

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57140; File No. SR-CHX-2007-23)

January 14, 2008

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change to Allow the Exchange to Open at 8:30 a.m. (Chicago time) Without Regard to the Opening on the Primary Market

I. Introduction

On October 2, 2007, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the Exchange to open at 8:30 a.m. (Chicago time) without regard to the opening on the primary market. To accommodate its implementation schedule for this proposal, the Exchange extended the time for Commission action to January 14, 2008. The Federal Register published the proposed rule change for comment on November 1, 2007.³ The Commission received no comments on the proposal.

II. Description

Under existing rules, the Exchange generally opens for trading in a security once the primary market has done so.⁴ 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,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 56698 (October 24, 2007), 72 FR 61919.

⁴ See CHX Rules, Article 20, Rule 1(b).

the rules permit two senior CHX officials to open the market.⁵ The Exchange has proposed to amend its rules to permit trading to begin at 8:30 a.m. (Chicago time), except for trading in specified exchange-traded funds, which would begin at 7:20 a.m. (Chicago time).⁶

In conjunction with this change to the opening time of the Exchange's market, the Exchange also proposes two other changes to its rules. First, the Exchange would eliminate the opening cross order type. According to the Exchange, 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.⁷ 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

⁵ See CHX Rules, Article 20, Interpretation and Policy .01.

⁶ 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).

⁷ 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.

market orders.⁸ The Exchange states that 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.

III. Discussion

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.⁹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that a national securities exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Previously, the Exchange opened for trading in a security once the primary market had opened in that security. The Exchange now proposes to permit trading to begin at 8:30 a.m. Chicago time (9:30 a.m. Eastern time), without regard to the whether the primary market opened in that security. The Commission believes that this proposed change is consistent with the Act and does not raise any new regulatory issues.

⁸ 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).

⁹ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78f(b)(5).

Further, the proposal is consistent with the definition of “regular trading hours” under Rule 600(b)(64) of the Act.¹¹ In addition, the Exchange has proposed a related change to eliminate the opening cross order type, which execute at the primary market opening price. As the Exchange will no longer link its opening to the primary market, the Commission believes that eliminating the cross order type is consistent with the Act as it eliminates the potential for those order types to violate the protected quotations of other markets. Finally, the Exchange’s proposal to prevent IOC market orders from being accepted until the primary market opens in that security or two senior officers of the Exchange otherwise determine that it is appropriate to accept such orders is likewise consistent with the Act and the protection of investors and the public interest and should allow IOC market orders entered on CHX to be executed at prices that are closely related to the primary market opening price.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CHX-2007-23) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 242.600(b)(64).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).