

hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

A request for a hearing or a petition for leave to intervene must be filed by:

(1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, [HEARINGDOCKET@NRC.GOV](mailto:HEARINGDOCKET@NRC.GOV); or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by e-mail to [OGCMailCenter@nrc.gov](mailto:OGCMailCenter@nrc.gov). A copy of the request for hearing and petition for leave to intervene should also be sent David W. Jenkins, Esq., 500 Circle

Drive, Buchanan, MI 49107, attorney for the licensee.

For further details with respect to this action, see the licensee's application for amendment dated April 6, 2004, and the Cook ITS Conversion Web page (as discussed above). Documents may be examined, and/or copied for a fee at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, (301) 415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 23rd day of September, 2004.

**Jack Donohew,**

*Senior Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04-21765 Filed 9-28-04; 8:45 am]

**BILLING CODE 7590-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50417; File No. SR-CHX-2003-07]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Out-of-Range Execution Rules

September 21, 2004.

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 March 20, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "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 Exchange. On March 10, 2004, the Exchange filed Amendment No. 1 to the proposed rule change,<sup>3</sup> and on September 15, 2004,

the Exchange filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, "out-of-range" executions. The text of the proposed rule change, as amended, appears below. Additions appear in *italics*; deletions are in [brackets].

\* \* \* \* \*

### Chicago Stock Exchange Rules

#### ARTICLE XX

#### Guaranteed Execution System and Midwest Automated Execution System

RULE 37. (a)Guaranteed Executions.

\* \* \* \* \*

[6. Executions Outside of Range.

Since executions are guaranteed on the basis of the size and price of the best bid or offering, the order may be executed out of the primary market range for the day but in a Dual Trading System issue a stop must be granted if requested.]

[7.]6. No change to text.

\* \* \* \* \*

(b) Automated Executions.

\* \* \* \* \*

(9) [All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Additionally, specialists may stop limit orders that are marketable when entered into the MAX System. Subject to Interpretations and Policies .03 under this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials.]

\* \* \* \* \*

(d) SuperMAX 2000.

SuperMAX 2000 shall be a voluntary automatic execution program within the MAX System. SuperMAX 2000 shall be available for any security trading on the

Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 10, 2004 ("Amendment No. 1"). Amendment No. 1 clarified the purpose and effects of the proposal.

<sup>4</sup> See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the original proposal and Amendment No. 1 in their entirety.

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

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

<sup>3</sup> See letter from Kathleen M. Boege, Vice President & Associate General Counsel, CHX, to

Exchange in decimal price increments. A specialist may choose to enable this voluntary program within the MAX System on an issue-by-issue basis.

\* \* \* \* \*

[(5) Out of Range. Notwithstanding anything herein to the contrary, SuperMAX 2000 will not automatically execute an order if such execution would result in an out of range execution.]

\* \* \* \* \*

## . . . Interpretations and Policies

.01 No change to text.

.02 No change to text.

.03 *Reserved for future use.* [With regard to paragraph 6 of paragraph (a) of this Rule, in the case of a minimum variation market, a stopped sell order will not be filled until a transaction takes place at the bid price or lower on the primary exchange or the Exchange's displayed share volume at the offering has been exhausted. A stopped buy order will not be filled until a transaction takes place at the offering price or higher on the primary exchange or the Exchange's displayed share volume at the bid has been exhausted. Notwithstanding the foregoing, all orders stopped pursuant to this Interpretation and Policy .03 shall be executed by the end of the trading day on which such order was stopped at no worse than the stopped price.]

\* \* \* \* \*

## 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 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

The Exchange proposes to amend CHX Article XX, Rule 37, which governs, among other things, "out-of-range" executions. The Exchange's rules currently impose specific order handling requirements on specialists when the execution of an order would

result in an out-of-range execution.<sup>5</sup> For example, Exchange rules require that market orders received through MAX®, the Exchange's automated routing and execution system that would result in an out-of-range execution are deemed received with a request to stop.<sup>6</sup> Under existing rules, a specialist may execute a stopped order out of the primary market range only with the approval of two floor officials.

This out-of-range rule likely was put in place at the request of customers, or as a marketing tool to attract new customers, when trading occurred in much larger minimum variations and when trading on regional exchanges was somewhat less common. Today, trading on regional exchanges is not a new phenomenon. Moreover, trading on all markets now occurs in a decimal trading environment, where an out-of-range execution based on the national best bid or offer is more readily seen by customers as accurately and appropriately reflecting the current market for the security. In addition, the existing rule can have the unintended—and in today's sometimes fast-paced trading environment—inappropriate result of delaying order executions when the specialist has stopped the order waiting for an opportunity to fill it within the primary market range.<sup>7</sup> For all of these reasons, the Exchange believes that it is no longer necessary to require that its specialists only fill orders within the primary market range for the day.

The proposed rule text would eliminate all references to specific order-handling responsibilities with respect to out-of-range executions.<sup>8</sup>

<sup>5</sup> An "out-of-range" execution is an execution that would create a new high or new low for the day when compared to the primary market range.

<sup>6</sup> See CHX Article XX, Rule 37(b)(9).

<sup>7</sup> Inadvertent violations of the current rule also require specialists to correct improper executions, which can be an inconvenience to the Exchange's order-sending firms who must send additional execution confirmations to their customers.

<sup>8</sup> Deletion of the out-of-range provisions relating to the stopping of otherwise out-of-range orders may impact CHX Article XX, Rule 28, which deals with a CHX specialist's liability for stopped orders. The Exchange, based on discussions with the Commission, agrees that it is appropriate to clarify whether the practice of stopping stock should be permitted on the Exchange. If the Exchange's management, member committees and Board of Governors determines that this practice should be prohibited, the Exchange will effect such a rule change, including deletion of CHX Article XX, Rule 28, by means of a separate submission to the Commission. If the Exchange determines that it remains appropriate for CHX specialists to stop stock in certain limited circumstances, then the Exchange will submit a rule change to the Commission that would specifically define the circumstances under which stock may be stopped on the CHX, and specifically outlining appropriate CHX specialist conduct under such circumstances.

Once the out-of-range functionality is eliminated from the Exchange's systems, an order that is eligible for automatic execution will be automatically executed by the Exchange's MAX system, even if it will constitute an out-of-range execution.

#### 2. Statutory Basis

The CHX believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, 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.

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

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

### C. Self-Regulatory Organization's Statement on Comments Regarding 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 its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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, as amended, 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

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

• Send e-mail to *rule-comments@sec.gov*. Please include File No. SR-CHX-2003-07 on the subject line.

#### Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File No. SR-CHX-2003-07. 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, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of such filing will also 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 No. SR-CHX-2003-07 and should be submitted on or before October 20, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-21839 Filed 9-28-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50430; File No. SR-PCX-2004-78]

### Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Priority and Order Allocation Procedures for PCX Plus

September 23, 2004.

On August 10, 2004, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to amend PCX Rule 6.76 (Priority and Allocation Procedures of PCX Plus) to eliminate the requirement that inbound marketable Broker Dealer orders route to Floor Broker Hand Held Terminals in some trading scenarios in lieu of receiving immediate electronic executions and to eliminate Electronic Book Execution pursuant to PCX Rule 6.76(b)(4). The proposed rule change was published for comment in the **Federal Register** on August 19, 2004.<sup>3</sup> The Commission received no comments on the proposal.

The Exchange proposes to amend PCX Rule 6.76 to allow Firm and Non-OTP Holder Market Maker<sup>4</sup> orders to immediately execute on PCX Plus. The PCX also proposes to remove the restrictions on an order entered by a Firm or Non-OTP Holder or OTP Firm Market Maker less than one minute before the inbound order. In addition, the Exchange proposes to eliminate the 40% participation limitation currently placed on a Firm, Non-OTP Holder or OTP Firm Market Maker for an inbound order that is not entirely filled. Finally, the PCX proposes to eliminate the Electronic Book Execution rules set forth in PCX Rule 6.76(b)(4) that prevent PCX Market Makers from immediately executing orders against the Consolidated Book.

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> and, in particular, the requirements of section 6(b) of the Act<sup>6</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,<sup>7</sup> which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

Specifically, the Commission finds that, in eliminating restrictions which prevent Firm and Non-OTP Market Maker orders from immediately executing, the proposed rule changes should provide greater efficiencies in the marketplace. In particular, the Commission believes that allowing PCX Market Makers to immediately execute against the Consolidated Book by eliminating the Electronic Book Execution rules of PCX Rule 6.76(b)(4) should improve the speed of executions at the PCX.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-PCX-2004-78) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-21838 Filed 9-28-04; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF STATE

[Public Notice 4844]

### Culturally Significant Objects Imported for Exhibition Determinations: "Comic Grotesque: Wit and Mockery in German Art, 1870-1940"

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of

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

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

<sup>3</sup> See Securities Exchange Act Release No. 50191 (August 13, 2004), 69 FR 51504.

<sup>4</sup> The term "Non-OTP Holder Market Maker" includes, but is not limited to, specialists, designated primary market makers, lead market makers, market makers, registered options traders, primary market makers and competitive market makers registered on an exchange other than the PCX. See PCX Rule 6.1(b)(35).

<sup>5</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).