



**Ellen J. Neely**  
**Senior Vice President and General Counsel**

June 4, 2004

Mr. Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

**Re: File No. S7-18-04**

Dear Mr. Katz:

The Chicago Stock Exchange (the “CHX” or the “Exchange”) welcomes the opportunity to comment on the Securities and Exchange Commission’s proposal to modify the current requirements governing the submission and publication of rule changes by national securities exchanges and other self-regulatory organizations (“SROs”). The Exchange supports the Commission’s desire to implement a more transparent rule filing and publication process that takes advantage of technological advancements to permit widespread, timely access to SRO rules and rule change proposals. As described below, however, the Exchange also believes that the Commission should consider several potential changes to the details surrounding the implementation of these new requirements.

**1. The CHX Supports Modernization of the Rule Filing Process, But Encourages the Commission To Consider A Few Minor Changes to its Proposal.**

The CHX shares the Commission’s desire to modernize the SRO rule filing process. Electronic filing of rule change proposals eliminates the need to make unnecessary paper copies of rule filings and should allow for more efficient handling of these documents once they reach the Commission. Thus, while the CHX does not believe that electronic filing will significantly reduce rule-filing costs for SROs, the CHX does believe that the transparency and efficiencies achieved through this process amply warrant an industry-wide transition to electronic filing.<sup>1</sup>

The CHX suggests, however, that the Commission consider two proposed changes to the administrative aspects of the electronic filing process. First, the Exchange encourages the Commission to permit an SRO to submit a rule change proposal by conventional means in

---

<sup>1</sup> In the Exchange’s experience, the cost of preparing and filing rule change proposals is largely concentrated in the time needed to draft the changes to the rule text and to prepare the Form 19b-4 – time that will be spent, no matter how the changes are filed with the Commission.

instances where an SRO (or the Commission) is encountering technical difficulties that preclude electronic filing.<sup>2</sup> Under such circumstances, the SRO should then be required to submit the proposal by electronic means as soon as practicable following resolution of technical difficulties. As a further administrative matter, the CHX believes that the Commission should eliminate the portion of the proposal that requires SROs to retain an original manual signature page for each submission. The CHX believes that this requirement is at odds with the Commission's stated goal of modernizing the rule filing process, without any discernable benefit. By requiring each SRO to identify its authorized electronic filers, who are then authenticated through their electronic signature and digital ID, the Commission receives sufficient assurances that an authorized individual is submitting the rule filing. Requiring the SRO to retain a manual signature page, which frankly is more susceptible to forgery than the proposed electronic authentication measures, is simply unnecessary.

## **2. The CHX Agrees that SROs Should Make Their Proposed Rule Changes Available to Their Members.**

The CHX generally welcomes the Commission's efforts to provide additional transparency to the rule filing process by requiring SROs to publish their proposed rules on their websites. Although the CHX does not currently do so, it has had recent internal discussions about beginning that practice.<sup>3</sup>

We firmly believe, however, that the Commission has not provided SROs a reasonable amount of time to post their rule change proposals on their websites. Under the proposal, the Commission would require that SROs post proposals within one business day after filing them with the Commission. While it may be possible, under some circumstances, to ensure that posting occurs that quickly, the CHX believes that it is unreasonable to require that that time frame be met under all circumstances. Vacations, staff turnover and the pressing needs of other legal or regulatory matters may cause an SRO to miss a one-day deadline. The CHX respectfully suggests that a three-business day time frame provides a more reasonable amount of flexibility to SROs, while not substantially delaying public access to proposed rule changes.<sup>4</sup>

---

<sup>2</sup> Filing a rule change by conventional means should also excuse an SRO from publishing the proposal on the SRO's website, if the SRO's technical issues involve the SRO's website.

<sup>3</sup> Having said that, the CHX notes that potential confusion could result from the posting of proposed rule changes on SRO websites before the proposals have been considered by the Commission or noticed for public comment. As the Commission is aware, there is often significant dialogue between the Division of Market Regulation and an SRO regarding a submission, and many times amendments to the submission are filed, before a rule change proposal is noticed in the *Federal Register* for public comment. If an interested party learns of a rule change proposal on an SRO's website (even if it is denoted as a proposal only), the party would not necessarily be aware of ongoing dialogue between the SRO and the Division of Market Regulation and would have no way to know that an amendment to the proposal might be forthcoming. As a result, that party would risk wasting resources commenting on a proposal that might be significantly changed before it is formally made available for public comment. Similarly, an SRO might needlessly spend its resources responding to those out-of-date comments or addressing them in any later submissions made to the Commission.

<sup>4</sup> A slightly longer time frame also seems appropriate because there is no requirement under Rule 19b-4 that the Commission take initial action on a submitted proposal within any particular time frame. As a result, proposals may be quickly reviewed and put out for public comment or may be the subject of more intense scrutiny. Even in the

**3. The CHX Concurs With the Commission's Goals Underlying Website Availability of SRO Rules, But Believes That The Commission Should Refine Its Implementation Directives.**

The CHX generally supports the Commission's proposed requirement that SROs post and maintain a current and complete version of their rules on their respective websites. The CHX agrees that this measure should help ensure that current and complete versions of SRO rules are readily accessible to interested parties, possibly enhancing compliance with SRO rules. That being said, the CHX does have some suggestions regarding the implementation of such a directive.

**A. The Commission Should Establish Uniform Standards Governing The Rule-Related Content That Must Be Posted On Each SRO's Website.**

In its release, the Commission describes the varying levels of website rule availability that currently exist, noting that some SROs (including the CHX) do not currently publish their rules on their websites. The CHX notes, however, that the inconsistency noted by the Commission is not limited to the fact that some SROs publish rules and others do not. In fact, SROs make available varying degrees of rule-related information – on websites and by other methods – presumably reflecting each SRO's ideas about the rule-based content that should be made publicly available. For example, the member guides currently published by CCH, Incorporated ("CCH"), and the corresponding electronic text available on CCH's online service, are not consistent among exchanges in terms of content.<sup>5</sup> To avoid inconsistency, the CHX recommends that the Commission's final rule specifically identify those rule-based materials that the Commission believes should be readily available on an SRO website.

**B. The Commission Should Amend its Proposed Time Frames for Posting Rule Changes on SRO Websites.**

The CHX strongly disagrees with the Commission's contention that one business day will "... provid[e] SROs with sufficient time to comply..." with the proposed requirement that both proposed rule changes and approved rule changes be posted on an SRO's website. As noted above, vacations, staff turnover and the pressing needs of other legal or regulatory matters may cause an SRO to miss a one-day deadline for the posting of proposed rule changes to a website. The CHX believes that the process associated with publishing an approved rule is a much more detailed one, which cannot easily be condensed into a single business day, particularly where

---

best of circumstances, proposals published on an SRO website within three days after filing with the Commission would be available to members and to the public long before they would be made available in the Federal Register for formal review.

<sup>5</sup> The CHX has noted, for example, that many SROs decline to publish their fee schedules in either the "hard copy" guides published by CCH or the online service that is available to CCH subscribers.

Mr. Jonathan G. Katz  
June 4, 2004  
Page 4 of 4

more substantial rule changes are involved.<sup>6</sup> Moreover, SROs (or at least the CHX) often receive no advance notice of the Commission's plans to issue an approval order and, as a result, cannot plan to have resources standing by to ensure that a rule change is immediately published. Accordingly, the CHX recommends that the Commission's final rule provide SROs with at least three business days to post approved rule changes on their websites.

In addition, the CHX asks that the Commission confirm that any time frame for posting approved rule changes would start only after the SRO has received notice that the changes have been approved. On occasion, the CHX has learned of rule change approvals only by reviewing the *Federal Register*. If SROs are to be held to strict timelines with respect to website posting of rule changes, it will be vital that the SROs actually receive notice of those changes in a timely way.

**C. The Commission Should Set A Reasonable Effective Date for the Proposed Rule to Give SROs an Opportunity to Post Their Full Rulebooks on their Websites.**

As the Commission has noted, the CHX does not currently post its rules on its website. In reviewing available alternatives to begin that practice, the CHX has found that it likely will be more cost-effective to have the work done internally than to enter into a web-hosting agreement with a service such as CCH.<sup>7</sup> Because of the length of the CHX's current rulebook, we understand that the work required to create the required web pages and appropriately format the rule text could take many weeks for our current part-time website consultant to complete. The CHX respectfully requests that the Commission provide SROs with at least 90 days, after the effective date of the proposed changes to Rule 19b-4, to comply with the rulebook posting directive.

The Exchange appreciates the opportunity to share its thoughts with the Commission on these topics. If you have any questions about these comments, please do not hesitate to call me at 312/663-2496.

Very truly yours,

Ellen J. Neely

---

<sup>6</sup> To make changes to rules, the marked versions of the text filed with the Commission must be changed into the final, unmarked and properly-formatted version of the text and painstakingly reviewed for accuracy before they are incorporated into the published product. Whether these changes are made in-house or made through a service such as CCH, several different people, each with their own schedules, ordinarily are involved in the process.

<sup>7</sup> The CHX, like some other SROs, currently publishes its rules through CCH. CCH makes these rules available in a loose-leaf notebook or in an electronic format. The Exchange understands that CCH might offer webhosting arrangements for an annual cost of approximately \$45,000, a not-insignificant expenditure for a small SRO.