

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the NYSE Arca's principal office and on its Internet Web site at [www.nyse.com](http://www.nyse.com). 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-NYSEArca-2012-141, and should be submitted on or before January 16, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-31014 Filed 12-21-12; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68455; File No. SR-CHX-2012-14]

### Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Telemarketing Rules

December 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on December 4, 2012, the Chicago Stock Exchange, Inc. ("CHX" or the "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. CHX has filed this proposal pursuant to Exchange Act Rule 19b-4(f)(6)<sup>3</sup> which is effective upon filing with the Commission.

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

CHX proposes to amend its rules to adopt provisions that are substantially similar in all material respects to Financial Industry Regulatory Authority ("FINRA") Rule 3230 (Telemarketing), which the Commission recently approved.<sup>4</sup> In turn, FINRA's rule was modeled after and is substantially similar to Federal Trade Commission ("FTC") rules that prohibit deceptive and other abusive telemarketing acts or practices.<sup>5</sup> The text of this proposed rule change is available on the Exchange's Web site at ([www.chx.com](http://www.chx.com)) and in 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 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. 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 Changes

###### 1. Purpose

The Exchange proposes to amend Article 8, Rule 13 (Advertising and Promotion) to adopt provisions that are substantially similar to FTC rules that prohibit deceptive and other abusive telemarketing acts or practices.<sup>6</sup>

The Prevention Act required, among other things, the Commission to

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> See Exchange Act Release No. 66279 (Jan. 30, 2012), 77 FR 5611 (Feb. 3, 2012) (SR-FINRA-2011-059) (approval order of proposed rule change to adopt telemarketing rule).

<sup>5</sup> 16 CFR 310.1-.9. The FTC adopted rules under the Telemarketing Consumer Fraud and Abuse Prevention Act of 1994 ("Prevention Act") in 1995. See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (Aug. 23, 1995). Since the FTC rule is the model for the FINRA rule and the CHX rule, subsequent references will be to the FTC rule.

<sup>6</sup> See *supra* note 5.

promulgate, or direct any national securities exchange or registered securities associations to promulgate, rules substantially similar to the FTC rules<sup>7</sup> to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets or that existing federal securities laws or Commission rules already provide for such protection.<sup>8</sup> To this end, in May 2011, Commission staff directed the Exchange to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.<sup>9</sup>

#### Proposed CHX Article 8, Rule 13

Based on the aforementioned considerations, the proposed rule change to CHX Article 8, Rule 13, adopts new rule text that is substantially similar to the FTC's rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.<sup>10</sup>

#### General Telemarketing Restrictions

Proposed CHX Article 8, Rule 13(d) provides that no Participant or associated person therewith may initiate any outbound telephone call<sup>11</sup> to:

1. Any residence of a person before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called person's

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 6102.

<sup>9</sup> See Letter from Robert W. Cook, Director, Division of Trading and Markets, Securities and Exchange Commission, to David A. Herron, Chief Executive Officer of CHX, Inc. (May 12, 2011).

<sup>10</sup> See *supra* note 5.

<sup>11</sup> An "outbound telephone call" is a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A "customer" is any person who is or may be required to pay for goods or services through telemarketing. A "donor" means any person solicited to make a charitable contribution. A "person" is any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity. "Telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call. See proposed CHX Article 8, Rule 13(p)(11), (14), (16), (17), and (20); see also FINRA Rule 3230(m)(11), (14), (16), (17), and (20); and 16 CFR 310.2(f), (l), (n), (v), (w), and (dd).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

location, unless the Participant has an established business relationship<sup>12</sup> with the person pursuant to subparagraph (p)(12), the Participant has received that person's prior express invitation or permission, or the person called is a broker or dealer;

2. any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the Participant; or

3. any person who has registered his or her telephone number on the FTC's national do-not-call registry.

The proposed rule change is substantially similar to the FTC's provisions regarding abusive telemarketing acts or practices.<sup>13</sup> The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.<sup>14</sup>

#### National Do-Not-Call List Exceptions

Proposed CHX Article 8, Rule 13(e) provides that the Participant making outbound telephone calls to any person who has registered his or her telephone number on the FTC's national do-not-call registry will not be liable for violating the prohibition in paragraph (d)(3) if:

<sup>12</sup> An "established business relationship" is a relationship between a Participant and a person if (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the Participant or at a clearing firm that provides clearing services to the Participant within the 18 months immediately preceding the date of an outbound telephone call; (b) the Participant is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or (c) the person has contacted the Participant to inquire about a product or service offered by the Participant within the three months immediately preceding the date of an outbound telephone call. A person's established business relationship with a Participant does not extend to the Participant's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a Participant's affiliate does not extend to the Participant unless the person would reasonably expect the Participant to be included. The term "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the Participant. The term "broker-dealer of record" refers to the broker or dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer. See proposed CHX Article 8, Rule 13(p)(1), (4), and (12); see also 16 CFR 310.2(o) and FINRA Rule 3230(m)(1), (4), and (12).

<sup>13</sup> See 16 CFR 310.4(b)(1)(iii)(A) and (B) and (c); see also FINRA Rule 3230(a).

<sup>14</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (Aug. 23, 1995) at 43855.

1. The Participant has an established business relationship with the recipient of the call;<sup>15</sup>

2. the Participant has obtained the person's prior express invitation or permission;<sup>16</sup> or

3. the associated person making the call has a personal relationship<sup>17</sup> with the recipient of the call.

The proposed rule change is substantially similar to the FTC's provision regarding an exception to the prohibition on making outbound telephone calls to persons on the FTC's do-not-call registry.<sup>18</sup> The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.<sup>19</sup>

#### Safe Harbor Provision

Proposed CHX Article 8, Rule 13(f) provides that the Participant or person associated therewith making outbound telephone calls will not be liable for initiating any outbound telephone call to any person who has registered his or her telephone number on the FTC's national do-not-call registry if the Participant or person associated therewith demonstrates that the violation is the result of an error and that as part of the Participant's routine business practice, it meets the following standards:

1. The Participant has established and implemented written procedures to comply with the national do-not-call rules;

2. the Participant has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

3. the Participant has maintained and recorded a list of telephone numbers that it may not contact; and

4. the Participant uses a process to prevent outbound telephone calls to any

<sup>15</sup> A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that Participant even if the person continues to do business with the Participant.

<sup>16</sup> Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act (see 15 U.S.C. 7001 et seq.) between the person and Participant which states that the person agrees to be contacted by the Participant and includes the telephone number to which the calls may be placed.

<sup>17</sup> The term "personal relationship" means any family member, friend, or acquaintance of the person making an outbound telephone call. See proposed CHX Article 8, Rule 13(p)(18); see also FINRA Rule 3230(m)(18).

<sup>18</sup> See 16 CFR 310.4(b)(1)(iii)(B); see also FINRA Rule 3230(b).

<sup>19</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (Aug. 23, 1995) at 43854.

telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

The proposed rule change is substantially similar to the FTC's safe harbor to the prohibition on making outbound telephone calls to persons on the FTC's national do-not-call registry.<sup>20</sup> The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.<sup>21</sup>

#### Procedures

Proposed CHX Article 8, Rule 13(g) adopts procedures that Participants must institute to comply with Article 8, Rule 13 prior to engaging in telemarketing. Such procedures must meet the following minimum standards:

1. Participants must have a written policy for maintaining their firm-specific do-not-call lists.

2. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the Participant's firm-specific do-not-call list.

3. If the Participant receives a request from a person not to receive calls from that Participant, the Participant must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made.<sup>22</sup>

4. The Participant or person associated therewith making an outbound telephone call must provide the called party with the name of the individual caller, the name of the Participant, an address or telephone number at which the Participant may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for

<sup>20</sup> See 16 CFR 310.4(b)(1)(iii)(B); see also FINRA Rule 3230(c).

<sup>21</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4628; and Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (Aug. 23, 1995) at 43855.

<sup>22</sup> Participants must honor a person's do-not-call request within a reasonable time from the date the request was made, which may not exceed thirty (30) days from the date of such request. If such requests are recorded or maintained by a party other than the Participant on whose behalf the outbound telephone call is made, the Participant on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

which charges exceed local or long distance transmission charges.<sup>23</sup>

5. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the Participant making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

6. The Participant making outbound telephone calls must maintain a record of a person's request not to receive further calls.

Inclusion of this requirement to adopt these procedures will not create any new obligations on Participants, as they are already subject to identical provisions under the Federal Communications Commission's ("FCC") telemarketing regulations.<sup>24</sup>

#### Wireless Communications

Proposed CHX Article 8, Rule 13(h) states that the provisions set forth under this Rule are applicable to Participants and persons associated therewith making outbound telephone calls to wireless telephone numbers.<sup>25</sup>

#### Outsourcing Telemarketing

Proposed CHX Article 8, Rule 13(i) states that if the Participant uses another entity or person to perform telemarketing services on its behalf, the Participant remains responsible for ensuring compliance with all provisions contained in this Rule 13. This proposed rule also clarifies that Participants must consider whether the entity or person that the Participant uses for outsourcing, must be appropriately registered or licensed, where required.<sup>26</sup>

#### Caller Identification Information

Proposed CHX Article 8, Rule 13(j) provides that any Participant that engages in telemarketing, as defined in subparagraph (p)(20) of this Rule, must transmit or cause to be transmitted the telephone number, and, when made available by the Participant's telephone carrier, the name of the Participant, to any caller identification service in use by a recipient of an outbound telephone call. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. In addition, any Participant that engages in telemarketing, as defined in subparagraph (p)(20) of this Rule, is

prohibited from blocking the transmission of caller identification information.<sup>27</sup>

The provisions are similar to the caller identification provisions in the FTC rules.<sup>28</sup> Inclusion of these caller identification provisions in this proposed rule change will not create any new obligations on Participants, as they are already subject to identical provisions under FCC telemarketing regulations.<sup>29</sup>

#### Unencrypted Consumer Account Numbers

Proposed CHX Article 8, Rule 13(k) prohibits Participant or persons associated therewith from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The proposed rule change is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.<sup>30</sup> The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.<sup>31</sup> In addition, the term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The proposed definition is substantially similar to the view taken by the FTC.<sup>32</sup>

#### Submission of Billing Information

Proposed CHX Article 8, Rule 13(l) requires, for any telemarketing transaction, a Participant or associated person therewith to obtain the express informed consent of the person to be charged and to be charged using the identified account. In addition, in any telemarketing transaction involving preacquired account information<sup>33</sup> and a free-to-pay conversion<sup>34</sup> feature, the

<sup>27</sup> Caller identification information includes the telephone number and, when made available by the Participant's telephone carrier, the name of the Participant.

<sup>28</sup> See 16 CFR 310.4(a)(8); see also FINRA Rule 3230(g).

<sup>29</sup> See 47 CFR 64.1601(e).

<sup>30</sup> See 16 CFR 310.4(a)(6); see also FINRA Rule 3230(h).

<sup>31</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4615.

<sup>32</sup> See *id.* at 4616.

<sup>33</sup> The term "preacquired account information" means any information that enables a Participant or person associated with a Participant to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. See proposed CHX Article 8, Rule 13(p)(19).

<sup>34</sup> The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial

Participant or person associated therewith must:

1. Obtain from the customer, at a minimum, the last four (4) digits of the account number to be charged;

2. obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to subparagraph (l)(1)(A); and

3. make and maintain an audio recording of the entire telemarketing transaction.

In any other telemarketing transaction involving preacquired account information not described in paragraph (l)(1), the Participant or person associated therewith must:

1. identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

2. obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to subparagraph (l)(2)(A).

The proposed rule change is substantially similar to the FTC's provision regarding the submission of billing information.<sup>35</sup> The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act.<sup>36</sup>

#### Abandoned Calls

Proposed CHX Article 8, Rule 13(m) prohibits a Participant or person associated with the Participant from abandoning<sup>37</sup> any outbound telemarketing call. The abandoned calls prohibition is subject to a "safe harbor" under proposed subparagraph (m)(2) if:

1. The Participant or person associated therewith employs technology that ensures abandonment of no more than three (3) percent of all telemarketing calls answered by a person, measured over the duration of a single calling campaign, if less than thirty (30) days, or separately over each successive 30-day period or portion thereof that the campaign continues;

2. the Participant or person associated therewith, for each telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. See proposed CHX Article 8, Rule 13(p)(13).

<sup>35</sup> See 16 CFR 310.4(a)(7); see also FINRA Rule 3230(i).

<sup>36</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4615.

<sup>37</sup> An outbound call is "abandoned" if a person answers it and the call is not connected to a person associated with the Participant within two (2) seconds of the person's completed greeting.

<sup>23</sup> See proposed CHX Article 8, Rule 13(g)(4); see also 47 CFR 64.1200(d)(4) and FINRA Rule 3230(d)(4).

<sup>24</sup> See 47 CFR 64.1200(d); see also FINRA Rule 3230(d).

<sup>25</sup> See also FINRA Rule 3230(e).

<sup>26</sup> See also FINRA Rule 3230(f).

3. whenever a person associated with the Participant is not available to speak with the person answering the telemarketing call within two (2) seconds after the person's completed greeting, the Participant or person associated therewith promptly plays a recorded message that states the name and telephone number of the Participant or person associated with the Participant on whose behalf the call was placed; and

4. the Participant retains records establishing compliance with the "safe harbor."

The proposed rule change is substantially similar to the FTC's provisions regarding abandoned calls.<sup>38</sup> The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.<sup>39</sup>

#### Prerecorded Messages

Proposed CHX Article 8, Rule 13(n) prohibits the Participant or person associated therewith from initiating any outbound telemarketing call that delivers a prerecorded message without a person's express written agreement<sup>40</sup> to receive such calls. The proposed rule change also requires that all prerecorded telemarketing calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the "safe harbor" for abandoned calls under proposed subparagraph (m)(2).

The proposed rule change is substantially similar to the FTC's provisions regarding prerecorded messages.<sup>41</sup> The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.<sup>42</sup>

#### Credit Card Laundering

Proposed CHX Article 8, Rule 13(o) prohibits credit card laundering, the practice of depositing into the credit

card system<sup>43</sup> a sales draft that is not the result of a credit card transaction between the cardholder<sup>44</sup> and the Participant. Except as expressly permitted, the proposed rule change prohibits the Participant or associated person therewith from:

1. Presenting or depositing into, the credit card system for payment, a credit card sales draft<sup>45</sup> generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the Participant;

2. employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant,<sup>46</sup> to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

3. obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement<sup>47</sup> or the applicable credit card system.

The proposed rule change is substantially similar to the FTC's

<sup>43</sup> The term "credit card system" means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. See proposed CHX Article 8, Rule 13(p)(7), (8), and (10).

<sup>44</sup> The term "cardholder" means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. See proposed CHX Article 8, Rule 13(p)(6).

<sup>45</sup> The term "credit card sales draft" means any record or evidence of a credit card transaction. See proposed CHX Article 8, Rule 13(p)(9).

<sup>46</sup> The term "merchant" means a person who is authorized under written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. The term "acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund. See proposed CHX Article 8, Rule 13(p)(2) and (14).

<sup>47</sup> The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or charitable contribution. See proposed CHX Article 8, Rule 13(p)(15).

provisions regarding credit card laundering.<sup>48</sup> The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act.<sup>49</sup>

#### Definitions

Proposed CHX Article 8, Rule 13(p) adopts the following definitions, which are substantially similar to the FTC's definitions of these terms: "acquirer," "billing information," "caller identification service," "cardholder," "charitable contribution," "credit," "credit card," "credit card sales draft," "credit card system," "customer," "donor," "established business relationship," "free-to-pay conversion," "merchant," "merchant agreement," "outbound telephone call," "person," "preacquired account information," and "telemarketing."<sup>50</sup>

#### Compliance with Other Requirements

Proposed CHX Article 8, Rule 13.01 states that this Rule does not affect the obligation of any Participant or person associated therewith that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act,<sup>51</sup> the Telephone Consumer Protection Act,<sup>52</sup> and the rules of the FCC relating to telemarketing practices and the rights of telephone consumers.<sup>53</sup>

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, in particular Section 6(b) of the Act.<sup>54</sup> Specifically, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)<sup>55</sup> in that it is designed to promote just and equitable principles of

<sup>48</sup> See 16 CFR 310.3(c); see also FINRA Rule 3230(l).

<sup>49</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 60 FR 43842 (Aug. 23, 1995) at 43852.

<sup>50</sup> See proposed CHX Article 8, Rule 13(p)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20); and 16 CFR 310.2(a), (c), (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (p), (s), (t), (v), (w), (x), and (dd); see also FINRA Rule 3230(m)(2), (3), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (19), and (20). The proposed rule change also adopts definitions of "account activity," "broker-dealer of record," and "personal relationship" that are substantially similar to FINRA's definitions of these terms. See proposed CHX Article 8, Rule 13(p)(1), (4), and (18) and FINRA Rule 3230(m)(1), (4), and (18); see also 47 CFR 64.1200(t)(14) (FCC's definition of "personal relationship").

<sup>51</sup> 15 U.S.C. 6101–6108, as amended.

<sup>52</sup> 47 U.S.C. 227.

<sup>53</sup> 47 CFR 64.1200.

<sup>54</sup> 15 U.S.C. 78f(b).

<sup>55</sup> 15 U.S.C. 78f(b)(5).

<sup>38</sup> See 16 CFR 310.4(b)(1)(iv); see also 16 CFR 310.4(b)(4).

<sup>39</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 68 FR 4580 (Jan. 29, 2003) at 4641.

<sup>40</sup> The express written agreement must: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the Participant to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the Participant; and (d) include the person's telephone number and signature (which may be obtained electronically under the E-Sign Act).

<sup>41</sup> See 16 CFR 310.4(b)(1)(v); see also FINRA Rule 3230(k).

<sup>42</sup> See Federal Trade Commission, *Telemarketing Sales Rule*, 73 FR 51164 (Aug. 29, 2008) at 51165.

trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the proposed rule change supports the objective of the Act by providing greater harmonization between CHX Rules and rules of similar purpose of other self-regulatory organizations, such as FINRA, resulting in less burdensome and more efficient regulatory compliance. In particular, CHX Participants that are also FINRA members are subject to both CHX Article 8, Rule 13 and FINRA Rule 3230; CHX believes that harmonizing these two rules would promote just and equitable principles of trade by requiring a single standard for telemarketing. In addition, CHX believes that adopting the amendments to CHX Article 8, Rule 13 will assure that the Exchange's rules governing telemarketing meet the standards set forth in the Prevention Act. To the extent the Exchange has proposed changes that differ from the FINRA version of the CHX Rules, the Exchange believes that such changes are technical in nature and do not change the substance of the proposed CHX Rules. The Exchange also believes that the proposed rule change will update and clarify the requirements governing telemarketing, which will promote just and equitable principles of trade and help to protect investors.

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

The Exchange 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others*

CHX neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>56</sup> and Rule 19b-4(f)(6)<sup>57</sup> thereunder in that it effects a change that: (i) Does not significantly affect the protection of investors or the public

interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### *Solicitation of Comments*

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2012-14 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CHX-2012-14. This file number should be included on the subject line if email 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 changes 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such

filing will also be available for inspection and copying at the principal office of the Exchange.

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-2012-14 and should be submitted on or before January 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>58</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2012-30886 Filed 12-21-12; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-68460; File No. SR-NYSEMKT-2012-41]

### **Self-Regulatory Organizations; NYSE MKT LLC.; Order Granting Approval of Proposed Rule Change To Amend Commentary .04 to NYSE Amex Options Rule 903 To Permit the Exchange to List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration**

December 18, 2012.

#### **I. Introduction**

On September 6, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") 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 Commentary .04 to NYSE Amex Options Rule 903 to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to monthly expiration in unusual market conditions. The proposed rule change was published for comment in the **Federal Register** on September 20, 2012.<sup>3</sup> On November 1, 2012, the Commission designated a longer period to act on the proposed rule change, until December 19, 2012.<sup>4</sup> The Commission received no comment letters on the

<sup>58</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 67862 (September 14, 2012), 77 FR 58429 ("Notice").

<sup>4</sup> Securities Exchange Act Release No. 68135, 77 FR 66896 (November 7, 2012).

<sup>56</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>57</sup> 17 CFR 240.19b-4(f)(6).