

Specifically, the Commission cannot find that each iteration of the amended process would qualify as an exception under Section 5(b)(ii) of the Linkage Plan. The Commission notes that when the Original Participant Exchanges proposed the Options Linkage Plan, all seven exchanges represented to the Commission that:

Section 5(b)(ii) of the Plan carries forward the current Trade-Through exception in the old plan and is the options equivalent to the single price opening exception in Regulation NMS for equity securities. Options exchanges use a trading rotation to open an option for trading, or to reopen an option after a trading halt. The rotation is effectively a single price auction to price the option and there are no practical means to include prices on other exchanges in that auction.

(emphasis added).⁵⁵ Relying on this unanimous representation from all exchanges who jointly proposed the Options Linkage Plan, the Commission stated in the Options Linkage Plan Approval Order that the language used in the Section 5(b)(ii) is “similar to an exception available for NMS stocks under Regulation NMS,”⁵⁶ and “[a]s noted by the Participants, the trading rotation is effectively a single price auction to price the option.”⁵⁷

The Commission acknowledges that the text of Section 5(b)(ii) of the Options Linkage Plan refers to the trade-through exception during a “trading rotation,” not a “single price auction.” But as even the Exchange notes in the ISE Letter, the Options Linkage Plan also does not define the term “trading rotation” nor

provide additional clarification to what the trading rotation exception under Section 5(b)(ii) means.⁵⁸ In addition, as noted above, all seven exchanges that jointly proposed the Linkage Plan explicitly represented to the Commission that the trading rotation exception is “similar to an exception available for NMS stocks under Regulation NMS” and is “effectively a single price auction to price the option.”⁵⁹ Accordingly, in the absence of any basis in the Options Linkage Plan itself for the Commission to determine otherwise, and in light of prior, explicit representations by the Original Participant Exchanges that the trading rotation exception applies to a “single price auction,” the Commission cannot find that the Exchange’s proposal is consistent with the Linkage Plan and thereby the Act.

The Commission acknowledges that the ISE’s proposed iterative opening process, unlike its current process, would provide away market protection for Public Customer Orders. For the reasons discussed above, however, the Commission cannot find that the proposed rule change is consistent with the Options Linkage Plan or the Act. Further, the Commission does not agree with the Exchange that the decision of other options exchanges not to comment on the proposed rule change equates to agreement with ISE’s interpretation of the trading rotation exception. It would be inappropriate for the Commission to draw any such conclusion unless explicitly stated by a commenter. As ISE itself noted, “exchanges may have several reasons for not commenting on a proposed rule change.”⁶⁰

Finally, in analyzing the proposed rule change, and in making its determination to disapprove the rule change, the Commission has considered whether the action will promote efficiency, competition, and capital

formation,⁶¹ but, as discussed above, the Commission cannot find that the proposed rule change is consistent with the Options Linkage Plan or Section 6(b)(5) of the Act.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2014-24), be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶²

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75630; File No. SR-CHX-2015-03]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Implement CHX SNAPSM, an Intra-Day and On-Demand Auction Service

August 6, 2015.

On June 23, 2015, the Chicago Stock Exchange, Inc. (“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 implement CHX SNAPSM, which would be an intra-day and on-demand auction service that would be initiated at the request of market participants seeking to trade securities in bulk. The proposed rule change was published for comment in the **Federal**

⁶¹ Whenever pursuant to the Act the Commission is engaged in rulemaking or the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁵ See Letter from Michael Simon, Secretary, ISE, dated November 7, 2008, and available at <http://www.sec.gov/rules/sro/nms/2008/4-546-ise-amend3.pdf>. See also Letters from Peter G. Armstrong, Managing Director, Options, NYSE Arca, dated October 30, 2008, available at <https://www.sec.gov/rules/sro/nms/2008/4-546-nysearca-amend3.pdf>; Edward J. Joyce, President & Chief Operating Officer, Chicago Board Options Exchange, dated November 21, 2008, available at <http://www.sec.gov/rules/sro/nms/2008/4-546-cboe-amend1.pdf>; Jeffrey P. Burns, Managing Director, NYSE Alternext US LLC, dated November 25, 2008, available at <https://www.sec.gov/rules/sro/nms/2008/4-546-nysealtr-amend1.pdf>; John Katovich, Vice President, BSE, dated December 1, 2008, available at <https://www.sec.gov/rules/sro/nms/2008/4-546-bse-amend1.pdf>; Richard S. Rudolph, Counsel, Nasdaq OMX Phlx, dated December 3, 2008, available at <https://www.sec.gov/rules/sro/nms/2008/4-546-phlx-amend1.pdf>; and Jeffrey S. Davis, Vice President & Deputy General Counsel, Nasdaq Stock Market LLC, dated December 4, 2008, available at <https://www.sec.gov/rules/sro/nms/2008/4-546-nasdaq-amend1.pdf>.

⁵⁶ See Options Linkage Plan Approval Order, *supra* note 32, at 39366. See also Rule 611(b)(3) of Regulation NMS under the Act (17 CFR 242.611(b)(3)) which provides that “the transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.”

⁵⁷ See Options Linkage Plan Approval Order, *supra* note 32, at 39366.

⁵⁸ Further, the Commission notes that the Linkage Plan refers to a singular “trading rotation” not, as ISE implies, multiple “trading rotations.”

⁵⁹ See *supra* note 55.

⁶⁰ See ISE Letter, *supra* note 7, at 3. ISE also provides as an exhibit to its response letter data purporting to show trade-throughs from all options exchanges during the first minute of trading on April 29, 2015, and April 30, 2015. According to ISE, the data shows trade-throughs from every exchange, with the total number of contracts trading through being 9,316 on April 29, and 48,269 contracts on April 30. See Exhibit to ISE Letter, *supra* note 7. The Commission cannot surmise from the data whether the trade-throughs are occurring without an exception or whether the exchanges are not complying with the Linkage Plan or their own rules. The Commission notes that the Options Linkage Plan provides that if a participant exchange relies on a trade-through exception, it would be required to establish, maintain, and enforce written policies and procedures reasonably designed to assure compliance with the terms of the exception.

Register on July 8, 2015.³ The Commission has received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act⁴ provides that, within 45 days of the publication of the notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates October 6, 2015 as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change (File Number SR-CHX-2015-03).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75633; File No. SR-FINRA-2015-009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change To Adopt FINRA Rule 2272 To Govern Sales or Offers of Securities on the Premises of Any Military Installation to Members of the U.S. Armed Forces or Their Dependents

August 6, 2015.

I. Introduction

On April 23, 2015, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt FINRA Rule 2272. Rule 2272 would govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents. The proposed rule was published for comment in the **Federal Register** on May 6, 2015.³ The Commission received four comment letters in response to the proposal.⁴ On June 18, 2015, FINRA granted the Commission an extension of time, until August 10, 2015, to act on the proposal.⁵ FINRA responded to the comment letters on July 21, 2015.⁶

This order approves the rule as proposed.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing of a Proposed Rule to Adopt FINRA Rule 2272 To Govern Sales or Offers of Securities on the Premises of Any Military Installation to Members of the U.S. Armed Forces or Their Dependents; Exchange Act Release No. 74890 (May 6, 2015), 80 FR 27220 (May 12, 2015) ("Notice").

⁴ See Letters from Jason T. Robinson, Georgia State University College of Law Investor Advocacy Clinic, dated May 30, 2015 ("GSU Letter"); Hugh D. Berkson, Public Investors Arbitration Bar Association, dated June 1, 2015 ("PIABA Letter"); David T. Bellaire, Esq., Financial Services Institute, dated June 2, 2015 ("FSI Letter"); David M. Rader, Michigan State University College of Law Investor Advocacy Legal Clinic, dated June 9, 2015 ("MSU Letter").

⁵ See Letter from Jeanette Wingler, Assistant General Counsel, FINRA, to Katherine England, Assistant Director, Division of Trading and Markets, Securities and Exchange Commission, dated June 18, 2015.

⁶ See Letter from Jeanette Wingler, Assistant General Counsel, FINRA, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated July 21, 2015 ("FINRA Response Letter").

II. Description of the Proposed Rule

a. Background

As stated in the Notice, FINRA is proposing to adopt Rule 2272 to govern sales or offers of sales of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.⁷ Proposed Rule 2272 would impose a number of restrictions upon FINRA members engaged in the sales or offers of sales of securities, including a disclosure requirement, a suitability obligation, and a ban on referral fees to persons not associated with a FINRA member.⁸

i. Statutory Basis

To comply with the requirements of Section 15A(b)(14) of the Exchange Act,⁹ FINRA proposed rules governing the sales, or offers of sales, of securities on the premises of any military installation to members of the U.S. Armed Forces or their dependents.¹⁰ Section 15A(b)(14) requires these rules mandate: (1) A broker-dealer performing brokerage services to military personnel or dependents disclose (a) that securities offered are not being offered or provided on behalf of the federal government, and that their offer is not sanctioned, recommended, or encouraged by the federal government and (b) the identity of the registered broker-dealer offering the securities; (2) such broker-dealer to perform an appropriate suitability determination prior to making a recommendation of a security to a member of the U.S. Armed Forces or a dependent thereof; and (3) that no person receive referral fees or incentive compensation unless such person is an associated person of a registered broker-dealer and qualified pursuant to the rules of a self-regulatory organization.¹¹

ii. Proposed Rule

Proposed FINRA Rule 2272 requires that, prior to engaging in sales or offers of sales of securities on the premises of a military installation to any member of the U.S. Armed Forces or a dependent thereof, a FINRA member must clearly and conspicuously disclose in writing: (1) The identity of the member offering

⁷ See Notice at 27221.

⁸ See *id.*

⁹ 15 U.S.C. 78o-3(b)(14).

¹⁰ Congress amended Section 15A(b) of the Exchange Act in the Military Personnel Financial Services Protection Act ("Military Act"). Pub. L. 109-290, 120 Stat. 1317. The Military Act requires the rules of a registered national securities association to include provisions governing the sales, or offers of sales, of securities on the premises of any military installation to any member of the Armed Forces or a dependent thereof.

¹¹ 15 U.S.C. 78o-3(b)(14).

³ See Securities Exchange Act Release No. 75346 (July 1, 2015), 80 FR 39172 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).