

Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time.<sup>22</sup> In addition, the Exchange represents that the Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the IIV File and the PCF will occur at the same time. Moreover, Commentary .02(b) to Amex Rule 1000A-AEMI provides for "fire wall" procedures with respect to personnel who have access to information concerning changes and adjustments to the Underlying Index and the implementation of procedures to prevent the use and dissemination of material non-public information regarding the Underlying Index. Further, Commentary .09 to Amex Rule 1000A-AEMI sets forth restrictions on members or persons associated with members who have knowledge of the terms and conditions of certain orders (the execution of which are imminent) to enter, based on such knowledge, an order to buy or sell a Share that is the subject of such orders, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Amex Rule 1002A(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors. In addition, Amex Rule 1002A(b)(ii) provides that, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules

governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.

(2) Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the application of Commentary .06 to Amex Rule 1000A-AEMI to the Funds and the prospectus and/or product description delivery requirements that apply to the Funds. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

This approval order is based on the Exchange's representations.

Finally, the Commission believes that the commenter's concerns over its proprietary interest in the process and system for calculating an intra-day indicative value relating to leveraged and inverse exchange traded funds to be purportedly used by the Trust do not preclude the Commission from approving the proposed rule change. Specifically, to the extent that the commenter's argument raises a claim of misappropriation or infringement of a protected property right, the Commission believes it is inappropriate for the Commission to attempt to resolve these issues in a proceeding involving the approval of a proposed rule change by a national securities exchange under the federal securities laws. To take such delaying action whenever a third party claim is asserted could stifle Commission review of new products proposed by self-regulatory organizations. The plain language of the U.S. securities laws does not suggest that Congress intended that the Commission attempt, in the context of an approval proceeding for a securities product, to resolve intellectual property right claims that can be pursued

elsewhere.<sup>23</sup> Accordingly, the commenter's assertions do not form a basis for the Commission to either disapprove or delay approval of the Exchanges' proposals.<sup>24</sup>

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>25</sup> that the proposed rule change (SR-Amex-2007-74), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

By the Commission.

**Nancy M. Morris,**  
*Secretary.*

[FR Doc. E7-21503 Filed 10-31-07; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56698; File No. SR-CHX-2007-23]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change to Allow the Exchange to Open at 8:30 a.m.

October 24, 2007.

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 October 2, 2007, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with

<sup>23</sup> The Commission notes that Congress has enacted an elaborate statutory framework for the establishment, preservation, and protection of intellectual property rights and has established specific federal agencies to administer these laws. Separate state causes of action also may be available to the holders of these proprietary rights as well. The Commission is not required by the Act to make, and has not made, a legal determination of proprietary claims flowing from the Trust's application of the process and system for calculating an intraday indicative value for the Shares of each Fund. This is not to say, however, that the Commission might not separately have a federal interest in the outcome of any proceeding challenging a new product or be willing to express a view regarding such a proceeding in the event a subsequent action provides the Commission opportunity to address these matters, *e.g.*, to protect investors and the public interest.

<sup>24</sup> See Securities Exchange Act Release Nos. 36070 (August 9, 1995), 60 FR 42205 (August 15, 1995) (SR-Amex-94-55 and SR-CBOE-95-01) (order approving the listing and trading of warrants on the Deutscher Aktien Index by Amex and the Chicago Board Options Exchange, Incorporated ("CBOE")); 28475 (September 27, 1990), 55 FR 40492 (October 3, 1990) (SR-Amex-89-16) (order approving the trading by Amex of options on the Japan Index); and 26709 (April 11, 1989), 54 FR 15280 (April 17, 1989) (SR-Phlx-88-07; SR-Amex-88-10; and SR-CBOE-88-09) (order approving the listing of index participations by Amex, CBOE, and the Philadelphia Stock Exchange, Inc.).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>22</sup> See Amex Rule 1002A(a)(ii).

the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been substantially 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 allow the CHX to open at 8:30 a.m., without regard to whether the primary market in a particular security is open and to make other associated changes to its rules. The text of this proposed rule change is available on the Exchange's Web site at [http://www.chx.com/content/Participant\\_Information/Rules\\_Filings.html](http://www.chx.com/content/Participant_Information/Rules_Filings.html), at the CHX's Office of the Secretary, 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 regarding the proposal. 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**

Under existing rules, the Exchange generally opens for trading in a security once the primary market has done so.<sup>3</sup> If the primary market announces that it will not open, or if the primary market has delayed its opening for reasons other than a regulatory halt, the rules permit two senior CHX officials to open the market.<sup>4</sup>

While these rules provided a reasonable way to handle the opening as the Exchange transitioned from its specialist trading model to its new fully-automated trading model, the Exchange believes that it is no longer appropriate to base its opening time on the actions taken by other markets. Through this filing, the Exchange would amend its

rules to permit trading to begin at 8:30 a.m., except for trading in specified exchange-traded funds, which would begin at 7:20 a.m.<sup>5</sup>

In conjunction with this change to the opening time of the Exchange's market, the Exchange would make two other changes to its rules. First, the Exchange would eliminate the opening cross order type. These cross orders, which are designed to execute at the primary market opening price, likely could no longer be effectively executed on the Exchange, once the proposed change is made to the time of the Exchange's opening.<sup>6</sup> In addition, the Exchange would add a new rule that prevents immediate or cancel ("IOC") market orders from being accepted until either (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders.<sup>7</sup> This change is designed to prevent market orders from being executed at prices that are far away from the primary market opening price, when that market ultimately opens.

##### **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

<sup>5</sup> See Proposed CHX Rules, Article 20, Rule 1(b). The Exchange represents that Exchange-traded funds that begin trading at 7:20 a.m. would be announced, from time to time, by the Exchange in a customer service notification or other type of update. The only exchange-traded fund currently trading at 7:20 a.m. is the streetTRACKS® Gold Trust. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division of Market Regulation ("Division"), Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

<sup>6</sup> If the Exchange's systems allow its participants to begin trading before the primary market opens trading in a particular security, an opening cross order (which must execute at the primary market opening price) might violate the protected quotations of other markets. To avoid this potential result, the Exchange believes that it is appropriate to eliminate this order type.

<sup>7</sup> See Proposed CHX Rules, Article 1, Rule 2(n) and Article 20, Rule 4(b)(13). For purposes of this rule, another exchange would be considered to have opened for trading in a security when the first trade in that security occurs in that market on or after 8:30 a.m. The Exchange has stated that two senior officers of the Exchange might decide that it is appropriate to allow IOC market orders to be accepted if, for example, the primary market has announced that it will open later than expected, but other markets are open to provide additional liquidity. Telephone conversation between Ellen Neely, President and General Counsel, CHX, Richard Holley III, Senior Special Counsel, Division, Commission, and Sonia Trocchio, Special Counsel, Division, Commission (October 18, 2007).

Section 6(b).<sup>8</sup> The proposed rule change is consistent with Section 6(b)(5) of the Act<sup>9</sup> 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 permitting the Exchange to begin trading at 8:30 a.m., without regard to whether the primary market in a particular security is open.

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

CHX 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*

The Exchange neither solicited nor received comments on the proposal.

### **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 other 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 CHX consents, the Commission will:

- (A) By order approve the proposed rule changes, or
- (B) Institute proceedings to determine whether the proposed rule changes 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-2007-23 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary,

<sup>8</sup> 15 U.S.C. 78(f)(b).

<sup>9</sup> 15 U.S.C. 78(f)(b)(5).

<sup>3</sup> See CHX Rules, Article 20, Rule 1(b).

<sup>4</sup> See CHX Rules, Article 20, Interpretation and Policy .01.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2007-23. 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. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2007-23 and should be submitted on or before November 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Nancy M. Morris,**  
*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56704; File No. SR-CHX-2007-20]

### Self-Regulatory Organizations; The Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Permitting Certain Transactions To Have Post-Trade Anonymity

October 25, 2007.

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 October 16, 2007, the Chicago Stock Exchange, Inc. (“CHX” or “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 substantially by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it 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

The Exchange proposes to amend its rules to allow participants to request post-trade anonymity with respect to certain transactions executed on the Exchange. The text of the proposed rule change is available at <http://www.chx.com>, at the Exchange, and 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, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. 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

Currently, when a trade occurs on the Exchange, a report is sent to the parties to the trade, or to the participant that submitted the trade on behalf of its customer, confirming details about the transaction, such as the number of shares executed, the price of the execution, and the identities of the parties to the trade. Similar information about the trade is sent to the National Securities Clearing Corporation (“NSCC”) for clearing purposes.

Through this proposal, CHX's participants would be allowed to request that their identities be kept confidential on trade and clearing reports associated with single-sided executions, except when necessary for regulatory and other identified purposes.<sup>5</sup> CHX would reveal the identity of a participant or the participant's clearing firm: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) if the NSCC ceases to act for a participant or a participant's clearing firm and NSCC determines not to guarantee the settlement of a participant's trades; or (3) if both parties to the trade consent.<sup>6</sup>

The Exchange proposes that these anonymity rules apply to all trades executed on the Exchange except the execution of cross orders.<sup>7</sup> The Exchange believes that it would be difficult to provide anonymity protection to cross orders and still provide the participant submitting the order with a sufficiently detailed trade or clearing report to permit it to effectively service its customers' needs.

Under the proposed rule, the Exchange would reveal to a participant, no later than the end of the day on the date an anonymous trade was executed, when that participant has submitted an order that has executed against an order submitted by that same participant.<sup>8</sup> In addition, because CHX's participants would not be able to retain information about the contra parties to anonymous transactions, CHX would keep that information in its original electronic form for the time periods required by

<sup>5</sup> See Proposed Article 21, Rule 5(a) and (b). The CHX's trade reporting functionality would be designed to keep confidential the identity of any party to a trade that requests anonymity, but to reveal the identities of other parties to the trade. The clearing functionality, on the other hand, would initially be designed such that, if any party to a transaction requests anonymity, the entire transaction would be considered anonymous. If later changes in the clearing technology permit a more refined outcome, CHX represents that it likely would seek to modify this functionality to mirror the trade reporting design described above.

<sup>6</sup> While the Exchange would keep contra party information confidential for an anonymous trade that was being reviewed through the initial stages of the Exchange's clearly erroneous or systems disruption trade review process, the Exchange would reveal that information upon any request for an appeal from the Exchange's decision on those matters and would make that information available to any participant that seeks to arbitrate a dispute relating to an otherwise anonymous trade. The Exchange believes that it is appropriate to reveal contra party information in these and other similar circumstances pursuant to the proposed “regulatory purposes” exception to the anonymity rule. See Proposed Article 21, Rule 5(b).

<sup>7</sup> See Proposed Article 21, Rule 5(e).

<sup>8</sup> See Proposed Article 21, Rule 5(c).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 200.30-3(a)(12).