odd-lots at the same price with which the odd-lot could aggregate to form a round lot. See footnote 4, *supra*.

<sup>8</sup> Under Regulation NMS, Rule 600(b)(8) defines "bid" or "offer" as the bid price or offer price for one or more round lots of an NMS security. This definition is embedded in the definition of "quotation" in Rule 600(b)(62), as well as the definition of "protected bid" or "protected offer" in Rule 600(b)(57). 17 CFR 242.600(b).

<sup>9</sup> See Response No. 7.03 in "Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS," Division of Trading and Markets, dated June 8, 2007.

<sup>10</sup> For example, if the Exchange routes a participant's buy order to the participant's chosen destination (Router ABC) and Router ABC gets an execution of that order in another market against market maker XYZ, the first leg of the transaction (ABC buying from XYZ) will be reported to clearing

<sup>3</sup> The Exchange notes that while this rule is currently being added to clarify how undisplayed odd-lots that are rejected from the Matching System will be routed, the rule will apply to any orders that are rejected from the Matching System and routed according to Participant instructions.

<sup>4</sup> The Exchange notes that odd-lot orders are aggregated with other odd-lot and mixed lot orders where possible to form round lots. Additionally, odd-lot orders are considered displayed when there are other round-lot orders at the same price point which are being displayed.

<sup>5</sup> This system functionality already exists and can be put into production once the necessary rule change is approved.

<sup>6</sup> The Exchange notes that orders rejected in accordance with this rule will be routed in the same manner as those rejected under the NMS trade-through validation rule (Exchange Article 20, Rule 5, Interpretations and Policies .03), which has already been approved by the Commission.

The Exchange will provide its Routing Services pursuant to the proposed rule and three separate agreements, to the extent that they are applicable to a specific routing decision and deemed necessary by the Exchange and/or a third-party broker-dealer providing connectivity to other markets: (a) An agreement between the Exchange and each Participant on whose behalf orders will be routed ("Participant-Exchange Agreement"); (b) an agreement between each Participant and a specified third-party broker-dealer that will use its routing connectivity to other markets and, if necessary, serve as a "give-up" in those markets ("Give-Up Agreement"); and (c) an agreement between the Exchange and the specified third-party broker-dealer ("Routing Connectivity Agreement") pursuant to which the third-party broker-dealer agrees to provide routing connectivity to other markets and serve as a "give-up" for the Exchange's Participants in other markets. The Routing Connectivity Agreement will include terms and conditions that enable the Exchange to comply with this rule.

The Exchange will provide such Routing Services in compliance with its rules and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements of Sections 6(b)(4)<sup>11</sup> and (5)<sup>12</sup> of the Act that the rules of a national securities exchange provide for the equitable allocation of dues, fees and other charges among its members and issues and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,<sup>13</sup> and furthers the objectives of Section 6(b)(5) in particular,<sup>14</sup> in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and

by the other market. The Router ABC would send an execution report back to the Exchange (for routing to the original order-sending participant). Under this proposal, if the participant and Router ABC had requested, the Exchange would take the execution report and create a clearing-only record, flipping the execution from Router ABC's account to the account of the order-sending participant (ABC selling to the order-sending participant).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

the public interest. In this case, providing Participants the ability to have their undisplayed orders rejected from the Exchange's Matching System, to be cancelled or routed elsewhere for execution, protects investors and removes an impediment to a free and open market in that it improves the certainty of order execution.

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

## 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-CHX-2009-02 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-2009-02. 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, on official business days between the hours of 10 a.m. and 3 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-2009-02 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60085; File No. SR-FINRA-2009-030]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 6440 To Require Members To Create a Contemporaneous Record of Certain Customer and Order Information

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("SEA" or "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2009 Financial Industry Regulatory

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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